

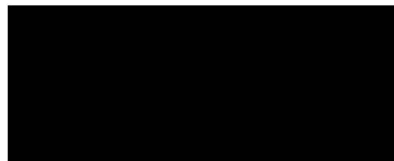


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 12, 2023

Via electronic mail



Via electronic mail

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

RE: FOIA Request for Review – 2023 PAC 76415

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 that follow, the Public Access Bureau concludes that the response by the Illinois Department of Financial and Professional Regulation (Department) to [REDACTED] April 9, 2023, FOIA request did not violate the requirements of FOIA.

On that date, [REDACTED] submitted a FOIA request to the Department seeking copies of all records pertaining to Case No. 2018- 09135 and 2018-12570. On April 11, 2023, the Department denied [REDACTED] request pursuant to section 7(1)(a) of FOIA.¹ In connection with section 7(1)(a) of FOIA, the Department cited section 1326.220(b) of the Illinois Administrative Code (2 Ill. Admin. Code 1326.220(b) (West 2022)) and section 2105-117 of the Department of Professional Regulation Law (20 ILCS 2105/2105-117 (West 2022)). On April 28, 2023, [REDACTED] submitted the above-referenced Request for Review disputing the

¹5 ILCS 140/7(1)(a) (West 2021 Supp.), as amended by Public Acts 102-694, effective January 7, 2022, revised February 3, 2022; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022).

██████████
Ms. Kathleen Anderson
July 12, 2023
Page 2

Department's response. In particular, ██████████ argued she "should at minimum be able to get whatever record IDFPR has of the discipline that was imposed[.]"²

On May 24, 2023, this office sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the withheld records for our confidential review, and a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On June 5, 2023, the Department provided this office with the requested materials, submitted confidentially.³ On June 6, 2023, the Department also provided this office with an addendum letter and a copy of the closing letter it sent to ██████████ on February 11, 2021. In this closing letter, the Department informed ██████████ that it closed its investigation and did not impose any public disciplinary actions.⁴

On June 14, 2023, this office informed ██████████ that the Department had chosen to keep its response confidential, but she could still submit a reply. On June 22, 2023, ██████████ submitted her reply along with supporting documentation.

DETERMINATION

"All 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); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2022). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(a) of FOIA

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Section 2105-117 of the Department of Professional Regulation Law contains the following confidentiality provision:

²E-mail from ██████████ to Leah Bartelt, Public Access Counselor, Office of the Attorney General (April 28, 2023).

³5 ILCS 140/9.5(d) (West 2022) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

⁴Letter from Enforcement Unit, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to ██████████ (February 11, 2021).

All information collected by the Department in the course of an examination or investigation of a licensee, registrant, or applicant, including, but not limited to, any complaint against a licensee or registrant filed with the Department *and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed*. The Department may not disclose the information to anyone other than law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Director, or a party presenting a lawful subpoena to the Department * * * A formal complaint filed against a licensee or registrant by the Department or any order issued by the Department against a licensee, registrant, or applicant shall be a public record, except as otherwise prohibited by law. (Emphasis added).

Section 1326.220(b) of the Illinois Administrative Code provides:

In response to a request submitted pursuant to FOIA, the Department will not disclose certain records as provided in this Section. Records covered under this Section include, but are not limited to:

b) Division of Professional Regulation and Division of Real Estate:

- 1) *Complaints received by the Department* against licensees or unlicensed persons or entities, except as provided by statute.

* * *

- 3) *Investigative files* maintained by the Division. (Emphasis added).

In its confidential response to this office, the Department asserted that it properly withheld investigation materials and other records responsive to ██████████ request pursuant to these confidentiality provisions. In support of its assertions, the Department provided additional details about the nature of the two specified complaints (2018-09135 and 2018-12570) and

██████████
Ms. Kathleen Anderson
July 12, 2023
Page 4

explained that it merged these complaints into one investigation. The Department also confirmed that this investigation was closed with no final disciplinary issued.


In her reply, ██████████ stated that in "February 2021 the case was completed and IDFPR issued a disciplinary action report to Cermak Health Services Pharmacy."⁵ She reiterated that she should have received, at a minimum, a copy of the disciplinary action report and a brief description of the final action taken in either case. In support of her assertions, ██████████ provided examples of the Department's brief explanations of disciplinary actions taken in other matters, which were posted on the Department's website.⁶

Having reviewed the information submitted by the parties, it appears no disciplinary orders were issued by the Department against Cermak Health Services Pharmacy or the individual identified in ██████████ Request for Review. Although ██████████ believed that a disciplinary action report was issued to the pharmacy, apparently based on an internal e-mail implementing a policy change, the Department's monthly disciplinary report for February 2021 does not list any disciplinary or enforcement actions against the specified pharmacy or individual.⁷ The Department provided additional details in its confidential response to confirm that no formal discipline was imposed in connection with the case files at issue. The Public Access Bureau has previously reviewed the above-described confidentiality provisions of the Department of Professional Regulation Law and Illinois Administrative Code and concluded that the Department is prohibited from disclosing any materials maintained in its investigative case files, except for formal complaints and disciplinary orders issued by the Department against a licensee. Ill. Att'y Gen. PAC Req. Rev. Ltr. 74715, issued January 18, 2023; Ill. Att'y Gen. PAC Req. Rev. Ltr. 58592, issued June 26, 2019. The existence of an internal policy change related to a complaint or complaints does not provide evidence that the Department issued a formal complaint or disciplinary order. Because there is no indication that formal complaints or orders were entered in connection with the specified case files, the Department is prohibited from disclosing any information related to its investigation of the specified pharmacy and individual or the results of that investigation. Accordingly, the Department did not improperly deny the request under section 7(1)(a) of FOIA.

⁵Letter from ██████████ to [Christina] M. Lucente-McCullough, Assistant Attorney General, Public Access Bureau (June 22, 2023), at 1.

⁶Letter from ██████████ to [Christina] M. Lucente-McCullough, Assistant Attorney General, Public Access Bureau (June 22, 2023), at 2-4. See IDFPR Consolidated Reports, available at <https://idfpr.illinois.gov/news/disciplines/discreports.html>.

⁷Illinois Department of Financial and Professional Regulation News, February 2021, available at <https://idfpr.illinois.gov/content/dam/soi/en/web/idfpr/forms/discpln/2021-02enf.pdf>.


Ms. Kathleen Anderson
July 12, 2023
Page 5

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 c.lucentemccullough@ilag.gov or the Chicago address listed on the first page of this letter.

Very truly yours,


CHRISTINA LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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