



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 21, 2016

PUBLIC ACCESS OPINION 16-012
(Request for Review 2016 PAC 44115)

FREEDOM OF INFORMATION ACT:
Disclosure of Public Employees' Compensation

Mr. Steve Carroll
811 South Oak Avenue
Freeport, Illinois 61032

Ms. Brenda Westfall
FOIA Officer
Housing Authority of the City of Freeport
1052 West Galena Avenue
Freeport, Illinois 61032

Dear Mr. Carroll and Ms. Westfall:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that the Housing Authority of the City of Freeport (Authority) violated the requirements of FOIA by improperly denying Mr. Steve Carroll's August 31, 2016, request for employee compensation information related to bonuses.

BACKGROUND

On August 31, 2016, Mr. Carroll submitted a FOIA request to the Authority seeking "the dollar amount of the increase and the names and titles of the staff members receiving bonuses as a result of the re-allocated funds."¹ The request referred to a May 13, 2016, meeting at which the Authority's Board of Commissioners (Board) voted to approve a re-allocation of an increase in the base salary of the Authority's chief executive officer to staff

¹FOIA Request from Steve Carroll to Housing Authority of the City of Freeport (August 31, 2016).

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bonuses. In a letter dated September 8, 2016, the Authority denied the request in its entirety citing sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016), and also asserted that the Personnel Record Review Act (PRRA) (820 ILCS 40/0.01 *et seq.* (West 2014)) prohibits disclosure of the requested information.²

On September 19, 2016, the Public Access Bureau received a Request for Review from Mr. Carroll contesting the Authority's denial.³ On September 26, 2016, the Public Access Bureau sent a copy of the Request for Review to the Authority and asked it to provide a detailed explanation of the factual and legal bases for its assertion that the requested records are exempt from disclosure under sections 7(1)(b) and 7(1)(c) of FOIA and the PRRA.⁴ The Public Access Bureau also asked the Authority to specifically address the applicability of section 2.5 of FOIA (5 ILCS 140/2.5 (West 2014)), which provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."

On October 7, 2016, the Authority submitted its response to the Request for Review to the Public Access Bureau.⁵ In the redacted version of the response, the employees' names, titles, and dollar amounts of the bonuses had been withheld, while in the confidential version that information was not redacted. The Authority discussed its arguments concerning the privacy of the requested information:

The information being requested is confidential. [The Authority] has concern about providing the confidential information requested for a number of reasons. [The Authority] desires to be respectful of the privacy and private financial information of its employees and be in compliance with applicable

²Letter from Brenda Westfall, FOIA Officer, Executive Assistant, Housing Authority of the City of Freeport, to Steve Carroll (September 8, 2016).

³Request for Review from Steve Carroll (signed and dated September 13, 2016).

⁴Letter from Neil P. Olson, Deputy Public Access Counselor, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport (September 26, 2016).

⁵Letter from Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport, to Office of Attorney General Lisa Madigan, c/o Neil P. Olson, Deputy Public Access Counselor (October 7, 2016). The Housing Authority submitted two versions of its response, a confidential version to be reviewed only by the Office of the Attorney General and a redacted version to be provided to Mr. Carroll.

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laws in this regard, including the FOIA and the Illinois Personnel Records Review Act. [The Authority] was reasonably concerned that if it were to provide the requested information that it would disclose private personal financial information which has ramifications for the [Authority] employees involved. Further, although Mr. Carroll's request states the requests are for "non-commercial purposes," in the past, [the Authority] is aware that information about private compensation has been used to contact and harass current [Authority] employees about specific details about bonuses and compensation. This type of use of information is not in the public interest, nor is it contemplated by the FOIA.^{6]}

On October 13, 2016, the Public Access Bureau forwarded a copy of the Authority's response with the confidential information redacted to Mr. Carroll.⁷ The Public Access Bureau received a reply from Mr. Carroll on October 26, 2015.⁸

During a November 9, 2016, telephone conversation with the Authority's FOIA Officer, an Assistant Attorney General in the Public Access Bureau requested that the Authority provide a supplemental written response detailing its allegations that information regarding employee compensation had been used as a basis to "harass" Authority employees.

