



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Ms. Lisa Ruszkowski
Administrative Assistant
SEA Limited
1800 Howard Street, Unit A
Elk Grove Village, Illinois 60007

Mr. Kerry F. Partridge
City Attorney
City of Rockford
425 East State Street
Rockford, Illinois 61104-1068

RE: FOIA Request for Review – 2013 PAC 26621

Dear Ms. Ruszkowski and Mr. Partridge:

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 2016)).

On October 25, 2013, Ms. Lisa Ruszkowski, an Administrative Assistant for SEA Limited, submitted a Request for Review to the Public Access Bureau alleging that the City of Rockford Fire Department (Department) improperly charged her for the time its personnel spent retrieving, reviewing, and copying a fire report. Ms. Ruszkowski provided an invoice from the City which identified the request as having a commercial purpose and assessed a \$10 fee for one hour of time (rounded to the nearest hour). The City's response to this office asserted that the fee was authorized by section 6(f) of FOIA (5 ILCS 140/6(f) (West 2012)) because Ms. Ruszkowski's request was for a commercial purpose. However, Ms. Ruszkowski marked her request as not having a "commercial purpose" as that term is defined in FOIA.

Section 2(c-10) of FOIA (5 ILCS 140/2(c-10) (West 2012)) defines "[c]ommercial 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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The City's response to this office emphasized that the website of Ms. Ruzkowski's business indicates that it is a forensic engineering and fire investigation company that specializes in analysis, research, and testing. According to the City, "[t]he company obviously sells its[] analysis of fire incidents in reports prepared with the information and data compiled from the very Rockford Fire Department fire incident and fire investigative reports requested by Ms. Ruszkowski's employer."¹ The City asserted that doing so constituted a "commercial purpose," and that determinations by this office in 2012² failed to consider that the plain language of the definition of that term in section 2(c-10) includes not only public records themselves but also "information derived from public records[] * * * for sale."

Thus, the City contends that a person who uses information derived from public records to provide business services has a commercial purpose. The Public Access Bureau has rejected that interpretation by distinguishing the provision of services from selling information derived from records:

A political consultant's use of records obtained under FOIA to provide consulting services to a client is not equivalent to selling or reselling the information in those records or using the information for solicitations or advertisements for sales or services to his or her clients. Indeed, the political consultant may use information distilled from FOIA requests, rather than the information itself, together with his or her experience to provide consulting services to clients. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52147, issued August 7, 2018, at 3.

See also Ill. Att'y Gen. PAC Req. Rev. Ltr. 41128 and 41129, issued August 16, 2017, at 6 (concluding that "an attorney's use of records obtained under FOIA to provide legal services is not tantamount to selling or reselling information in those records to his or her clients[.]").

Likewise, using information derived from fire incident and investigation reports to provide analysis, research and testing services does not constitute the sale of information derived from public records. Accordingly, this office concludes that the City improperly treated Ms. Ruzkowski's request as a request with a commercial purpose. This office also notes that even if the request did have a commercial purpose, the City's \$10 fee for one hour of personnel time was not permissible. The plain language of section 6(f) of FOIA, which only applies to

¹Letter from Kerry F. Partridge, City Attorney, Freedom of Information Officer, City of Rockford, Illinois, USA, to Dushyanth Reddivari, Assistant Attorney General, Public Access Bureau (December 6, 2013).

²Ill. Att'y Gen. PAC Req. Rev. Ltr. 18175, issued March 22, 2012; Ill. Att'y Gen. PAC Req. Rev. Ltr. 19451, issued July 6, 2012.

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commercial requests, provides that "[a] public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record. **No fees shall be charged for the first 8 hours spent** by personnel in searching for or retrieving a requested record." (Emphasis added.)

In accordance with the conclusions expressed above, this office requests the Department refund Sea Limited the \$10.00 fee. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at (312) 814-5201 or at the Chicago address on the first page of this letter if you have questions.

Very truly yours,

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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