OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 6, 2018

PUBLIC ACCESS OPINION 18-004
(Request for Review 2017 PAC 50559)

FREEDOM OF INFORMATION ACT:
Third Party Cost Records Submitted to a
City Related to a City-Funded
Redevelopment Project Are Not Exempt
From Disclosure under Section 7(1)(g) of FOIA

Ms. Elena Ferrarin
Senior Staff Writer
Daily Herald
P.O. Box 280
Arlington Heights, Illinois 60006

Mr. Michael R. Gehrman
Assistant Corporation Counsel
City of Elgin
150 Dexter Court
Elgin, Illinois 60120

Dear Ms. Ferrarin and Mr. Gehrman:

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 2016)). For the reasons discussed below, this office concludes that the City of Elgin (City) violated the requirements of FOIA by improperly denying Ms. Elena Ferrarin's November 7, 2017, FOIA request.

BACKGROUND

On November 7, 2017, Ms. Ferrarin, on behalf of the *Daily Herald*, submitted a FOIA request to the City seeking "[t]he latest revised redevelopment cost budget submitted by Capstone Development Group regarding the Tower Building in Elgin that was mentioned in the

city council weekly report dated Nov. 3."[1] On November 20, 2017, the City denied Ms. Ferrarin's request pursuant to section 7(1)(g) of FOIA (5 ILCS 140/7(1)(g) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017).[2] On November 21, 2017, the Public Access Bureau received a Request for Review from Ms. Ferrarin disputing the City's response.[3]

On November 29, 2017, the Public Access Bureau sent a copy of the Request for Review to the City. With the Request for Review, the Public Access Bureau also sent the City a letter in which it asked for copies of the withheld records for this office's confidential review together with a detailed legal and factual explanation for the City's assertion that the requested records were exempt from disclosure in their entireties under section 7(1)(g) of FOIA.[4]

On December 18, 2017, the Public Access Bureau received a written answer from the City.[5] Included with the City's answer was: (1) a copy of an *Elgin Courier-News* article about the Elgin Tower Building (Tower) redevelopment project;[6] (2) a copy of the Tower's development costs budget (Budget) requested by Ms. Ferrarin; (3); a December 14, 2017, letter from Mr. William Luchini, President, Capstone Development Group, LLC (Capstone) to Mr. Michael Gehrman, City of Elgin concerning the FOIA request; and (4) an excerpt from a September 2004 version of A GUIDE TO THE ILLINOIS FREEDOM OF INFORMATION ACT by the Office of the Attorney General.[7] As permitted by FOIA, the City submitted the Budget for this office's confidential review only. It also submitted a version of the December 14, 2017, letter from Capstone with the president's direct phone number redacted for this office to forward to

---

[1]FOIA request submitted by eferrarin@dailyherald.com via the City's online request portal.

[2]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Elena Ferrarin (November 20, 2017).

[3]E-mail from Elena Ferrarin, Senior staff writer, *Daily Herald*, to Public Access [Bureau, Office of the Attorney General] (November 21, 2017).

[4]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Michael R. Gehrman, Assistant Corporation Counsel, City of Elgin (November 29, 2017).

[5]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 14, 2017).

[6]Mike Danahey, "Elgin Tower Building rehab more than halfway finished," *Elgin Courier-News*, November 6, 2017.

[7]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 14, 2017).

Ms. Ferrarin. Also on December 18, 2017, the Public Access Bureau received from the City a supplemental written answer that contained the City's legal analysis.[8] The same day, the Public Access Bureau forwarded to Ms. Ferrarin copies of the City's two written answers and the attachments related thereto, except for the Budget.[9] On December 29, 2017, Ms. Ferrarin provided a reply to the City's answer.[10]

On January 25, 2018, the City responded to Ms. Ferrarin's reply.[11] This office sent Ms. Ferrarin a copy of the City's supplemental response on January 30, 2018.[12] The next day, Ms. Ferrarin sent an e-mail to acknowledge receipt of the City's supplemental response.[13]

Pursuant to section 9.5(f) of FOIA, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to March 6, 2018, in a letter dated January 17, 2018.[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 140/1.2 (West 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further 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 from

---

[8]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 15, 2017).

[9]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Elena Ferrarin, Senior Staff Writer, *Daily Herald* (December 18, 2017).

[10]Letter from Elena Ferrarin, *Daily Herald*, to [Laura] Harter (December 29, 2017).

