



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 2, 2024

Via electronic mail

Mr. Mick Dumke
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Via electronic mail

Ms. Hibo Aden
FOIA Officer
Office of the Mayor
City of Chicago
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RE: FOIA Request for Review – 2024 PAC 81969

Dear Mr. Dumke and Ms. Aden:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons stated below, the Public Access Bureau concludes that the City of Chicago Office of the Mayor (Mayor's Office) did not improperly deny Mr. Mick Dumke's June 24, 2024, FOIA request.

On that date, Mr. Dumke, on behalf of *Block Club Chicago*, submitted a FOIA request to the Mayor's Office seeking copies of certain e-mails specified in a log of e-mails attached to Mr. Dumke's request. On June 27, 2024, the Mayor's Office provided Mr. Dumke with responsive records with redactions pursuant to sections 7(1)(b), 7(1)(c), 7(1)(f), and 7(1)(kk) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(f), (1)(kk) (West 2022)), as amended by Public

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Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024). On July 1, 2024, this office received Mr. Dumke's complete Request for Review contesting the redactions. In particular, he challenged the redactions in an e-mail sent on February 27, 2023, by Samir Mayekar, a then-city official, concerning a property at 39th and State in Chicago and related materials. Those records were redacted pursuant to section 7(1)(f) of FOIA.

On July 11, 2024, this office sent a copy of the Request for Review to the Mayor's Office and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for its denial. On July 24, 2024, this office received the Mayor's Office's response. On July 25, 2024, this office forwarded a copy of the response to Mr. Dumke; he replied on that same date.

DETERMINATION

Under FOIA, all public records in the possession or custody 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 "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248.

In its response to this office, the Mayor's Office stated that the withheld material consists of a draft presentation for the INVEST South West Bronzeville project, as well as notes from a meeting regarding that project. The Mayor's Office stated that these materials were shared only with officials and employees within the City of Chicago and Chicago Housing Authority. The Mayor's Office argued:

These records are preliminary and frank discussions in which opinions are expressed and policies and actions are formulated. They are part of the process by which governmental decisions and

policies are formulated. The redacted materials are thus exempt from production under Section 7(1)(f) of FOIA and the relevant case law. Additionally, because the redactions contain frank discussions of policy matters, it is necessary to redact the records to encourage City employees to feel free to express their honest opinions.^[1]

In his reply, Mr. Dumke argued: "Even if some of these records once met the definition of 'deliberative' or 'pre-decisional,' it doesn't mean they should be exempt forever."² Mr. Dumke cited an alderman's statement that portions of the project at issue did not bear fruit and argued "Section 7 of the FOIA exempts 'The records, documents, and information relating to real estate purchase negotiations **until those negotiations have been completed or otherwise terminated.**'"³ (Emphasis in original.)

The language cited by Mr. Dumke appears in section 7(1)(r) of FOIA (5 ILCS 140/7(1)(r) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024), which exempts from disclosure "[t]he records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated."

Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023. Unlike the 7(1)(r) exemption, section 7(1)(f) contains no limitation relating to the completion or termination of the issue or project underlying the exempted records.

Accordingly, this office has previously determined that the section 7(1)(f) exemption continues to apply even when a policy proposal contained within records is not adopted. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 75506, issued July 20, 2023, at 4 ("[C]onstruing the scope of section 7(1)(f) as excluding recommendations that are not adopted as agency policy would discourage the type of candid predecisional communications that the exemption is intended to protect."). *See also Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶ 15 ("The deliberative process privilege exemption of the federal statute requires disclosure of

¹Letter from Hibo Aden, FOIA Officer, Office of the Mayor, to Ben Silver, Assistant Attorney General, Public Access Bureau (July 24, 2024), at [3].

²E-mail from Mick Dumke, Investigative Editor, *Block Club Chicago*, to Benjamin Silver, [Assistant Attorney General], [Public Access Bureau] (July 25, 2024).

³E-mail from Mick Dumke, Investigative Editor, *Block Club Chicago*, to Benjamin Silver, [Assistant Attorney General], [Public Access Bureau] (July 25, 2024).

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predecisional material once it has been adopted or incorporated by an agency. Illinois has no such limitation dealing with whether the communication was incorporated in the final decision.").

This office's confidential review of the contested records confirmed that they are predecisional and deliberative in nature. The withheld presentation and notes reflect the decision-making processes of the Mayor's Office and other City of Chicago departments and show the agencies formulating action on the project. Because the records were predecisional at the time they were prepared, they constitute predecisional deliberative material despite the passage of time and changing circumstances. Accordingly, the Mayor's Office did not improperly withhold these records pursuant to section 7(1)(f) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,



BENJAMIN J. SILVER
Assistant Attorney General
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