On November 29, 2016, the Authority submitted its supplemental written response to the Public Access Bureau, and asserted that the request at issue was part of a pattern of requests.⁹ The Authority stated, in pertinent part:

The harassment comes from the information he is requesting which is not within the intended purpose of FOIA, that being to "enable people to fulfill their duties of discussing public issues fully and freely and monitoring government to ensure that it is being conducted in the public interest." The requests are further in derogation of the Act's provision that it is "not intended to cause an

⁶Letter from Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport, to Office of Attorney General Lisa Madigan, c/o Neil P. Olson, Deputy Public Access Counselor (October 7, 2016), at 1.

⁷Letter from Neil P. Olson, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Steve Carroll (October 13, 2016).

⁸Reply from Steve Carroll (signed and dated October 19, 2016).

⁹Letter from Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport, to Office of Attorney General Lisa Madigan, c/o Neil P. Olson, Deputy Public Access Counselor (November 29, 2016).

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unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources."^{10]}

The Authority further contended that Mr. Carroll's requests targeted particular employees and arose out of his opposition to a property redevelopment program. The Authority listed and described a number of FOIA requests that Mr. Carroll had submitted between December 16, 2015, and November 11, 2016, two of which required the compilation of more than 1,000 pages of responsive records.¹¹

The Public Access Bureau forwarded a copy of the Authority's supplemental written response to Mr. Carroll on November 29, 2016.¹² On December 2, 2016, Mr. Carroll submitted a reply to the supplemental written response in which he asserted that he did not seek records for a "commercial purpose" or any of the other purposes identified by the Authority.¹³ He provided correspondence from the Authority indicating he had been charged for the costs of copying all but the first 50 pages of responsive records for each of his two requests that required the compilation of more than 1,000 pages of records.

On November 16, 2016, the Public Access Bureau properly extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.¹⁴

ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS

¹⁰Letter from Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport, to Office of Attorney General Lisa Madigan, c/o Neil P. Olson, Deputy Public Access Counselor (November 29, 2016), at 1.

¹¹Letter from Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport, to Office of Attorney General Lisa Madigan, c/o Neil P. Olson, Deputy Public Access Counselor (November 29, 2016), at 1-3.

¹²Letter from Neil P. Olson, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Steve Carroll (November 29, 2016).

¹³Letter from Steve Carroll to Neil P. Olson, Deputy Public Access Counselor, Assistant Attorney General, Public Access Bureau (December 2, 2016).

¹⁴Letter from Neil P. Olson, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Steve Carroll and Brenda Westfall, FOIA Officer, Housing Authority of the City of Freeport (November 16, 2016).

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140/1.2 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions to disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016) are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 2.5 of FOIA

Section 2.5 of FOIA provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts **are public records subject to inspection and copying by the public.**" (Emphasis added.) *See also* Ill. Const. 1970, art. VIII, § 1(c) ("[R]ecords of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.").

The Authority is a unit of local government and it is undisputed that the bonuses at issue were paid out of the Authority's funds. Although the Authority did not address the applicability of section 2.5 to the information that it described as "confidential," "private," and "personal," the plain language of section 2.5 requires the disclosure of all records relating to the use of public funds. Accordingly, any records documenting the allocation of the bonuses to Authority employees are subject to inspection and copying under FOIA, unless the Authority demonstrates that section 2.5 is superseded by the requirements of the PRRA or the FOIA exemptions that it cited as its bases for denying the request.

Section 7(1)(b) of FOIA

Section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2015 Supp.)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, **personal financial information**, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

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The Authority has asserted that employee compensation information is "personal financial information," as defined above, but has not provided any additional factual or legal bases to support the argument that the amount of compensation an employee receives is the type of "personal financial information" that constitutes a "unique identifier." This office has previously concluded:

The amount of compensation earned by an individual, standing alone, unlike a bank account number, does not constitute a "unique identifier" that could be considered "private information" under [section 2(c-5)]. Further, the compensation information relates to the [public body's] use of public funds and therefore is expressly subject to disclosure pursuant to section 2.5 of FOIA. Ill. Att'y Gen. Pub. Acc. Op. 15-006, issued August 31, 2015, at 5-6.

