



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 19, 2023

Via electronic mail

[REDACTED]

Via electronic mail

Ms. Kathleen Anderson
FOIA Officer
Illinois Department of Financial & Professional Regulation
555 West Monroe Street, Suite 500
Chicago, Illinois 60661
FPR.FOIA@Illinois.gov

RE: FOIA Request for Review – 2023 PAC 76546

Dear [REDACTED] and Ms. Anderson:

This determination 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 explained below, the Public Access Bureau concludes that the Illinois Department of Financial & Professional Regulation ("Department" or "IDFPR") improperly denied certain information responsive to [REDACTED] May 2, 2023, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Department seeking a copy of a specific e-mail between Mr. Vaughn Bentley, the Department's Deputy Director of Cannabis Control, and two named persons. On May 9, 2023, the Department denied the body of the e-mail, citing section 55-30(b) of the Cannabis Regulation and Tax Act (CRTA).¹ The

¹410 ILCS 705/55-30(b) (West 2022).

Ms. Kathleen Anderson
July 19, 2023
Page 2

Department implicitly premised the denial on section 7(1)(a) of FOIA,² which exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." On that same date, this office received [REDACTED] [REDACTED] Request for Review contesting the denial. He argued that the language of section 55-30(b) of the CRTA does not apply to the particular record he seeks.

On May 12, 2023, this office sent a copy of the Request for Review to the Department and asked it to provide an unredacted copy of the e-mail at issue for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of the asserted exemption. On May 19, 2023, the Department furnished those materials. Later on that same date, [REDACTED] submitted a 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 2022).

Section 7(1)(a) of FOIA

Section 7(1)(a) exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Under this provision, "an exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated - that is, such a proposed disclosure must be *specifically prohibited*." (Emphasis in original.) *Better Government Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 815-16 (4th Dist. 2008).

In its answer to this office, the Department maintained that its denial was proper under section 55-30(b) of the CRTA, which provides, in relevant part:

(b) The following information received and records kept by * * * the Department of Financial and Professional Regulation for purposes of administering this Article are subject to all applicable federal privacy laws, are confidential and exempt from disclosure under the Freedom of Information Act, except as provided in this Act, and not subject to disclosure to any individual or public or private entity * * *:

²5 ILCS 140/7(1)(a) (West 2022).

- (1) Applications and renewals, their contents, and supporting information submitted by or on behalf of dispensing organizations, cannabis business establishments, or Community College Cannabis Vocational Program licensees, in compliance with this Article, including their physical addresses; however, this does not preclude the release of ownership information about cannabis business establishment licenses, or information submitted with an application required to be disclosed pursuant to subsection (f);
- (2) Any plans, procedures, policies, or other records relating to cannabis business establishment security; and
- (3) Information otherwise exempt from disclosure by State or federal law.

The preceding subsection of the statute,³ however, specifies that:

Information provided by the cannabis business establishment licensees or applicants to * * * the Department of Financial and Professional Regulation * * * shall be limited to information necessary for the purposes of administering this Act. The information is subject to the provisions and limitations contained in the Freedom of Information Act and may be disclosed in accordance with Section 55-65.^[4]

The Department maintained that it properly denied the requested e-mail because:

The email in question is unequivocally related to a cannabis application. There are questions and comments throughout the email, all of which refer to the application. Because of the confidentiality clauses of both FOIA and CRTA this email should remain confidential to protect the private conversation between the

³410 ILCS 705/55-30(a) (West 2022).

⁴Subsection 55-65 (410 ILCS 705/55-65 (West 2022)) concerns the provision of information to financial institutions.

IDFPR Deputy Director/attorney and the cannabis dispensary applicants.^[5]

In reply, addressing the language of section 55-30(b)(1), [REDACTED] argued that:

There can be no dispute that the email in question FROM the Deputy Director, Vaughn Bentley, was not "submitted by or on behalf of dispensing organizations, cannabis business establishments, or Community College Cannabis Vocational Program licensees[.]" The provision is not intended nor written to cloak communications FROM public officials. The Department has a public duty to administer applicant licensing and the public has the duty to see that it is performed in the public interest.
(Emphasis in original.)^[6]

Section 55-30(b)(1) of the CRTA expressly prohibits disclosure of not just applications and renewals, but "their contents, and supporting information." The Illinois Supreme Court has advised that when interpreting a statute, "[e]ach word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *In re Detention of Lieberman*, 201 Ill.2d 300, 308 (2002). Accordingly, the Public Access Bureau has determined that the statutory language "their contents, and supporting information" must mean more than the applications and renewals themselves; at a minimum, it necessarily extends to information derived from an application that is recorded in other documents, regardless of format.⁷

This office's review of the withheld e-mail confirmed that it concerns an application under the CRTA and discusses the contents of the application. The e-mail is not, however, an application or renewal, nor does it solely consist of the contents of an application or renewal or supporting information submitted by or on behalf of dispensing organizations or cannabis business establishments. Section 7(1) of FOIA⁸ provides that:

⁵Letter from Kathleen Anderson, FOIA Officer, IDFPR, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Illinois Attorney General's Office (May 19, 2023), at 2.

⁶E-mail from [REDACTED], River North Citizens, to [Joshua] Jones (May 19, 2023).

⁷Ill. Att'y Gen. PAC Req. Rev. Ltr. 62084, issued March 31, 2020, at 5 (ownership information derived from an application or an amendment to application materials was exempt under section 7(1)(a) even if compiled into a spreadsheet or database).

⁸5 ILCS 140/7(1) (West 2022).

When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying.

In this instance, the Department did not demonstrate that this provision is inapplicable because it did not prove by clear and convincing evidence that the letter it sent to the two named individuals is exempt from disclosure in its entirety. The Department asserts that the record as a whole is "unequivocally related to a cannabis application." Regardless, the General Assembly could have specified in section 55-30(b)(1) of the CRTA that agency communications about or related to applications are exempt from disclosure in their entireties, but it did not choose to do so. A reviewing body "may not read into a statute limitations or conditions not explicitly set forth in the plain statutory language." *In re Estate of Shelton*, 2017 IL 121199, ¶43, 89 N.E.3d 391, 402 (2017). Under these circumstances, the Department has not provided the Public Access Bureau with a legal basis from which it could conclude that the Department may withhold the full substantive content of the message pursuant to FOIA. To remedy its improper denial, this office asks the Department to disclose a copy of the e-mail to [REDACTED], subject to the redaction of the discrete information that would unavoidably reveal the contents of applications, renewals, or supporting information submitted by or on behalf of the applicant. In particular, the middle paragraph depicts application contents, with the exception of the second clause, while the first and third paragraphs largely set forth information concerning the Department's procedures and expectations.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes this matter. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau