



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 4, 2016

Via electronic mail

[REDACTED]

Via electronic mail

Ms. Helen Shields Wright
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611-3154
foiarequest@mwrdd.org

RE: FOIA Request for Review – 2015 PAC 34937

Dear [REDACTED] and Ms. Wright:

Pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2014)), the Public Access Bureau has received a Request for Review of the response by the Metropolitan Water Reclamation District of Greater Chicago (District) to a FOIA request submitted by [REDACTED]

On March 16, 2015, [REDACTED] submitted a FOIA request to the District seeking certain records related to historic engineering drawings. On March 27, 2015, the District denied [REDACTED] request pursuant to section 7(1)(k) of FOIA (5 ILCS 140/7(1)(k) (West 2014)). On April 26, 2015, [REDACTED] submitted a Request for Review to this office contesting that denial.

On May 4, 2015, the Public Access Bureau forwarded a copy of the Request for Review to the District and requested unredacted copies of the responsive records for our confidential review, as well as a detailed explanation of the legal and factual bases for the District's assertion of the section 7(1)(k) exemption. On May 22, 2015, the District provided responsive records for our review, together with a written response asserting that its engineers had indicated "that the release of any plans of our existing facilities that show locations and details of structural, electrical, mechanical, process piping or any other related systems constitute

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a security risk in that such information could be used in a deliberate attack on our facilities."¹ Additionally, the District stated that its risk manager determined that "[t]he District should not release drawings of facilities that are existing and in use or may be used. The release of information contained in these documents could pose a security risk to the District[]"² On May 23, 2015, ██████████ replied and asserted that because the District had previously provided similar records to him, disclosure of the requested records would not compromise security. ██████████ included several records he had received with his reply.

On August 7, 2015, the District sent a supplemental response and provided electrical drawings for Division Q to our office and to ██████████ and explained that the drawings were provided because they "contain equipment that has been removed, is no longer in service and do not include or reference any service buildings or equipment."³ The District, however, stated in its supplemental response that its Executive Director previously determined "that any drawings of existing facilities should not be released to the public because of the potential security risk or threat as contemplated by [section 7(1)(k)] under FOIA since such disclosure could compromise security[.]"⁴ On August 24, 2015, ██████████ replied by clarifying that he requested mechanical drawings and not electrical drawings. On August 31, 2015, the District sent another supplemental response after consulting with Engineering staff and determining that Division O and R mechanical drawings may be disclosed. However, the District continued to withhold mechanical drawings of Division M pursuant to section 7(1)(k), asserting that "these sheets contain existing facilities that are in use and disclosure to the public represents a possible

¹Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago, to Lindsey C. Johnson, Assistant Attorney General, Public Access Bureau (May 22, 2015), at 3.

²Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District of Chicago, to Lindsey C. Johnson, Assistant Attorney General, Public Access Bureau (May 22, 2015), at 4..

³Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District to Lindsey Johnson, Assistant Attorney General, Office of the Illinois Attorney General (August 7, 2015), at 1.

⁴Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago, to Lindsey C. Johnson, Assistant Attorney General, Public Access Bureau (August 7, 2015), at 2.

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potential threat or compromise of security for same."⁵ Division O and R mechanical drawings were provided to this office and to ██████████ who confirmed receipt of the drawings on September 9, 2015. On September 13, 2015, ██████████ replied that the District had previously provided him with records similar to the mechanical drawings that it continued to withhold, and that disclosure of those records would not compromise security.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); *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 2014).

Section 7(1)(k) exempts from disclosure:

Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, ***but only to the extent that disclosure would compromise security.*** (Emphasis added.)

Section 7(1)(k) is partly intended to prevent the disclosure of records that could endanger public property: "The issue is important in this day of threatened terrorism. We're always on alert * * * for these facilities to be accessed by individuals that would do harm to the public[.]" Remarks of Representative Burke, May 14, 2003, House Debate on Senate Bill 1034, which as Public Act 325, effective July 23, 2003, amended section 7(1)(k) to include technical

⁵Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago, to Piya Mukherjee, Assistant Attorney General, Office of the Illinois Attorney General, State of Illinois, Public Access Bureau (August 31, 2015).

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records concerning water treatment facilities, sports stadiums and other specific public buildings and facilities, at 160. Public Act 93-422, effective August 5, 2003, subsequently expanded section 7(1)(k) to exempt, in addition to architects' plans and engineers' technical submissions, "other construction related technical documents[.]" Section 7(1)(k) has not been interpreted by an Illinois reviewing court.

In its response to the Public Access Bureau, the District explains that all the relevant drawings are either for buildings existing and in service or with future service possible. Further, the District contends that the records are "technical engineering documents related to the construction of publicly funded government owned building and contain detailed information concerning the function and structure of internal components, which could compromise security of the District's system."⁶

This office has reviewed the records in question. Based upon our review, we conclude that the records do constitute "architects' plans, engineers' technical submissions, and other construction related technical documents" within the scope of section 7(1)(k). Further, we have no basis to dispute the District's assertion that these technical documents contain detailed information concerning the structural, electrical, mechanical, and process piping which, if disclosed, could compromise security of the facilities. Even assuming ██████████ has received similar records from the District in the past, FOIA does not preclude the District from asserting 7(1)(k) with respect to other records or require the District to provide him with the records in question. Accordingly, we conclude that the District did not improperly withhold these records under section 7(1)(k) of FOIA.

In accordance with the conclusions expressed in this letter, the District has properly withheld the documents responsive to ██████████ request. The Public Access Counselor

⁶Letter from Helen Shields Wright, Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago, to Lindsey C. Johnson, Assistant Attorney General, Public Access Bureau (May 22, 2015), at 3.

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has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-5206. This letter shall serve to close this matter.

Very truly yours,

[REDACTED]
S. PIYA MUKHERJÉE
Assistant Attorney General
Public Access Bureau

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