Accordingly, this office concludes that the Authority has not sustained its burden of demonstrating by clear and convincing evidence that the compensation information is exempt from disclosure under section 7(1)(b) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from inspection or copying:

Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

In its response to Mr. Carroll's FOIA request, the Authority asserted that "[t]he disclosure of this information about individual employees is highly personal or objectionable to a reasonable person, and the right of the [Authority] employees to privacy outweighs any

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legitimate public interest in obtaining the information."¹⁵ There is, however, a significant legitimate public interest in disclosure of the amount of compensation paid to public employees for the performance of public duties. See Ill. Att'y Gen. Pub. Acc. Op. 15-006, at 7 ("[T]he public has a right to know the purposes for which public funds are expended, including the identity of those who receive the funds and the amount of funds received.") As government employees, paid with public funds, these employees have no reasonable expectation of privacy in the amount of compensation they receive. And even if they do have an expectation of privacy in the amount of their compensation, it does not outweigh the public's legitimate interest in knowing how public funds are expended. Accordingly, the Authority has not demonstrated that disclosure of the information requested by Mr. Carroll would constitute a "clearly unwarranted invasion of personal privacy" as required by section 7(1)(c) of FOIA.

Personnel Record Review Act

The Authority also cited PRRA as a basis to deny the request. The Authority has not cited a specific section of the PRRA or provided a factual basis to support its assertion that the PRRA prohibits disclosure of the requested information. Section 11 of the PRRA (820 ILCS 40/11 (West 2014)) provides that "[t]his Act shall not be construed to diminish a right of access to records already provided by law, provided that *disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.*" (Emphasis added.)¹⁶ The PRRA, however, does not prohibit the disclosure of any records other than performance evaluations. In particular, no provision of the PRRA prohibits a public body from disclosing employee compensation information. Accordingly, this office concludes that the Authority has not sustained its burden of demonstrating that the requested information is exempt from disclosure under the PRRA.

The Purpose of FOIA

The Authority has asserted that the request at issue in this matter and other requests by Mr. Carroll are inconsistent with the purpose of FOIA and have burdened its operations. Section 1 of FOIA (5 ILCS 140/1 (West 2014)) provides:

[I]t is declared to be the public policy of the State of Illinois that
all persons are entitled to full and complete information

¹⁵Letter from Brenda Westfall, FOIA Officer, Executive Assistant, Housing Authority of the City of Freeport, to Steve Carroll (September 8, 2016), at 2.

¹⁶Section 8 of the PRRA (820 ILCS 40/8 (West 2014)) directs an employer to "delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old" prior to releasing personnel record information. This section does not mention records relating to employee compensation.

regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

* * *

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act ***is a primary duty of public bodies to the people of this State, and this Act should be construed to this end,*** fiscal obligations notwithstanding. (Emphasis added.)

Thus, FOIA provides all persons access to "public records," a term which is broadly defined to include "all records, * * * and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2015 Supp.). FOIA generally does not condition disclosure of public records on the purpose of a request. Indeed, a public body is prohibited from inquiring about the purpose of a request, except to determine whether the request is for a commercial purpose or to grant a fee waiver. See 5 ILCS 140/3(c) (West 2014)). Mr. Carroll has denied that he is seeking this information for a "commercial purpose," and this office has not received any information indicating that the request falls within the scope of the definition of that term in section 2(c-10) of FOIA (5 ILCS 140/2(c-10) (West 2015 Supp.)).¹⁷

With respect to the Authority's assertion that Mr. Carroll's request is a burden on its operations, FOIA contains provisions to ease the burden of complying with a request in appropriate circumstances. A public body may deny a particular request pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2014)) when "compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information." In addition, in

¹⁷Section 2(c-10) of FOIA defines "commercial purpose" as "the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services."

