



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 26, 2024

Via electronic mail



Via electronic mail

Commander R. Murray
Matteson Police Department
20500 South Cicero Avenue
Matteson, Illinois 60443
rmurray@villageofmatteson.org

RE: FOIA Request for Review – 2024 PAC 79727

Dear [REDACTED] and Commander Murray:

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.)).

In a form dated December 19, 2023, [REDACTED] submitted a FOIA request to the Matteson Police Department (Department) seeking a copy of any responses from Eagle Sports Range related to his past employment with the company. On January 11, 2024, the Department denied the request pursuant to section 7(1)(f) of FOIA.¹ That same day, [REDACTED] submitted a Request for Review to the Public Access Bureau challenging the denial.

On January 24, 2024, this office forwarded a copy of the Request for Review to the Department and asked it to provide copies of the withheld records, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemption. On

¹ 5 ILCS 140/7(1)(f) (West 2022), as amended by Public 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.

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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January 25, 2024, this office received the requested materials. On January 30, 2024, this office forwarded a copy of the Department's response to ██████████ he replied that same day.

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 Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2022). 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." 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. Factual material generally is not within the scope of section 7(1)(f) unless it cannot be reasonably segregated from deliberative material and, therefore, would provide insight into the public body's decision-making process. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶ 27.

Further, section 7(1)(f) of FOIA has been interpreted as extending to communications between a public body and a third-party consultant when the third party's "analyses and recommendations 'played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done.'" *Fisher v. Office of the Illinois Attorney General*, 2021 IL App (1st) 200225, ¶ 20 (quoting *Harwood*, 344 Ill. App. 3d at 248).

In its response to this office, the Department asserted that it relied on a previous determination issued by this office in another Request for Review to withhold the response it obtained from Eagle Sports Range related to ██████████ application. In particular, the Department stated it denied the request "based on the decision in this case that opinions of employment references are exempt under section 7(1)(f)."²

²Letter from Commander R. Murray #103, Matteson Police Department, to Teresa Lim, Illinois Attorney General's Office, Public Access Bureau (January 25, 2024).

As the Department noted, the Public Access Bureau has previously addressed in another Request for Review, 2019 PAC 60986, whether a city department director's notes on an applicant's employment references fell within the scope of the section 7(1)(f) exemption. This office determined that the notes at issue showed the "director's impressions and opinions about what was notable or remarkable from her conversations with the employment references[,] which were then used in the City's hiring decision. Ill. Att'y Gen. PAC Req. Rev. Ltr. 60986, issued October 13, 2022, at 2. Parts of the notes also recited or paraphrased the opinions of the employment references, and the city similarly "relied on their opinions in the process of formulating action on the application." Ill. Att'y Gen. PAC Req. Rev. Ltr. 60986, at 2. Because the notes were predecisional and deliberative in nature, this office concluded that the city did not improperly withhold the notes pursuant to section 7(1)(f). Ill. Att'y Gen. PAC Req. Rev. Ltr. 60986, at 2; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 59361, issued June 5, 2020 (police department did not improperly withhold responses of prior employers concerning an applicant pursuant to section 7(1)(f) because they reflected the views and opinions of the employers).

This office's review of the Department's investigation report, specifically the limited part related to Eagle Sports Range, confirmed that the Department withheld information that is deliberative in nature. The information contains the opinions and views of the employer who was consulted concerning ██████████ which the investigator who compiled the report found to be significant. In reply to this office, ██████████ asserted that he believed Eagle Sports Range provided false information about him and questioned why he could not obtain this information. He contended "[t]his is not a confidential informant on a criminal case, it[']s just a background investigation."³ As discussed above, the section 7(1)(f) exemption is intended to protect the ability of public bodies to have frank and open deliberations before reaching a decision on a matter, such as a decision on hiring. Because disclosure of this information would provide insight into the Department's decision-making process as it evaluated ██████████ application, this office concludes that the Department did not improperly withhold the information pursuant to section 7(1)(f).

³E-mail from ██████████ to [Teresa] Lim (January 30, 2024).

[REDACTED]
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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, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]

TERESA LIM
Supervising Attorney
Public Access Bureau

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