



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 5, 2023

Via electronic mail
Mr. Gregory Pratt
Reporter
Chicago Tribune
435 North Michigan Avenue
Chicago, Illinois 60611
gpratt@chicagotribune.com

Via electronic mail
Mr. Tom Skelton
FOIA Officer
City of Chicago Mayor's Office
121 North LaSalle Street, Suite 500
Chicago, Illinois 60602
Thomas.Skelton@cityofchicago.org

RE: FOIA Request for Review – 2022 PAC 71689; City FOIA No.: F017544

Dear Mr. Pratt and Mr. Skelton:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that the City of Chicago (City) Mayor's Office (Mayor's Office) did not improperly respond to Mr. Gregory Pratt's February 28, 2022, FOIA request by redacting the text messages at issue in this matter.

On that date, Mr. Pratt, on behalf of the *Chicago Tribune*, submitted a FOIA request to the Mayor's Office seeking copies of all text messages exchanged between Mayor Lori Lightfoot and four named public officials for the timeframe of May 20, 2019, through February 28, 2022. On May 6, 2022, the Mayor's Office provided responsive text messages, but indicated that it redacted some information that did not pertain to the transaction of public business

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pursuant to section 7(1)(c) of FOIA.¹ On May 9, 2022, Mr. Pratt submitted a Request for Review disputing those redactions.

On May 13, 2022, this office sent a copy of the Request for Review to the Mayor's Office and asked it to provide unredacted copies of the requested text messages for this office's confidential review. This office also requested a detailed explanation of the factual and legal bases for redacting the information from those text messages. On June 1, 2022, the Mayor's Office furnished those materials and a written answer. Later that day, this office forwarded a copy of the Mayor's Office's answer to Mr. Pratt; he replied on June 3, 2022.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2020); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2020).

Section 2(c) of FOIA defines "public records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information 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. (Emphasis added.)

In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶31, 992 N.E.2d 629, 636 (2013) the Illinois Appellate Court noted that FOIA does not define the term "public business." Turning then to the dictionary's definition of "public," the court stated "to qualify as a public record a communication must first pertain to business or community interests as opposed to private affairs. Indeed, FOIA is not concerned with an individual's private affairs." *City of Champaign*, 2013 IL App (4th) 120662, ¶ 31, 992 N.E.2d at 637 (internal quotation omitted). Therefore, the threshold determination of whether a communication is a "public record" for the purposes of FOIA is whether that communication pertains to "public business." Only if this

¹5 ILCS 140/7(1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

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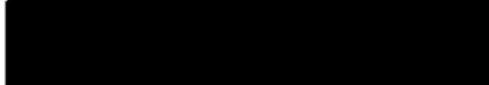
threshold is met does the analysis proceed to whether the communication was "(2) prepared by, (3) prepared for, (4) used by (5) received by, (6) possessed by, or (7) controlled by a public body." *City of Champaign*, 2013 IL App (4th) 120662, ¶ 42, 992 N.E.2d at 639-40.

In its response to this office, the Mayor's Office asserted that the redacted portions of the disputed text messages are not public records subject to disclosure under FOIA because the text messages "relate to private affairs as opposed to governmental or community interests."²

This office's confidential review confirmed that the redacted information pertains to purely private affairs, such as condolences, personal greetings, and other private matters. The redacted information does not appear to relate to the officials' public duties nor to the transaction of City business. Because the redacted messages are not "public records" as defined by section 2(c) of FOIA, this office concludes that the Mayor's Office's redactions did not violate FOIA.³

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This matter is closed. If you have questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,


SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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²Letter from Tom Skelton, FOIA Officer, Office of the Mayor, to Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (June 1, 2022), at [3].

³Because this determination resolves this matter, this office need not address the applicability of section 7(1)(c) of FOIA to the redactions.