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appropriate circumstances, a public body may invoke the procedures for processing a request from a "recurrent requester"¹⁸ or a "voluminous request,"¹⁹ set forth in section 3.2 and section 3.6 of FOIA (5 ILCS 140/3.2, 3.6 (West 2014)), respectively. Although these provisions may afford a public body with more time to comply with a request, recoup certain personnel costs associated with providing records, or even deny a request if a requester declines to narrow it to manageable proportions, none of them authorize a public body to decline to provide "public records" based on its perception that the requester is seeking them for a reason that is in some way inconsistent with the purposes for which FOIA was enacted.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 31, 2016, Mr. Steve Carroll submitted a FOIA request to the Authority seeking "the dollar amount of the increase and the names and titles of the staff members receiving bonuses as a result of the re-allocated funds" in connection with a re-allocation of one staff member's salary increase to bonuses for other staff members.

2) On September 8, 2016, the Authority denied the request in its entirety, citing sections 7(1)(b) and 7(1)(c) of FOIA and the Personnel Record Review Act.

¹⁸Section 2(g) of FOIA (5 ILCS 140/2(g) (West 2015 Supp.)) defines a "[r]ecurrent requester" as "a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests within a 7-day period." Based on the information provided by the Authority regarding the 13 FOIA requests Mr. Carroll submitted between December 16, 2015, and November 11, 2016, Mr. Carroll would not qualify as a recurrent requester.

¹⁹Section 2(h) of FOIA (5 ILCS 140/2(h) (West 2015 Supp.)) defines a "[v]oluminous request" as:

a request that: (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.

Based on the correspondence provided by Mr. Carroll, it appears that the Authority treated his requests that required the compilation of more than 1,000 pages of records as "voluminous requests."

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3) On September 19, 2016, the Public Access Bureau received a Request for Review from Mr. Carroll contesting the denial of his FOIA request. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).

4) On September 26, 2016, the Public Access Bureau sent a copy of Mr. Carroll's Request for Review to the Authority and asked it to provide a detailed explanation of the factual and legal bases for its assertion that the requested records are exempt from disclosure under sections 7(1)(b) and 7(1)(c) of FOIA and the PRRA.

5) On October 7, 2016, the Authority sent its written response to the Public Access Bureau. The Authority provided two versions of its response, one version of the response was redacted to conceal the identities of the employees receiving bonuses and the amounts of those bonuses, the other version was for this office's confidential review and contained the pertinent employee compensation information. A copy of the redacted response was provided to Mr. Carroll.

6) Pursuant to section 9.5(f) of FOIA, this office properly extended the time for issuing a binding opinion by 30 business days to January 4, 2017. Therefore, the Attorney General may properly submit a binding opinion with respect to this matter.

7) Section 2.5 of FOIA specifically provides that all records relating to the obligation, receipt, and use of public funds of units of State and local government are public records subject to inspection and copying by the public. The Authority is a unit of local government and the compensation at issue was paid from public funds. Therefore, the amount of compensation paid to each employee is subject to disclosure.

8) Further, the amount of bonus compensation paid by the Authority to its employees does not constitute "personal financial information" or any other "unique identifier" that is exempt from disclosure under section 7(1)(b) of FOIA. Therefore, the Authority may not properly withhold the amount of bonus compensation paid to each employee under section 7(1)(b).

9) The Authority also failed to meet its burden of demonstrating that disclosure of the requested employee compensation information would constitute a clearly unwarranted invasion of personal privacy under section 7(1)(c) of FOIA. Because records containing that information directly relate to the Authority's use of public funds, as well as the performance of public duties by the employees in question, they are expressly subject to disclosure under section 2.5 of FOIA and any privacy interest that the employees may have in this information is outweighed by the public's legitimate interest in knowing how public funds are spent.

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10) The PRRA does not prohibit a public body from disclosing employee compensation information.

Therefore, it is the opinion of the Attorney General that the Authority's response to Mr. Carroll's Freedom of Information Act request violated the requirements of the Act. Accordingly, the Authority is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Carroll records sufficient to show the bonuses paid to each Authority employee as a result of the May 13, 2016, Board vote.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Steve Carroll as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-012) upon:

Mr. Steve Carroll
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Freeport, Illinois 61032

Ms. Brenda Westfall
FOIA Officer
Housing Authority of the City of Freeport
1052 West Galena Avenue
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by causing a true copy thereof to be sent electronically to the address as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 21, 2016.



SARAH L. PRATT
Public Access Counselor

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