



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

February 1, 2022

*Via electronic mail*

[REDACTED]

*Via electronic mail*

Mr. James B. Murray, Jr.  
Head Assistant Attorney and FOIA Officer  
Metropolitan Water Reclamation District of Greater Chicago  
100 East Erie Street  
Chicago, Illinois 60611  
murrayjl@mwrdd.org

RE: FOIA Request for Review – 2019 PAC 58120; District FOIA No. 19-131

Dear [REDACTED] and Mr. Murray:

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 2020)). For the reasons that follow, the Public Access Bureau concludes that the Metropolitan Water Reclamation District of Greater Chicago (District) did not improperly withhold most of the records responsive to [REDACTED] [REDACTED] April 28, 2019, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the District seeking copies of "all documents, notes, reports, videos, pictures, proposals, and communication regarding an AAA freight located in Merrion[e]tte Park[,] Illinois[.]" since January 15, 2019.<sup>1</sup> [REDACTED] stated that "[t]his is a site [for which] current violations have been issued."<sup>2</sup> On May 6, 2019, the District extended the time for its response by five business days pursuant to section 3(e)(vi) of FOIA (5 ILCS 140/3(e)(vi) (West 2018)). On May 13, 2019, the District denied [REDACTED] request in its entirety pursuant to section 7(1)(d)(ii) of FOIA (5

---

<sup>1</sup>FOIA request submitted by [REDACTED] to FOIARrequest@mwrdd.org (April 28, 2019).

<sup>2</sup>FOIA request submitted by [REDACTED] to FOIARrequest@mwrdd.org (April 28, 2019).

[REDACTED]  
Mr. James B. Murray, Jr.

February 1, 2022

Page 2

ILCS 140/7(1)(d)(ii) (West 2018)). On May 15, 2019, [REDACTED] submitted this Request for Review contesting the District's denial.

On May 21, 2019, this office forwarded a copy of the Request for Review to the District and asked it to provide this office with unredacted copies of the withheld records for our confidential review, together with a detailed explanation of the factual and legal bases for the applicability of section 7(1)(d)(ii) of FOIA. On May 31, 2019, the District provided this office with the requested materials, including both a complete version of its response for this office's confidential review and a redacted version for [REDACTED]. The District also provided [REDACTED] with copies of certain responsive e-mails and photographs. On June 3, 2019, this office forwarded a copy of the redacted version of the District's written response to [REDACTED]; she did not reply.

#### 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 2020); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). 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 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

Section 7(1)(d)(ii) of FOIA exempts from disclosure records "created in the course of administrative enforcement proceedings," to the extent that their disclosure would "interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request[.]" In its non-confidential response in this matter, the District argued it properly withheld records created in an active administrative enforcement proceeding concerning the development of the property at issue without the proper permits. The District explained it opened an investigation into the specified site regarding violations of the District's Watershed Management Ordinance (WMO), and issued a violation report advising the property owner of the alleged violation on July 25, 2018. The District described the initial phase of the administrative enforcement process under the Ordinance as follows:

The WMO governs the issuance of permits to entities seeking to develop property within the jurisdiction of the District. Those permits regulate the construction of sewerage systems and detention of water on developed property. \* \* \* When violations of the WMO are discovered, enforcement is initiated. Those enforcement actions involved a multi-step process with the goal of putting the violator on notice of the violation and working with the

████████████████████  
Mr. James B. Murray, Jr.

February 1, 2022

Page 3

party to bring about compliance. If compliance cannot be achieved, the District will bring a Show Cause Action before a Hearing Officer[.]<sup>[3]</sup>

Once this enforcement process started, the District explained, it exchanged internal and external e-mails constituting "the investigatory and fact finding phase of the proceedings that will form the basis for determining how best to proceed with the enforcement action."<sup>4</sup> The District argued that disclosure of these e-mails could have jeopardized its enforcement proceeding "by prematurely revealing the nature, scope, direction and focus of the District's investigation to an unknown third-party who could then use the information to negatively impact the District's enforcement action."<sup>5</sup> The Department argued that this matter is similar to *Stein v. U.S. Securities & Exchange Comm'n*, 266 F. Supp. 3d 326 (D.D.C. 2017)), in which a Federal district court concluded that e-mails from Securities and Exchange Commission (SEC) investigations were exempt under the Federal FOIA exemption for administrative enforcement proceedings.

