



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 10, 2024

Via electronic mail

Via electronic mail

Ms. Tish Clark
Deputy Village Clerk
Village of Hanover Park
2121 Lake Street
Hanover Park, Illinois 60133
tclark@hpil.org

RE: FOIA Request for Review – 2023 PAC 77566; FOIA #23-0217

Dear [REDACTED] and Ms. Clark:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons that follow, the Public Access Bureau concludes that the response by the Village of Hanover Park (Village) to [REDACTED] July 3, 2023, FOIA request violated the requirements of FOIA.

On July 3, 2023, [REDACTED] submitted a FOIA request to the Village seeking, in relevant part, "[c]opies of all leases that were submitted to the City of Hanover Park to obtain business or remodeling licenses for [designated addresses]. (Since 2020)."² On July 25, 2023,

¹5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

²E-mail from [REDACTED] to [Village of Hanover Park] (July 3, 2023).

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

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

██████████
Ms. Tish Clark
April 10, 2024
Page 2

the Village denied ██████████ request for the leases pursuant to section 7(1)(g) of FOIA.³ On August 3, 2023, this office received ██████████ completed Request for Review challenging the Village's denial of the leases.

On August 10, 2023, this office sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of the responsive records for this office's confidential review, together with a detailed explanation of the legal and factual bases for the FOIA exemptions it asserted. On August 11, 2023, the Village provided the requested materials. On August 18, 2023, this office forwarded a copy of the Village's response to ██████████ with an opportunity to reply; 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. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2022). Section 7(1)(g) of FOIA, exempts from disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information **would cause competitive harm to the person or business**, and only insofar as the claim directly applies to the records requested. (Emphasis added.)

For a record to be exempt from disclosure under section 7(1)(g):

[T]he document must contain (1) a trade secret, commercial, or financial information, (2) that was obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are either (a) proprietary, (b) privileged, or (c) confidential, **and** (3) that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business. (Emphasis in original.) *Chicago v. Janssen Pharmaceuticals, Inc*, 2017 IL App (1st) 150870, ¶ 27.

³5 ILCS 140/7(1)(g) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023.

Thus, a public body must demonstrate that disclosing documents would cause competitive harm in order for the documents to be withheld pursuant to section 7(1)(g). *Janssen, Inc.*, 2017 IL App (1st) 150870, ¶ 29. "To show substantial competitive harm, the agency must show by specific factual or evidentiary material that: (1) the person or entity from which information was obtained actually faces competition; and (2) substantial harm to a competitive position would likely result from disclosure of the information in the agency's records." *Cooper v. Dep't of the Lottery*, 266 Ill. App. 3d 1007, 1013 (1994) (quoting *Calhoun v. Lyng*, 864 F.2d 34, 36 (5th Cir. 1988))." Parties opposing disclosure need not demonstrate actual competitive harm; instead, they need only show actual competition and a likelihood of substantial competitive injury in order to "bring [that] commercial information within the realm of confidentiality." *New Hampshire Right to Life v. United States Dept of Health & Human Services*, 778 F.3d 43, 50 (1st Cir. 2015) (quoting *Public Citizen Health Research Group v. Food Drug Administration*, 704 F.2d 1280, 1291 (D.C. Cir. 1983)).

In its response to this office, the Village clarified that the business owner who submitted the application and lease at issue "questioned as to why we were requesting a copy of his lease as part of the business license application process" and "noted that he considered his lease agreement as personal and confidential[.]"⁴ Based on the business owner's concerns, the Village stated that it denied [REDACTED] request for the lease pursuant to section 7(1)(g) of FOIA.

Although the business owner may have submitted the lease under the assumption that it would be maintained confidentially, the plain language of section 7(1)(g) also requires a public body to show that disclosure of the records would result in competitive harm. The Village did not address the issue of competitive harm, nor is it apparent to this office how disclosure of what appears to be a standard form commercial lease would result in competitive harm to the business owner. Accordingly, this office concludes that the Village improperly withheld the lease agreement in its entirety. This office requests the Village provide [REDACTED] a copy of the lease, subject only to appropriate redactions of signatures pursuant to section 7(1)(b) of FOIA.⁵ Ill. Att'y Gen. PAC Req. Rev. Ltr. 46798, issued March 16, 2017 (signatures are a form of "private information" that may be withheld pursuant to section 7(1)(b)).

⁴E-mail from Tish Clark, Deputy Village Clerk, Village of Hanover Park, to Victoria Frazier, Assistant Attorney General, Public Access Bureau, (August 11, 2023).

⁵5 ILCS 140/7(1)(b) (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.

Ms. Tish Clark
April 10, 2024
Page 4

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 (217) 782-9054 or victoria.frazier@ilag.gov. Thank you.

Very truly yours,

Victoria Frazier

VICTORIA FRAZIER
Assistant Attorney General
Public Access Bureau

77566 f 71g improper mun