



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 13, 2023

Via electronic mail

[REDACTED]

Via electronic mail

Ms. Melissa Nunchuck
Compliance Officer
Chicago Department of Human Resources
121 North LaSalle Street, Room 1100
Chicago, Illinois 60602
dhrfoia@cityofchicago.org

RE: FOIA Request for Review – 2023 PAC 78284

Dear [REDACTED] and Ms. Nunchuck:

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 2022)). For the reasons that follow, the Public Access Bureau concludes that the City of Chicago Department of Human Resources (Department) did not improperly withhold information responsive to [REDACTED] September 14, 2023, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Department seeking copies of "the Official Citywide Motor Truck Driver (7183) List and the Official Citywide Pool Motor Truck Driver (7184) List."¹ On September 21, 2023, the Department denied the request in its entirety pursuant to section 7.5(zz) of FOIA,² which exempts from

¹E-mail from [REDACTED] to DHR FOIA Representatives (September 14, 2023).

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; 103-508, effective July 1, 2023.

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disclosure "[i]nformation prohibited from being disclosed under the Illinois Public Labor Relations Act." Section 6(c-5) of the Illinois Public Labor Relations Act (IPLRA)³ provides:

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 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.)

The Department stated: "Because requested seniority lists identify members within specific bargaining units, they are therefore exempt under FOIA."⁴ On September 29, 2023, [REDACTED] submitted a Request for Review contesting the denial. The Request for Review argued that this office's binding opinion⁵ upholding a city's denial of a FOIA request from the Freedom Foundation under section 7.5(zz) does not apply to her request; she argued

³5 ILCS 315/6(c-5) (West 2022).

⁴Letter from Melissa Nunchuck, Compliance Officer, Department of Human Resources, to [REDACTED] (September 21, 2023).

⁵Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, issued June 30, 2022 (Binding Opinion 22-009).

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that because the requester in that matter was an "outside entity," the analysis in the binding opinion "does not apply to [her] and [her] fellow union members."⁶ [REDACTED] stated that the purpose of her request was to ensure the lists are accurate and current.

On October 5, 2023, this office forwarded a copy of the Request for Review to the Department and asked it to provide this office with unredacted copies of the responsive records for this office's confidential review, together with a detailed explanation of the legal and factual bases for denying the request under the asserted exemption. On October 31, 2023, the Department furnished those materials, as well as a copy of a collective bargaining agreement with Teamsters Local 700, and an "Employee Work History" report about [REDACTED] that the Department stated it had provided to her on March 15, 2022. The Department stated that all of the employees in the lists "are members of Teamsters Local 700 or eligible to join the union as part of the bargaining unit."⁷ The Department also provided [REDACTED] with copies of the records in which it redacted all of the employees' names and other information about them, such as employee identification number and bargaining unit in list 7183⁸ and "Pool Seniority Date," "Start Date Bargaining Unit," and "Driver Start Date" in list 7184.⁹ On that same date, [REDACTED] replied: "A redacted list to an actual member, myself for personal observation, does not give me the information I need."¹⁰

DETERMINATION

Under FOIA, "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022). 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 2022).

After the Supreme Court struck down the provision of the IPLRA that authorized automatic deductions of fair share fees from non-union members' wages in *Janus v. AFSCME*,

⁶E-mail from [REDACTED] to whom it may concern (September 24, 2023).

⁷Letter from Melissa Nunchuck, Compliance Officer, Department of Human Resources, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 31, 2023), at 3.

⁸City of Chicago Department of Human Resources, Records Management, Department Seniority Report, 7183-Motor Truck Driver (October 23, 2023).

⁹City of Chicago Department of Human Resources, Records Management, Pool Motor Truck Driver Seniority List (October 23, 2023).

¹⁰E-mail from [REDACTED] to DHRFOIA@cityofchicago.org and Joshua.Jones@ilag.gov (October 31, 2023).

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Council 31, 138 S. Ct. 2448 (2018), the General Assembly passed legislation to affirm and facilitate the exercise of collective bargaining rights by, among other measures, adding sections 6(c-5), 10(a)(8), and 10(a)(9)¹¹ to the IPLRA.¹² In Binding Opinion 22-009, this office explained that because the FOIA request expressly concerned only employees of a public body who were covered by a collective bargaining agreement with Service Employees International Union (SEIU) 73, revealing the requested employee names and other requested details about them would necessarily reveal their "membership or membership status" as either current or eligible members of an identified labor organization.¹³ Accordingly, this office concluded that the denial of the request under section 7.5(zz) did not violate FOIA.¹⁴

In its answer to this office, the Department maintained that it similarly properly denied the request pursuant to section 7.5(zz) because:

The City of Chicago has a clear duty toward the protection
of public employees' right to organize established by the Illinois

¹¹5 ILCS 315/10(a)(8), (a)(9) (West 2022).

