



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 12, 2016

Mr. Tim Inklebarger
Reporter
Wednesday Journal
141 South Oak Park Avenue
Oak Park, Illinois 60302

Mr. Paul L. Stephanides
Village Attorney
Village of Oak Park
Law Department
123 Madison Street
Oak Park, Illinois 60302

RE: FOIA Request for Review – 2016 PAC 39705

Dear Mr. Inklebarger and Mr. Stephanides:

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 2014)). For the reasons that follow, the Public Access Bureau concludes that the Village of Oak Park (Village) did not improperly withhold records responsive to Mr. Tim Inklebarger's January 13, 2016, FOIA request.

On that date, Mr. Inklebarger, on behalf of the *Wednesday Journal*, submitted a FOIA request to the Village seeking a copy of a Village employee survey conducted by the Village in the fall of 2015. On January 21, 2016, the Village denied Mr. Inklebarger's request in its entirety pursuant to section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016). On January 21, 2016, this office received Mr. Inklebarger's Request for Review in which he disputes the denial of his request.

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On February 3, 2016, the office forwarded a copy of this Request for Review to the Village and requested that it provide a copy of the responsive records for our confidential review together with a detailed explanation of the factual and legal bases for the assertion of section 7(1)(f). On February 26, 2016, the Village responded and provided the survey results for our confidential review. In its response, the Village maintained that its denial was proper under section 7(1)(f) and added an assertion that the survey is also exempt from disclosure pursuant to section 7(1)(g) of FOIA (5 ILCS 140/7(1)(g) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016). On February 29, 2016, this office forwarded the Village's response to Mr. Inklebarger; he did not reply. On May 11, 2016, in an e-mail to an Assistant Attorney General in the Public Access Bureau, Mr. Inklebarger clarified that he is seeking copies of the Village employees' responses to the survey.

DETERMINATION

All public records in the possession or custody of a public body "are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that asserts that a record is exempt from disclosure "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014). 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)(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." "[A]s a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 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.

The Village's response to this office asserted the following:

The survey is a tool for the Village Manager to formulate policies or actions and other matters, including recommendations, concerning Village employees and her overall management of Village employees and their supervisors. In addition, the survey results may be reviewed in summary form by [sic] the Village

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Board to conduct its annual review of the Village Manager's performance * * * If the results were to be released, it may have a negative effect on open communications and truthful answers to the questions posed by the survey * * * It may also have a chilling effect on the future use of the survey or other similar types of surveys of Village employees in order to determine policies or actions to be taken with regard to employees.¹

In addition, the Village included with its response to this office an e-mail from the Village Manager to Village Supervisors, explaining the purpose of the survey:

Again this year, we will be asking employees to participate in the Oak Park Employee Survey * * * [B]y sharing their opinions and making their voices heard, they provide us with knowledge of the overall employee opinions and this information guide both the Village Manager and the Village Board in knowing how and where to begin improving the work environment. * * * I also think it is noteworthy that the employee opinions that were shared with us last year help guide decisions about improving our workplace.²

This office has reviewed the responsive records, which are survey responses from employees and supervisors containing their opinions on various workplace matters. The Village has asserted that these results are used by the Village in its deliberative process to improve the workplace for Village employees, and that they were not publicly cited by the head of the Village. The Public Access Bureau has previously concluded that survey responses in which public employees express opinions that are used as part of a public body's decision-making process are exempt from disclosure under section 7(1)(f). Ill. Att'y Gen. PAC Pre-Auth. 113448, issued April 11, 2011 (concluding results of surveys of public employees containing their opinions and recommendations which were used by a village to formulate actions and policies constituted pre-decisional deliberative material). Likewise, we conclude that the Village did not improperly deny Mr. Inklebarger's request under section 7(1)(f) of FOIA.

¹Letter from Paul L. Stephanides, Village Attorney, to Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 26, 2016), at 2-3.

²E-mail from Cara Pavlicek, Village Manager, Village of Oak Park, to Robert Anderson *et. al.* (September 8, 2015).

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Because this office has determined that the Village did not improperly withhold the survey under section 7(1)(f) of FOIA, we need not determine whether it is exempt under section 7(1)(g) of FOIA.

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, you may contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

A large black rectangular redaction box covering the signature of Shannon Barnaby.

SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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