



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 23, 2024

Via electronic mail



Via electronic mail

Ms. Michelle Jett
Director of Administration
Office of Champaign County Executive
1776 West Washington Street
Urbana, Illinois 61802
mjett@co.champaign.il.us

RE: Request for Review – 2024 PAC 83737

Dear [REDACTED] and Ms. Jett:

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 2023 Supp.)). For the reasons that follow, the Public Access Bureau concludes that the Champaign County Executive's Office (County) did not improperly deny draft versions of advertisements in response to [REDACTED] FOIA request.

On October 4, 2024, [REDACTED] submitted a FOIA request to the County seeking copies of "[a]ll emails, memorandum, texts or other communication from Steve Summers or Michelle Jett or their subordinates from 1/1/2024 to current with any vendors involved with campaign ads over the public safety sales tax []" and "[c]opies of all advertisements, billboard, print, radio or otherwise the county has produced or has had produced by third-parties in regards

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to the public safety sales tax."¹ On October 21, 2024, the County provided ██████████ with certain records and informed him that it was waiting on to hear from another department regarding additional records. On October 25, 2024, the County sent ██████████ a final response denying the remaining records under section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2023 Supp), as amended by Public Act 103-605, effective July 1, 2024). On October 30, 2024, ██████████ submitted the above-referenced Request for Review contesting the withholding of what he claims are fully produced videos and challenged the completeness of the County's response.²

On November 7, 2024, this office forwarded a copy of the Request for Review to the County and asked it to provide this office with unredacted copies of the requested records together with a detailed explanation for the applicability of the section 7(1)(f) exemption. On November 19, 2024, the County provided this office with copies of the responsive materials, including the records provided to ██████████ a written response, and three withheld videos of television advertisements concerning a sales tax. The County informed this office that after ██████████ alleged that the first production was incomplete, it undertook an additional review and identified two responsive spreadsheets that were furnished to ██████████ on November 19, 2024. On that same date, ██████████ noted receipt of the two spreadsheets.³ On November 20, 2024, this office forwarded a copy of the County's redacted response to ██████████; he 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 2022); *see also Southern Illinoisan v. Illinois Dept. 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).

¹E-mail from ██████████ Mahomet Leaks, to County Executive (October 4, 2024)

²Some of the e-mails provided to ██████████ were also redacted pursuant to section 7(1)(f). ██████████ does not challenge these redactions in his Request for Review.

³In his Request for Review, ██████████ stated that the e-mails that were provided did not include outbound e-mails. This office's review of the e-mails that were furnished, however, confirmed that they include chains in which the County received as well as responded to e-mails. ██████████ also alleged that e-mails were missing zip code and address data. The County performed an additional search and furnished the attachments with this data. Given that ██████████ noted receipt and did not further contest the production of the attachments, this office will take no further action on the issue of whether the County's response was complete.

Section 7(1)(f) of FOIA exempts from inspection and copying "[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). Section 7(1)(f) 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.

Request for Review alleges that the County improperly withheld television advertisements that "were fully produced and as far as I can tell, paid for. They are no longer preliminary drafts, it's a finished product."⁴ In its response to this office, the County characterized the withheld advertisements as drafts that were not finalized and never used even though the producer was paid for its services. In an e-mail to this office on December 5, 2024, the County further stated that "[i]f the County decided tomorrow to use them as their intended purpose, they would have to be edited further before doing so."⁵

In United States Fish and Wildlife Service vs. Sierra Club, 592 U.S 261 (2021), the United States Supreme Court addressed whether written opinions regarding a proposed federal agency action were drafts within the scope of the exemption in Federal FOIA that corresponds to section 7(1)(f).⁶ The opinions, which concluded that a proposed rule was likely to adversely affect endangered species, were not approved or submitted to the Environmental Protection Agency (EPA). *Sierra Club*, 592 U.S at 265. Instead, the decisionmakers who reviewed the drafts concluded "that 'more work needed to be done,'" and "shelved the draft opinions and agreed with the EPA to extend the period of consultation." *Sierra Club*, 592 U.S at 265. The Court rejected the argument that the opinions constituted a final decision because they were not followed by another version that was adopted, holding that the opinions were "both predecisional and deliberative." *Sierra Club*, 592 U.S at 272-73. The Court emphasized that "the determinative fact is not their level of polish—it is that the decisionmakers at the Services neither approved the drafts nor sent them to the EPA." *Sierra Club*, 592 U.S at 271-72; *see also Heffernan vs. Azar*, 417 F Supp. 3d 1, 17 (D.D.C 2018) (draft of press release that was not issued

⁴E-mail from [REDACTED] to Public Access [Bureau, Office of the Illinois Attorney General] (October 30, 2024).

⁵E-mail from Michelle Jett to Matthew Rogina (December 5, 2024).

⁶5 U. S. C. § 552(b)(5) (2018) (exempting from disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.").

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properly withheld under the deliberative process exemption because it was "never adopted formally or used by the agency in its dealings with the public, * * * and it relates to the defendant's policy consideration of whether to issue a press release").

Likewise, the versions of advertisements at issue were not among the versions that were approved for release and if they were, the final product would have been different, according to the County. Even though completed versions of the videos were submitted and no additional editing was done, the unadopted versions of the advertisements are preliminary drafts that provide insight into the County's predecisional deliberative process of formulating advertisements. Accordingly, this office concludes that the County did not improperly withhold the videos under 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 letter serves to close this matter. If you have any questions, please contact me at the Chicago address on the first page of this letter.

Very truly yours,

[REDACTED]

MATTHEW C. ROGINA
Senior Assistant Attorney General
Public Access Bureau

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