



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 17, 2023

Via electronic mail
Mr. Gregory Pratt
Chicago Tribune
gpratt@chicagotribune.com

Via electronic mail
Mr. Thomas Skelton
FOIA Officer
Office of the Mayor
City of Chicago
121 North LaSalle Street, Room 507
Chicago, Illinois 60602
thomas.skelton@cityofchicago.org

RE: FOIA Request for Review – 2022 PAC 71500; F015831-020122

Dear Mr. Pratt 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 2020)). For the reasons that follow, the Public Access Bureau concludes that the response by the City of Chicago, Office of the Mayor (Mayor's Office) to Mr. Gregory Pratt's January 31, 2022, FOIA request violated FOIA.

On that date, Mr. Pratt, on behalf of the *Chicago Tribune*, submitted a FOIA request to the Mayor's Office seeking, relevant to this Request for Review, all e-mails concerning public business from January 1, 2022, through January 31, 2022, residing on any non-city e-mail account used by Mayor Lori Lightfoot. After extending its time to respond, on April 27, 2022, the Mayor's Office provided Mr. Pratt with copies of the e-mails responsive to his request, but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(f) of FOIA.¹ On April 27, 2022, Mr. Pratt submitted a Request for Review challenging the redactions made to

¹ 5 ILCS 140/7(1)(b), (1)(c), (1)(f) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

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one e-mail: a January 23, 2022, message sent at 5:33 p.m. from Mayor Lori Lightfoot's personal e-mail address to her City e-mail address.

On May 4, 2022, this office sent a copy of the Request for Review to the Mayor's Office and asked it to provide an un-redacted copy of the e-mail identified in Mr. Pratt's Request for Review for this office's confidential review. This office asked that the Mayor's Office clarify the applicable exemptions cited for the information redacted from the record and provide a detailed explanation of the legal and factual bases for the applicability of those exemptions. On May 23, 2022, this office received the Mayor's Office's written answer and a copy of the un-redacted record. Later that day, this office forwarded the Mayor's Office's answer to Mr. Pratt; on May 25, 2022, this office received Mr. Pratt's reply.

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 2020); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that denies a record "has the burden of proving by clear and convincing evidence" that the record is exempt from disclosure. 5 ILCS 140/1.2 (West 2018). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

In its response to this office, the Mayor's Office clarified that the e-mail at issue contains notes from personal conversations about a crime victim and their family. The Mayor's Office stated that it redacted the e-mail on the basis of the section 7(1)(c) exemption. Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Department of*

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Conservation, 256 Ill. App. 3d 198, 202 (4th Dist. 1994). Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

Under the first and second factors of the balancing test, Mr. Pratt writes for *The Chicago Tribune*. Because Mr. Pratt is seeking the requested information to distribute to the public as part of his duties as a newspaper reporter, his interest and the public's interest in disclosure of the records are aligned. He contends that there is a public interest in the use of public resources to address a matter of public concern. He speculated that if the record reflects communications with "someone who's connected and reached out to the mayor * * * and is asking for something -- a settlement, a policy action, a personnel change, * * * that is probably something where the public interest of how people are using their access to power outweighs the alleged privacy interests."² The Mayor's Office argues that "there is no real public interest in the disclosure of this information. The information does not relate to the affairs of government or the official actions of public officials. * * * These notes are about purely personal matters."³

As to the third factor—the degree of invasion of personal privacy—this office's review of the un-redacted e-mail confirmed that the Mayor's Office withheld a series of notes that appear to summarize a discussion about a grieving family of a crime victim. The notes reflect many personal details about the family that are unrelated to any actions by the Mayor's Office. A reasonable person would find the disclosure of the personal details highly objectionable given the sensitive nature of the circumstances surrounding the incident.⁴ Other details are less personal, however, and reflect facts the Mayor's Office collected to apprise itself of the situation and inform its response or potential response.

Regarding the fourth factor, there does not appear to be another means for Mr. Pratt to obtain the withheld record.

²E-mail from [Gregory Pratt] to [Laura S. Harter] (May 24, 2022).

³Letter from Tom Skelton, FOIA Officer, Office of the Mayor, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 22, 2022), at [2].

⁴Because the Mayor's Office provided the record to this office confidentially, section 9.5(c) of FOIA precludes this office from further identifying the substance of the record.

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Taking all of these factors into account, this office concludes that there is a public interest in the general subject matter of the e-mail, which reflects the Mayor's summary of facts about the circumstances of certain constituents in the aftermath of a tragic incident. The entirety of the e-mail does not concern a purely personal matter unrelated to government affairs and the Mayor's public duties. Rather, the notes appear to suggest some potential actions the Mayor's Office might consider or matters it would continue to monitor. In these portions of the e-mail, the public interest in disclosure outweighs the relatively minor invasion of the victim's family. However, other portions of the e-mail contain highly personal details, and the substantial personal privacy interests of the crime victim's family in those portions outweigh the minimal public interest in disclosure. Therefore, this office requests that the Mayor's Office disclose to Mr. Pratt a less redacted version of the January 23, 2022, e-mail in which it redacts only: the first word in the first line, the fourth line before the second ellipsis and after the last ellipsis, and the 6th and 7th lines, and the 11th, 12th, and 13th lines.

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) 843-0564 or laura.harter@ilag.gov.

Very truly yours,

A solid black rectangular redaction box covering the signature of Laura S. Harter.

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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