



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 4, 2019

Via electronic mail
Mr. Tim Novak
Reporter
Chicago Sun-Times
30 North Racine Avenue, Suite 300
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Via electronic mail
Mr. Tom Skelton
FOIA Officer
City of Chicago Department of Law
30 North LaSalle, Suite 1720
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lawfoia@cityofchicago.org

RE: FOIA Request for Review – 2019 PAC 57727

Dear Mr. Novak 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 2016)). For the reasons that follow, the Public Access Bureau concludes that the response by the City of Chicago Department of Law (Department) to Mr. Tim Novak's March 11, 2019, FOIA request did not violate FOIA.

On that date, Mr. Novak, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Department seeking review of the first two banker's boxes of records regarding the case of *Nanci Koschman v. City of Chicago*. On March 29, 2019, the Department provided records responsive to Mr. Novak's request, but withheld certain information pursuant to sections 7(1)(b), 7(1)(c), 7(1)(m), and 7.5(h) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(m) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018); 5 ILCS 140/7.5(h) (West 2017 Supp.), as amended by Public Acts 100-646, effective July 27, 2018; 100-863, effective August 14, 2018; 100-887, effective August 14, 2018; 100-690, effective January 1, 2019). On

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April 5, 2019, this office received Mr. Novak's Request for Review challenging the Department's denial of records obtained from the Office of the Inspector General for the City of Chicago (Inspector General's Office).

On April 22, 2019, this office sent a copy of the Request for Review to the Department and asked it to provide un-redacted copies of the records that the Department withheld pursuant to section 7.5(h) of FOIA, together with a detailed explanation of the factual and legal bases for the applicability of section 7.5(h) to those records. On April 30, 2019, the Department provided an answer and the requested records. On May 2, 2019, this office forwarded the Department's answer to Mr. Novak; he did not reply.

DETERMINATION

"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 7.5(h) of FOIA exempts from disclosure "[i]nformation the disclosure of which is exempted under the State Officials and Employees Ethics Act [(SOEEA)], and records of any lawfully created State or **local inspector general's office** that would be exempt if created or obtained by an Executive Inspector General's office under that Act." (Emphasis added.) Section 20-95(d) of the SOEEA (5 ILCS 430/20-95(d) (West 2016)) provides:

Unless otherwise provided in this Act, **all investigatory files and reports** of the Office of an Executive Inspector General, other than monthly reports required under Section 20-85, are confidential, **are exempt from disclosure under the Freedom of Information Act**, and shall not be divulged to any person or agency, except as necessary (i) to a law enforcement authority, (ii) to the ultimate jurisdictional authority, (iii) to the Executive Ethics Commission, (iv) to another Inspector General appointed pursuant to this Act, or (v) to an Inspector General appointed or employed by a Regional Transit Board in accordance with Section 75-10. (Emphasis added.)

Mr. Novak's Request for Review asserted that section 7.5(h) only applies to records created or obtained by an Executive Inspector General's Office and, therefore, the exemption does not prohibit disclosure of Inspector General's Office's records in the Department's possession. However, the plain language of section 7.5(h) also provides that

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records created or obtained during an investigation by a lawfully-created local inspector general's office are exempt from disclosure under FOIA if they are the same type of records created or obtained by an Executive Inspector General's Office under SOEEA. The Illinois Supreme Court has recognized that the Inspector General's Office is empowered to carry out investigatory duties authorized by the City Council.¹ *Ferguson v. Patton*, 2013 IL 112488, ¶28, 985 N.E.2d 1000, 1009-10 (2013). Accordingly, the Public Access Bureau has consistently determined that the Inspector General's Office's investigative records are exempt from disclosure pursuant to section 7.5(h) of FOIA. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39772, issued March 7, 2016.

The Department explained that it withheld a transcript of an interview conducted by the Inspector General's Office. It further asserted that the transcript was part of the Inspector General's Office's investigatory file pertaining to a specific investigation. Based on this office's confidential review of the transcript, and the Department's representations, this office concludes that the transcript was generated by the Inspector General's Office in connection with one of its investigations and none of the exceptions to the confidentiality provisions of the Ethics Act apply. Mr. Novak argues that SOEEA does not apply here because he sought the record from the Department, not from the Inspector General's Office. However, the plain language of Section 20-95(d) of the SOEEA applies to "all investigatory files and reports of the Office of an Executive Inspector General." Such records remain confidential when obtained by public bodies other than inspector general's offices. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50104, issued February 7, 2018, at 3 (inspector general records received by county board president's office exempt from disclosure); Ill. Att'y Gen. PAC Req. Rev. Ltr. 25584, issued February 14, 2018, at 3 (university did not improperly withhold letter from inspector general to university's ethics officer). Accordingly, this office concludes that the Department did not violate FOIA by withholding the responsive transcript pursuant to section 7.5(h) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us.

Very truly yours,

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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¹Chicago Municipal Code § 2-56-010 *et seq.* (added October 4, 1989).