



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 31, 2023

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

The Honorable Jon Hofmeister
Hunt Lima Drainage District
Board of Commissioners
705 Lafayette Street
Warsaw, Illinois 62379
jonhof8@gmail.com

RE: FOIA Request for Review – 2022 PAC 73556

Dear [REDACTED] and Mr. Hofmeister:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the Hunt Lima Drainage District (District) improperly withheld in their entirety records responsive to [REDACTED] February 22, 2022, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the District seeking, in relevant part, copies of the annual maintenance assessment rolls and current collector's books for 2020 and 2021. In an undated response that [REDACTED] received on September 8, 2022, the District asserted that "these documents contain private personal information that is exempt[.]"¹ On September 18, 2022, the Public Access Bureau received this Request for Review contesting the District's denial.

¹Letter from Hunt Lima Drainage District Commissioners to [REDACTED] (undated).

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This office forwarded a copy of the Request for Review to the District and asked it to provide unredacted copies of the requested records for our confidential review, together with a detailed written explanation of the factual and legal bases for the applicability of any asserted exemptions. On October 26, 2022, the District Board's Chairman Jonathan Hofmeister provided this office with unredacted copies of a representative sampling of 2022 annual maintenance assessments for District landowners. Mr. Hofmeister also stated:

I spoke with the other two commissioners about sending our own tax bills to represent the typical form that is sent to landowners. There are four pages total.

I also trust that the rules the district followed to deny the release of these documents to ██████████ will be provided by [District Legal Counsel John Hauk]. We still maintain that the names and addresses of the landowners should be considered exempt from FOIA requests.^[2]

In a November 2, 2022, response to this office from the District's legal counsel, the District asserted that "the assessment 'bills' are exempted from disclosure pursuant to 5 ILCS 140/7 as they contain private information, such as home addresses and personal financial information, which is included in the definition of 'private information' found in 5 ILCS 140/ 2(c-5)."³ This office forwarded a copy of the District's response to ██████████; on November 15, 2022, she replied, asserting that the requested records constituted records of public funds and should be subject to disclosure under FOIA.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that redacts a record "has the burden of proving by clear and convincing evidence" that the redacted information is exempt from disclosure. 5 ILCS 140/1.2 (West 2022). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

²E-mail from Jonathan Hofmeister to Christopher Boggs (October 26, 2022).

³E-mail from John N. Hauk, Attorney, Hauk & Owens, LLC, to [Christopher] Boggs (November 2, 2022).

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Based on the District's claim that information within the requested records constituted "private" information, the District appears to assert that all portions of the records are exempt from disclosure under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2022)). That exemption applies to "[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 2022)) defines "private information" as:

unique 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.)

Furthermore, section 2.5 of FOIA (5 ILCS 140/2.5 (West 2022)) 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." This office has reviewed the records at issue, which consist of the 2022 annual assessments or "maintenance tax" levied by the District on landowners within the District. Thus, the requested records clearly relate to the District's receipt of public funds.

In its responses to this office, the District's Board and legal counsel contended that landowners' names and addresses, together with their personal financial information, are exempt from disclosure. In Binding Opinion 18-002, Attorney General Madigan determined that a customer name listed on a water bill issued by a public body did not fall within the definition of "private information" in section 2(c-5), and therefore was not exempt from disclosure pursuant to section 7(1)(b) of FOIA. Ill. Att'y Gen. Pub. Acc. Op. No. 18-002, issued February 14, 2018, at 5. In that opinion, Attorney General Madigan looked to the plain language of sections 2(c-5) and 7(1)(b), and relied on a prior binding opinion which held that "names are not specifically included in the definition of 'private information,' and a name is not ordinarily sufficiently unique to identify a specific individual because many persons have the same name." Ill. Att'y Gen. Pub. Acc. Op. No. 18-002, issued February 14, 2018, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-003, issued January 18, 2012, at 7). Attorney General Madigan also determined in that opinion that, because bills for water services are expressly subject to disclosure under section 2.5, the customer names and service addresses on those bills were not "personal financial information" as that phrase is used in section 2(c-5).


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Likewise, the annual assessments directly relate to the District's receipt of public funds to be used for levee maintenance. Such records are expressly subject to disclosure under section 2.5. Further, the District has provided no explanation concerning how the amount owed by each landowner constitutes "personal financial information" under section 2(c-5) of FOIA. Because the annual assessments in question reflect the anticipated receipt of funds by the District and because the District has not demonstrated that section 7(1)(b) is applicable to the requested records, this office concludes that the District improperly withheld the annual assessments in their entireties.⁴ In accordance with that determination, this office requests that the District provide Ms. Roskamp with copies of the records at issue, including the responsive annual assessments for other District landowners. "Home" addresses of property owners may be redacted pursuant to section 7(1)(b) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51203, issued August 2, 2018 (home address of utility bill that displays name of utility customer exempt as private information). Addresses of properties owned by companies and/or incorporated farming operations, however, are business addresses that are not within the scope of the exemption. Ill. Att'y Gen. PAC Req. Rev. Ltr. 48986, issued July 1, 2020, at 4 (information that identifies businesses rather than individuals not exempt from disclosure under section 7(1)(b) of FOIA).

Finally, it is unclear, based on the District's response to this office, the extent to which additional responsive financial records exist. For example, although the District provided this office with a representative sampling of the requested annual assessments, it is unclear whether the District maintains "collector's books" as identified in [REDACTED] request.⁵ Accordingly, this office requests that the District conduct a new search for records and issue a supplemental response to [REDACTED], either disclosing copies of the non-exempt portions of the records it locates or, if no responsive records are located, describing the specific measures that were taken to locate records.


⁴In *Timpone v. Illinois Student Assistance Comm'n*, 2019 IL App (1st) 181115, 147 N.E.3d 873 (2019), the Illinois Appellate Court held that names may be withheld under section 7(1)(b) when disclosure could be matched to information posted on a State agency's website about the income earned by students and spouses or parents of students who received or applied for financial aid grants. The court explained that "the context of the information disclosure is significant[.]" and that the names were exempt under section 7(1)(b) because they would invade those individuals' privacy in light of the "detailed personal income information" posted on the agency's website. *Timpone*, 2019 IL App (1st) 181115, ¶¶40-41, 147 N.E.3d at 887. Because that personal income information did not document the receipt or expenditure of public funds, it is readily distinguishable from the records about the District's assessment of maintenance taxes at issue in this matter.

⁵For example, numerous references to "collector's books" throughout the Illinois Drainage Code (70 ILCS 605/1 *et seq.* (West 2022)) appear to indicate that those records are customarily maintained at the county level.


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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 785-7438.

Very truly yours,


CHRISTOPHER R. BOGGS
Deputy Public Access Counselor
Public Access Bureau

73556 f71b proper improper reg spd

cc: *Via electronic mail*
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