[11]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (January 25, 2018).

[12]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Elena Ferrarin, Senior Staff Writer, *Daily Herald* (January 30, 2018).

[13]E-mail from Elena Ferrarin to [Hattie] Bryant (January 31, 2018).

[14]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Elena Ferrarin, Senior Staff Writer, *Daily Herald*, and Michael Gehrman, Assistant Corporation Counsel, City of Elgin (January 17, 2018).

disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997). Under FOIA, bare assertions without a detailed rationale do not satisfy a public body's burden of demonstrating that an exemption is applicable. *See Rockford Police Benevolent and Protective Ass'n, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)).

The Budget for the Elgin Tower Building was prepared by Capstone, a private entity redeveloping the Tower from an office building into an apartment building.[15] One of the Tower redevelopment project's funding sources is tax increment financing (TIF) moneys from the City.[16] According to the terms of the City's agreement with Capstone, the City committed to provide $3.175 million in TIF district funds to Capstone when the Tower redevelopment project was halfway completed.[17] The City agreed to pay Capstone another $3.175 million when the project was substantially completed.[18] In November, the City paid Capstone the first $3.175 million payment upon receiving proof from Capstone that it had the funding to complete the project and that the redevelopment work was halfway completed.[19] The Budget was one of the items of proof provided to the City by Capstone.

---

[15]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 14, 2017), at 2; Mike Danahey, *Elgin Tower Building rehab more than halfway finished*, ELGIN COURIER-NEWS, November 6, 2017.

[16]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 14, 2017), Mike Danahey, *Elgin Tower Building rehab more than halfway finished*, ELGIN COURIER-NEWS, November 6, 2017 (on file with author).

[17]Letter from Elena Ferrarin, *Daily Herald*, to [Laura S.] Harter, Assistant Attorney General, Public Access Bureau (December 29, 2017), Rick Kozal, City Manager, Elgin City Council Weekly Report, *Tower Receives First Development Assistance Payment*, November 3, 2017.

[18]Letter from Elena Ferrarin, *Daily Herald*, to Laura S. Harter, Assistant Attorney General, Public Access Bureau, (December 29, 2017), Rick Kozal, Elgin City Council Weekly Report, "Tower Receives First Development Assistance Payment" (November 3, 2017).

[19]Letter from Michael R. Gehrman, Assistant Corporation Counsel, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 14, 2017), Mike Danahey, *Elgin Tower Building rehab more than halfway finished*, ELGIN COURIER-NEWS, November 6, 2017 (on file with author).

Section 7(1)(g) of FOIA exempts from disclosure:

> Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

For a record to be exempt from disclosure under section 7(1)(g):

> [T]he document must contain (1) a trade secret, commercial, or financial information, (2) that was obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are either (a) proprietary, (b) privileged, or (c) confidential, ***and*** (3) that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business. (Emphasis in original.) *Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶27, 78 N.E.3d 446, 455 (2017).

As discussed in *Janssen*, section 7(1)(g) was substantively amended by the General Assembly in 2010.[20] Prior to 2010, section 7(1)(g) of FOIA exempted from disclosure "[t]rade secrets and commercial or financial information ***obtained from a person or business*** where the trade secrets or information are proprietary, privileged or confidential, ***or*** where disclosure of the trade secrets or information ***may*** cause competitive harm." (Emphasis added.) 5 ILCS 140/7(1)(g) (West 2008). Thus, the previous version of section 7(1)(g) applied to records containing trade secrets or commercial or financial information that were merely "obtained" from a person or business. In contrast, the current version of section 7(1)(g) specifically requires that such records be "furnished under a claim that they are proprietary, privileged, or confidential." The General Assembly's addition of this requirement indicates its intention to limit the scope of the 7(1)(g) exemption to records expressly claimed to fall under one or more of those three categories at the time that the records are provided to the public body.

[20]*See* Public Act 96-542, effective January 1, 2010.

Along with its answer to this office, the City submitted a copy of a December 14, 2017, letter from Capstone's President. The letter stated that "the Redevelopment Agreement between the City of Elgin and Capstone Development requires proof of sufficient financial resources to complete the project. This information was provided to the city with the belief that it would remain confidential and privileged."[21] The City asserted that the letter establishes that the Budget was provided "'under an express or implied promise that it [will] be kept confidential[.]'"[22]

Although the City has not provided evidence that Capstone made an express claim of confidentiality at the time it gave the City the Budget, the City argues that Capstone submitted the information under an implied promise that it would be kept confidential. To support its position that an implied promise of confidentiality satisfies the requirements of section 7(1)(g) of FOIA, the City cites a 2004 version of the Attorney General's A GUIDE TO THE ILLINOIS FREEDOM OF INFORMATION ACT (Guide) for the proposition that "[s]ubsection 7(1)(g) is intended to protect information which is proprietary property of a private party and which is submitted to the government under an express or implied promise that it will be kept confidential."[23] The Guide, however, which cites *Cooper v. Dep't of the Lottery*, 266 Ill. App. 3d 1007, 1013 (1st Dist. 1994), interprets the earlier version of section 7(1)(g) of FOIA referenced above.

The court in *Cooper v. Dep't of the Lottery* gave effect to what it interpreted as an "'implied promise by the government that [ ] information will be kept confidential'" (*Cooper*, 266 Ill. App. 3d at 1013) (quoting *Benson v. General Services Administration,* 289 F.Supp. 590, 594 (W.D. Wash.1968)). Presumably, the General Assembly was aware of that decision when it amended section 7(1)(g) to require that information be submitted under a claim that it is proprietary, privileged, or confidential as a threshold for the applicability of section 7(1)(g). *Janssen*, 2017 IL App (1st) 150870, ¶28, 78 N.E.3d at 455–56 (citing *Fink v. Ryan*, 174 Ill. 2d 302, 308 (1996)) ("It is presumed that, in enacting new legislation, the legislature acts with full knowledge of previous judicial decisions addressing the subject matter of that legislation."). Accordingly, because the available information indicates that Capstone did not furnish the Budget under an express claim that the information was "proprietary, privileged, or confidential,"

---

[21]Letter from William Luchini, President, Capstone Development Group, LLC, to City of Elgin (December 14, 2017).

[22]Letter from Michael R. Gehrman, Assistant Corporation Counsel, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (January 25, 2018), at 3 (quoting OFFICE OF THE ATTORNEY GENERAL, STATE OF ILLINOIS, ATTORNEY GENERAL LISA MADIGAN, A GUIDE TO THE ILLINOIS FREEDOM OF INFORMATION ACT 26 (2004)).

[23]OFFICE OF THE ATTORNEY GENERAL, STATE OF ILLINOIS, ATTORNEY GENERAL LISA MADIGAN, A GUIDE TO THE ILLINOIS FREEDOM OF INFORMATION ACT 26 (2004).

the City has failed to meet its burden of demonstrating that the records are exempt from disclosure under section 7(1)(g) of FOIA.

Even assuming that Capstone had furnished the Budget to the City under a claim that it was confidential or privileged, the City has not established an additional requirement of section 7(1)(g) – that disclosure of the Budget would cause competitive harm to Capstone. "'To show substantial competitive harm, the agency must show by specific factual or evidentiary material that: (1) the person or entity from which information was obtained actually faces competition; and (2) substantial harm to a competitive position would likely result from disclosure of the information in the agency's records.'" *Cooper*, 266 Ill. App. 3d at 1013 (quoting *Calhoun v. Lyng*, 864 F.2d 34, 36 (5th Cir. 1988)). "Parties opposing disclosure need not demonstrate actual competitive harm; instead, they need only show actual competition and a likelihood of substantial competitive injury in order to 'bring [that] commercial information within the realm of confidentiality.'" *New Hampshire Right to Life v. United States Dep't of Health & Human Services*, 778 F.3d 43, 50 (1st Cir. 2015) (quoting *Public Citizen Health Research Group v. Food & Drug Administration*, 704 F.2d 1280, 1291 (D.C. Cir. 1983)).

The City stated that the Budget "contains particularly sensitive financial information, the nature of which is apparent on the face of the document, including but not limited to such things as financing costs, consulting costs, profit calculations and particular professional fees."[24] The City asserted that disclosure of the budget would lead to competitive harm. It also referenced the letter from Capstone's president, which stated that "[i]f this information is released it will cause competitive harm to [Capstone] and/or [the Tower] as other developers can use the confidential information to model and structure their developments. This would be a detriment to the developer and the project."[25]

In making its argument, the City has not provided facts or evidence that demonstrate how disclosure of the Tower's Budget would result in competitive harm to Capstone or the Tower. In particular, the City has not detailed what competition Capstone or the Tower faces. It also has not described how the line items in the Budget could be used to structure competitors' developments in a way that would harm Capstone or the Tower. As a result, the City's statements regarding competitive harm are generalized and do not detail how harm would arise or how substantial the harm would be. These generalized statements are not sufficient to

[24]Letter from Michael R. Gehrman, Assistant Corporation Counsel, [City of] Elgin, to Laura S. Harter, Assistant Attorney General, Public Access Bureau, (December 14, 2017), at 2.

