



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

March 29, 2018

*Via electronic mail*

Ms. Sophia Tareen & Mr. John O'Connor  
Reporters, Associated Press  
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*Via electronic mail*

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City of Chicago Department of Law  
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RE: FOIA Request for Review – 2018 PAC 51776

Dear Ms. Tareen, Mr. O'Connor, and Ms. Mathew:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that the Office of the Mayor of the City of Chicago (Mayor's Office) did not violate FOIA by denying a FOIA request submitted by Ms. Sophia Tareen and Mr. John O'Connor.

On February 8, 2018, Ms. Tareen and Mr. O'Connor submitted a FOIA request to the Mayor's Office seeking:

[C]opies of the following covering Sept. 1 to Nov. 1[:]

The application made on behalf of Chicago and its suburbs to Amazon connected to the Request for Proposals issued by the company in September for a second headquarters. Please include

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all cover letters, videos, attachments, and other files included along with this application[.]<sup>[1]</sup>

On February 16, 2018, the Mayor's Office denied the request as a repeated request pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)), arguing that it had previously properly denied the request under section 7(1)(h) of FOIA (5 ILCS 140/7(1)(h) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). On that same date, Ms. Tareen and Mr. O'Connor submitted this Request for Review contesting the Mayor's Office's denial.

On February 21, 2018, this office sent a copy of the Request for Review to the Mayor's Office and asked it to provide this office with unredacted copies of the responsive records for this office's confidential review, together with a detailed explanation for the assertion that the Mayor's Office had previously properly denied the same request under section 7(1)(h). On March 2, 2018, the Mayor's Office provided a written response but no records for this office's review. Ms. Tareen and Mr. O'Connor did not submit a reply.

## DISCUSSION

Under FOIA, "[a]ll 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 2016). A public body "has the burden of proving by clear and convincing evidence" that any records it withholds are exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The Act's exceptions to disclosure "are to be read narrowly." *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 3(g) of FOIA permits a public body to deny as unduly burdensome "repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act[.]" Because the Mayor's Office previously denied a request from Ms. Tareen and Mr. O'Connor for the same records, it is necessary to analyze whether that previous denial was proper in order to determine whether the request at issue here was an unduly burdensome repeated request.

Section 7(1)(h) of FOIA exempts from disclosure:

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<sup>1</sup>FOIA request from Sophia Tareen & John O'Connor, The Associated Press, to FOIA Officer, Office of the Mayor (February 8, 2018).

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Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

There are no published cases in which an Illinois reviewing court has construed the scope of section 7(1)(h).

In its response to this office, the Mayor's Office argued:

The language provided in Section 7(1)(h) clearly delineates that proposals and bids are exempt until an award or final selection is made. In this instance, the requester seeks the bid and proposal records that the City submitted to Amazon. Because a final selection has not been made by Amazon, the records fit squarely within the exemption provided in Section 7(1)(h).<sup>[2]</sup>

The Mayor's Office acknowledged that section 7(1)(h) contains a clause referring to procurement and contractor agreements, but claimed that "[t]he word 'including' connotes that what is listed after this word is a part of a larger group that is exempt."<sup>3</sup>

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). A statute must be read "as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *People-v. Smith*, 2016 IL 119659, ¶27, 76 N.E.3d 1251, 1258 (2016). "When the statutory language is clear and unambiguous, it should be applied as written without resort to extrinsic aids or tools of interpretation." *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶47, 983 N.E.2d 993, 1004 (2013). If statutory language is ambiguous or unclear, a reviewing body may look

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<sup>2</sup>Letter from Tia Mathew, Assistant Corporation Counsel, City of Chicago Department of Law, to Joshua Jones, Deputy Bureau Chief, Office of the Illinois Attorney General (March 2, 2018), at 2.

<sup>3</sup>Letter from Tia Mathew, Assistant Corporation Counsel, City of Chicago Department of Law, to Joshua Jones, Deputy Bureau Chief, Office of the Illinois Attorney General (March 2, 2018), at 2.

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beyond the act's language to construe its meaning. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶11, 958 N.E.2d 1021, 1023 (2011).

The middle clause of the first sentence of section 7(1)(h) —"including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body"—could possibly be interpreted as signaling that the exemption applies only to instances in which a public body solicits bids or proposals, rather than including instances in which a public body submits bids or proposals. However, courts have interpreted "the word 'including', in its most commonly understood meaning, to be a term of enlargement, not of limitation." *Paxson v. Board of Education of School District No. 87*, 276 Ill. App. 3d 912, 920 (1st Dist. 1995). The General Assembly's use of the word "including" rather than a limiting term such as "only" indicates that bids or proposals solicited by public bodies are not the only types of bids or proposals that section 7(1)(h) is intended to encompass. This interpretation is consistent with the meaning of section 7(1)(h) when it is read as a whole, as well. The beginning portion of section 7(1)(h), "[p]roposals and bids for **any** contract, grant, or agreement" (emphasis added), plainly includes **all** proposals and bids. The last sentence of section 7(1)(h) provides that "[i]nformation prepared **by or for** the body in preparation of a bid solicitation shall be exempt until an award or final selection is made" (emphasis added), thus including proposals and bids both submitted by a body and submitted to a body within the exemption.

Absent case law or legislative history restricting the scope of section 7(1)(h) to proposals or bids submitted to a public body, the Public Access Bureau has determined that the exemption applies to bids or proposals submitted by a public body. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28257, issued February 21, 2017, at 3 (sheriff's office did not violate FOIA by withholding materials prepared in preparation for a bid for a new contract with the U.S. Marshals Service).

In this matter, the request sought the City of Chicago's bid for Amazon's second headquarters, and it is undisputed that Amazon had not yet made a final selection. Because section 7(1)(h) exempts from disclosure bids and proposals until a final selection is made, and because this office lacks a sufficient basis to conclude that section 7(1)(h) is limited to bids and proposals submitted to a public body, the Public Access Bureau has determined that the Mayor's Office's denial of Ms. Tareen's and Mr. O'Connor's previous request for the same records did not violate FOIA. Therefore, the Mayor's Office did not improperly deny their February 8, 2018, request as an unduly burdensome repeated request.

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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. Should you have questions, please contact me at (312) 814-8413 or [jjones@atg.state.il.us](mailto:jjones@atg.state.il.us).

Very truly yours,

A solid black rectangular box redacting the signature of Joshua M. Jones.

JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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