



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 20, 2023

Via electronic mail
Mr. Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552
Olympia, Washington 98507
mnelsen@freedomfoundation.com

RE: FOIA Request for Review – 2023 PAC 77586

Dear Mr. Nelsen:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted in this matter.

On June 12, 2023, you submitted a FOIA request to the Illinois Department of Human Services (Department) on behalf of the Freedom Foundation, stating:

I am requesting the following information for all personal assistants, home health workers, and/or home care workers currently working in the State of Illinois:

1. First name
2. Middle name (or initial, if name is unavailable)
3. Last name
4. Age
5. Gender
6. Job title
7. Hire date^[1]

^[1]E-mail from Maxford Nelsen, Director of Labor Policy, Freedom Foundation, to DHS Staff (June 12, 2023).

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On June 21, 2023, the Department denied your request pursuant to section 7.5(zz) of FOIA,² which exempts from disclosure: "Information prohibited from being disclosed under the Illinois Public Labor Relations Act." The Department stated:

Please note that the positions identified in your request are all covered under the collective bargaining agreement between the Illinois Department of Central Management Services (CMS)/ Illinois Department of Human Services (IDHS) and the Services Employees International Union, Healthcare Illinois & Indiana (SEIU-HII). Please also note that the Illinois Public Labor Relations Act prohibits the release of information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation. [Citation.] Disclosure of the requested names, demographic information, job titles and hire dates would necessarily reveal information concerning employee membership or membership status. Specifically, disclosure would reveal which employees are either members of SEIU-HII or eligible to join the union as part of a bargaining unit.^[3]

On August 2, 2023, you submitted a Request for Review contesting that denial. You argued that your request does not seek any of the information prohibited from disclosure under section 6(c-5) of the Illinois Public Labor Relations Act (IPLRA).⁴ Section 6(c-5) provides, in relevant part:

No employer shall disclose the following information of any employee: (1) the employee's home address (including ZIP code and county); (2) the employee's date of birth; (3) the employee's home and personal phone number; (4) the employee's personal email address; (5) any information personally identifying employee **membership or membership status** in a labor organization or other voluntary association affiliated with a labor organization or a labor federation (including whether employees are members of such organization, **the identity of such**

²5 ILCS 140/7.5(zz) (West 2022), as amended by Public Acts 103-008, effective June 7, 2023; 103-034, effective June 9, 2023.

³E-mail from Thomas D. Mulcrone, Associate General Counsel, Illinois Department of Human Services, to Maxford Nelsen (June 21, 2023).

⁴5 ILCS 315/6(c-5) (West 2022).

organization, whether or not employees pay or authorize the payment of any dues or moneys to such organization, and the amounts of such dues or moneys); and (6) emails or other communications between a labor organization and its members.

* * *

If an employer discloses information in violation of this subsection (c-5), an aggrieved employee of the employer or his or her exclusive bargaining representative may file an unfair labor practice charge with the Illinois Labor Relations Board pursuant to Section 10 of this Act or commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, if an employer willfully and wantonly discloses information in violation of this subsection. (Emphases added.)

On June 30, 2022, the Public Access Counselor issued a binding opinion (Ill. Att'y Gen. Pub. Acc. Op. No. 22-009) concluding that a public body did not violate FOIA by denying a similar FOIA request from the Freedom Foundation under section 7.5(zz) of FOIA. Unlike the request at issue in this matter, the request that underlies Binding Opinion 22-009 did seek each employee's "union" such that compliance with the request would have required the City to indicate whether or not each employee was a member of Service Employees International Union (SEIU) Local 73. That portion of the request, however, was not dispositive in this office's determination that the IPLRA prohibited disclosure of the requested information. The binding opinion explained that "[s]ection 6(c-5) of the IPLRA expressly applies not just to 'any information personally identifying employee membership' but to 'membership *status*' as well.⁵ (Emphasis added.) Because the request was limited to employees covered by a collective bargaining agreement with Service Employees International Union (SEIU) Local 73, disclosure of the requested information would reveal the "membership or membership status" of the employees as either current or eligible members of the union.⁶

In this instance, your request similarly targets the identities of current or eligible members of a particular union, SEIU-HII. After the Supreme Court decided *Janus v. AFSCME, Council 31*, __ U.S. __, 138 S. Ct. 2448 (2018), the General Assembly amended the IPLRA to exempt such information from disclosure under FOIA. Although you argue that "nothing in Illinois law prohibits the disclosure of information about public employees who might be

⁵Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, at 9-10.

⁶Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, at 10.

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'eligible' to join a labor organization[,"]⁷ you have not offered an interpretation of "membership or membership status" and "the identity of such organization" that both gives effect to all terms of the IPLRA amendments and requires disclosure under these circumstances.⁸ This office has determined that no further action is warranted as to the Department's denial under section 7.5(zz).

This file is closed. If you have questions, you may contact me at joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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⁷Letter from Maxford Nelsen, Director of Labor Policy, Freedom Foundation, to Leah [Bartelt], Public Access Counselor, Office of the Attorney General (August 2, 2023).

⁸This office notes that although the workers at issue in your request qualify as "public employees" for purposes of the IPLRA (5 ILCS 315/7 (West 2022)), this request is distinct from a request for a staff roster for a State agency or other public body.