[25]Letter from William Luchini, President, Capstone Development Group, LLC, to City of Elgin (December 14, 2017).

demonstrate that disclosure of the Tower's Budget would cause competitive harm to any person or business.

In its supplemental answer to the Public Access Bureau, the City also argued that disclosing the Budget would dissuade developers from doing business with the City in situations in which the City seeks to confirm the developers' financial stability, as other businesses might fear that their trade secret information could be disclosed.[26] To support this assertion, the City cites *BlueStar Energy Services, Inc. v. Illinois Commerce Commission*, 374 Ill. App. 3d 990, 995 (1st Dist. 2007), *superseded by statute*, Freedom of Information Act (5 ILCS 140/7(1)(g) (West 2014)), as recognized in *Janssen*, 2017 IL App (1st) 150870, ¶28, 78 N.E.3d at 456, for the proposition that "*trade secret* in the context of the FOIA has been interpreted to include information that (1) would either inflict substantial competitive harm or (2) make it more difficult for the agency to induce people to submit similar information in the future." (Emphasis in original.)

In *Janssen*, the Illinois Appellate Court concluded that because *BlueStar* was decided before the 2010 amendments to section 7(1)(g) of FOIA, it no longer accurately described the requirements for exempting information as a trade secret. The amendments narrowed the scope of 7(1)(g), requiring that the trade secrets both be "furnished under a claim that they are proprietary, privileged or confidential, ***and*** that disclosure of the trade secrets or commercial or financial information ***would*** cause competitive harm to the person or business[.]" (Emphasis in original.) *Janssen*, 2017 IL App (1st) 150870, ¶27, 78 N.E.3d at 455 (quoting 5 ILCS 140/7(1)(g) (West 2014)). Accordingly, the court explained that its:

> statement in *BlueStar* that "[t]he term *trade secret* in the context of the FOIA has been interpreted to include information that (1) would either inflict substantial competitive harm or (2) make it more difficult for the agency to induce people to submit similar information in the future" (emphasis in original) [citation] is only applicable to those FOIA requests made pursuant to the earlier versions of the statute. *Janssen*, 2017 IL App (1st) 150870, ¶28, 78 N.E.3d at 456.

In a similar argument to the one made by the City in the present case, the appellant in *Janssen* objected to disclosure of what it claimed was confidential information because disclosure "would have a 'chilling effect' on other organizations complying with a subpoena" in the future. *Janssen*, 2017 IL App (1st) 150870, ¶25, 78 N.E.3d at 455-56.

[26]Letter from Michael R. Gehrman, Assistant Corporation Counsel, to Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 15, 2017), at 1.

Although the court in *Janssen* noted that the policy concerns at issue in *BlueStar* were still valid, it found that Janssen had not met the threshold requirement of section 7(1)(g) of FOIA because it failed to establish that the disclosure of the alleged confidential information would cause it competitive harm. *Janssen*, 2017 IL App (1st) 150870, ¶29, 78 N.E.3d at 456. Similarly, although the City has raised the concern that requiring disclosure of the Budget would have a chilling effect on its ability to contractually require developers to submit sensitive financial information, it has not demonstrated how disclosing the budget would cause competitive harm to either Capstone or the Tower.

Accordingly, this office concludes that the City has not sustained its burden of demonstrating that the Budget record requested by Ms. Ferrarin is exempt from disclosure pursuant to section 7(1)(g) of FOIA.[27]

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 November 7, 2017, Ms. Elena Ferrarin, on behalf of the *Daily Herald*, submitted a FOIA request to the City of Elgin seeking "the latest revised redevelopment cost budget submitted by Capstone Development Group regarding the Tower Building in Elgin that was mentioned in the city council weekly report dated Nov. 3."[28]

2) On November 20, 2017, the City denied Ms. Ferrarin's request in its entirety, citing section 7(1)(g) of FOIA.