It is uncontested that the District was conducting an active administrative enforcement proceeding at the time of the request; rather, the issue is whether disclosure of the responsive records would have interfered with those proceedings. Based on its confidential review of the e-mails provided by the District in Exhibit B, this office agrees that it was reasonable to conclude that disclosure of most of these records could have compromised the administrative enforcement proceeding. Some of these e-mails contained in-depth discussions about the District's actions going forward.<sup>6</sup> These e-mails are similar to the internal SEC e-mails found to be exempt in *Stein*. See *Stein*, 266 F. Supp. 3d at 347. If disclosed to an individual outside the District, these e-mails could have interfered with how the District proceeded with its investigation into the WMO violations. Therefore, this office concludes that most of the withheld e-mails are exempt from disclosure under section 7(1)(d)(ii) of FOIA.

---

<sup>3</sup>Letter from James B. Murray, Jr., Head Assistant Attorney/FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Leo Draws, Assistant Attorney General, Public Access Bureau (May 31, 2019), at 3.

<sup>4</sup>Letter from James B. Murray, Jr., Head Assistant Attorney/FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Leo Draws, Assistant Attorney General, Public Access Bureau (May 31, 2019), at 4.

<sup>5</sup>Letter from James B. Murray, Jr., Head Assistant Attorney/FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Leo Draws, Assistant Attorney General, Public Access Bureau (May 31, 2019), at 5.

<sup>6</sup>E-mail from Gabrielle Giamarusti, [Senior] Legal Assistant, Metropolitan Water Reclamation District of Greater Chicago, to Leo Draws, Assistant Attorney General, Public Access Bureau (May 31, 2019). See pages 39-44 of attachment titled *Confidential Group Ex B.pdf*.

████████████████████  
Mr. James B. Murray, Jr.

February 1, 2022

Page 4

On the other hand, the District did not demonstrate by clear and convincing evidence that the remaining e-mails, if disclosed, would have interfered with its enforcement proceeding. In particular, this office points to e-mails exchanged between District staff, the property owner, and his legal counsel.<sup>7</sup> Although related to its investigation, these e-mails simply relay facts about the alleged WMO violations and do not describe the District's internal actions or opinions about this proceeding. The District's speculation that a third party FOIA requester could use the external e-mails to negatively impact the enforcement proceeding is vague and conclusory. Accordingly, this office concludes that the District did not sustain its burden of showing, by clear and convincing evidence, that all of the e-mails sought by ██████████ are exempt from disclosure under section 7(1)(d)(ii) of FOIA.

In accordance with the conclusions expressed in this letter, this office requests that the District provide ██████████ with copies of the responsive e-mails identified in footnote seven, subject to redaction of "private information" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2018)).<sup>8</sup>

---

<sup>7</sup>E-mail from Gabrielle Giamarusti, [Senior] Legal Assistant, Metropolitan Water Reclamation District of Greater Chicago, to Leo Draws, Assistant Attorney General, Public Access Bureau (May 31, 2019). See pages 2-4, 10-15, 25-29, and 34-38 of attachment titled *Confidential Group Ex B.pdf*.

<sup>8</sup>Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." "Private information" is defined as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. 5 ILCS 140/2(c-5) (West 2020).

[REDACTED]  
Mr. James B. Murray, Jr.

February 1, 2022

Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at [c.lucentemccullough@ilag.gov](mailto:c.lucentemccullough@ilag.gov) or the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]  
CHRISTINA M. LUCENTE-MCCULLOUGH  
Assistant Attorney General  
Public Access Bureau

58120 f 71dii proper improper reg auth