¹²See Public Act 101-620, effective December 20, 2019. Sections 10(a)(8) and 10(a)(9) of the IPLRA provide, in relevant part:

(a) It shall be an unfair labor practice for an employer or its agents:

* * *

(8) to interfere with, restrain, coerce, deter, or discourage public employees or applicants to be public employees from: (i) becoming or remaining members of a labor organization; (ii) authorizing representation by a labor organization; or (iii) authorizing dues or fee deductions to a labor organization, nor shall the employer intentionally permit outside third parties to use its email or other communication systems to engage in that conduct. An employer's good faith implementation of a policy to block the use of its email or other communication systems for such purposes shall be a defense to an unfair labor practice; [or]

(9) to disclose to any person or entity information set forth in subsection (c-5) of Section 6 of this Act that the employer knows or should know will be used to interfere with, restrain, coerce, deter, or discourage any public employee from: (i) becoming or remaining members of a labor organization, (ii) authorizing representation by a labor organization, or (iii) authorizing dues or fee deductions to a labor organization[.]

¹³Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, at 10.

¹⁴Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, at 12.

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General Assembly under sections 6(c-5), 10(a)(8), and 10(a)(9) of the IPLRA. Because seniority lists identify members within specific bargaining units and provide their ranked seniority as members of that bargaining unit within a specific job title, any information that would identify individuals on that list must be redacted. In the Pool [Motor Truck Driver] document, this includes pool numbers, pool seniority dates, job title code, start dates in the bargaining unit, departments, driver start dates, continuous service dates, and employee names. In the regular [Motor Truck Driver] document, this includes employee names, bargaining unit, job title code, continuous service dates, start present position (SPP) dates, and seniority dates. [Citation.] Without the information exempted under 7.5(zz), the lists are rendered wholly unusable to determine or track seniority in a specific bargaining unit, which is their intended purpose. To provide this information, which is limited to a specific job title within a specific bargaining unit, would be to give the requester back-door-entry to determine the names and identities of union members.^[15]

The Department indicated that [REDACTED] might be able to obtain the information from her union, stating: "As section 6(c) of the IPLRA specifies, seniority lists are provided to the applicable labor organization's exclusive representatives. This is done twice per month. Employees may freely request this information from their bargaining unit as members of the union."¹⁶ For purposes of requesting records under FOIA, in contrast, the Department argued that [REDACTED] has no greater rights than any other requester, including the Freedom Foundation, by virtue of being a member of the union herself. The Department also noted that [REDACTED] could obtain a work history report containing her own seniority information under the Personnel Record Review Act (820 ILCS 40/1 *et seq.* (West 2022)), and that "[t]o the extent that employees have questions or disputes regarding their own seniority information, there is a mechanism through their union's collective bargaining agreement [citation] with the City of Chicago to have questions answered, grievances filed, or corrections made."¹⁷

¹⁵Letter from Melissa Nunchuck, Compliance Officer, Department of Human Resources, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 31, 2023), at 2.

¹⁶Letter from Melissa Nunchuck, Compliance Officer, Department of Human Resources, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 31, 2023), at 3.

¹⁷Letter from Melissa Nunchuck, Compliance Officer, Department of Human Resources, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 31, 2023), at 3 (citing Collective Bargaining Agreement, Teamsters Local 700 – City of Chicago, § 14.8 (ratified January 17, 2018)).

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In this instance, as in Binding Opinion 22-009, [REDACTED] request concerns the identities of current or eligible members of a particular union, Teamsters Local 700. Although the General Assembly's post-*Janus* amendments to the IPLRA may have been aimed principally at deterring anti-union outreach efforts towards employees, section 6(c-5) of the IPLRA prohibits disclosure of an employee's "membership or membership status" in a union and "the identity of such organization," regardless of the identity of the requester. Thus, although there is no indication that [REDACTED] as a union member, requested the lists to interfere with, restrain, coerce, deter, or discourage any public employee from joining a union or remaining a dues-paying member, the Department was not required to demonstrate that her request had such a purpose. To the extent [REDACTED] previously obtained the same kinds of lists directly from the Department for previous years, her prior ability to obtain the lists did not obligate the Department to furnish the lists responsive to the present request in light of an applicable FOIA exemption, section 7.5(zz). Accordingly, this office has determined that the Department's denial of the employees' information under section 7.5(zz) did not violate FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (312) 814-8413 or joshua.jones@ilag.gov.

Very truly yours,

[REDACTED]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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