3) On November 21, 2017, the Public Access Bureau received a Request for Review from Ms. Ferrarin contesting the denial of her FOIA request. The Request for Review

[27]This office also notes that article VIII, section 1(c) of the Illinois Constitution of 1970 provides that "[r]eports and records 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." Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2016)) correspondingly 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." The Budget concerns the development costs associated with a building project for which the City agreed to contribute $6.35 million in public funds. The City argued that the Budget was not created by the City and does not reflect any financial information regarding the City's resources or liquid funds, but it does not dispute that the funds provided by the City were used for a portion of the costs reflected in the Budget. Accordingly, the Budget is a record relating to the City's use of public funds and must be disclosed.

[28]FOIA request submitted by eferrarin@dailyherald.com via the City's online request portal.

was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)).

4) On November 29, 2017, the Public Access Bureau sent a copy of the Request for Review to the City and asked it to provide copies of the withheld records for this office's confidential review. This office also asked the City to provide a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(g) exemption.

5) On December 18, 2017, this office received a copy of the redevelopment cost Budget along with two written answers from the City, which included the City's legal analysis of the section 7(1)(g) exemption.

6) On December 18, 2017, the Public Access Bureau forwarded a copy of the City's written answers to Ms. Ferrarin.

7) On December 29, 2017, Ms. Ferrarin replied to the City's answers.

8) On January 17, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to March 6, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

9) On January 25, 2018, the City submitted additional correspondence to address points raised in Ms. Ferrarin's reply.

10) On January 30, 2018, this office sent Ms. Ferrarin a copy of the City's supplemental response. On January 31, 2018, she acknowledged receipt of the City's supplemental response in an e-mail.

11) Section 7(1)(g) of FOIA exempts from disclosure "[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested."

12) Under the current language of section 7(1)(g), a public body that withholds a record pursuant to this exemption must demonstrate that: (1) it contains a trade secret, commercial, or financial information; (2) it was obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are

either proprietary, privileged, or confidential; and (3) disclosure of the trade secrets or commercial or financial information would cause competitive harm to that person or business.

13) The City argues that Capstone supplied the Budget to it under a claim of confidentiality. However, the letter from Capstone provided by the City to the Public Access Bureau is dated after the City received Ms. Ferrarin's FOIA request. That letter does not provide evidence that the Budget was "furnished under a claim that" the information was proprietary, privileged, or confidential.

14) The City also argues that the records are exempt from disclosure under 7(1)(g) because the City made an implied promise to keep them confidential. In arguing that an implied promise satisfies the requirements of section 7(1)(g), the City relies on Illinois Appellate Court opinions that interpreted a prior version of section 7(1)(g). Since those decisions, however, the legislature has amended section 7(1)(g) to require that the information at issue must have been submitted to the public body under a claim that it is proprietary, privileged or confidential. In this matter, the City has not established that the Budget was furnished to it by Capstone under a claim that it was proprietary, privileged or confidential.

15) The City also has not provided clear and convincing evidence to establish the additional requirement of 7(1)(g) that the disclosure of the Budget would cause competitive harm to Capstone or the Tower. While the City has raised the concern that disclosure of the Budget would dissuade others from submitting similar information to the City in the future, it has not provided specific facts demonstrating the competitive harm to Capstone or the Tower that would result from disclosing the Budget. Accordingly, this office concludes that the City has not sustained its burden of demonstrating that the Budget is exempt from disclosure in its entirety pursuant to section 7(1)(g) of FOIA.

Therefore, it is the opinion of the Attorney General that the City's response to Ms. Ferrarin's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the City is directed to take immediate and appropriate action to comply with this opinion by disclosing to Ms. Ferrarin a copy of the budget record that she requested.

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 2016). 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 Elena Ferrarin as defendants. *See* 5 ILCS 140/11.5 (West 2016).

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 18-004) upon:

Ms. Elena Ferrarin
Senior Staff Writer
Daily Herald
PO Box 280
Arlington Heights, Illinois 60006
eferrarin@dailyherald.com

Mr. Michael R. Gehrman
Assistant Corporation Counsel
City of Elgin
150 Dexter Court
Elgin, Illinois 60120
Gehrman_m@cityofelgin.org

by causing a true copy thereof to be sent electronically to the addresses 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 March 3, 2018.

SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548