



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 19, 2022

*Via electronic mail*

Mr. Eric Schmid  
Metro East Reporter  
St. Louis Public Radio  
23 Public Square  
Belleville, Illinois 62220  
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*Via electronic mail*

Mr. Jeffrey S. Berkbigler  
City Attorney/Corporation Counsel  
City of Edwardsville, Illinois  
jberkbigler@cityofedwardsville.com

RE: FOIA Request for Review – 2022 PAC 69505 and 69506

Dear Mr. Schmid and Mr. Berkbigler:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the City of Edwardsville (City) did not improperly deny records responsive to Mr. Eric Schmid's December 16, 2021, FOIA request.

On that date, Mr. Schmid, on behalf of St. Louis Public Radio, submitted a FOIA request to the City seeking copies of applications filed, permits issued, and inspections made pursuant to City ordinances which pertain to any building within the Gateway Commerce Enterprise Zone and a M-1 Light Manufacturing Zone. On December 23, 2021, Mr. Schmid narrowed his request to records concerning commercial, industrial, or office/professional structures within the 1270/1255/IL111 interchange area. On January 19, 2022, the City provided

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responsive records with certain information redacted under sections 7(1)(b) and 7(1)(c)<sup>1</sup> of FOIA and denied structural and architectural building plans pursuant to section 7(1)(k) of FOIA.<sup>2</sup>

On December 20, 2021, Mr. Schmid submitted a FOIA request to the City seeking copies of applications filed, permits issued, and inspections made pursuant to a City ordinance which pertains to property at 3077 Gateway Commerce. On the same day, the City provided responsive records with certain information redacted under sections 7(1)(b) and 7(1)(c) of FOIA and denied structural and architectural building plans pursuant to section 7(1)(k) of FOIA.

On January 20, 2022, Mr. Schmid submitted a Request for Review disputing the denial of the building plans. He stated that the records he is seeking include building plans for an Amazon warehouse that collapsed after being hit by a tornado; he stated that he needs the records to verify Amazon officials' assertion that the building was in compliance with applicable building codes and to determine whether surrounding warehouses were similarly designed and constructed. On February 3, 2022, this office sent a copy of the Request for Review to the City and asked it provide copies of the records that were withheld for this office's confidential review and a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(k) exemption. On March 2, 2022, the City submitted its response. On March 7, 2022, this office forwarded the City's written response to Mr. Schmid; he replied on March 15, 2022.

## DETERMINATION

Section 7(1)(k) of FOIA 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.)

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<sup>1</sup>5 ILCS 140/7(1)(b), (1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

<sup>2</sup>5 ILCS 140/7(1)(k) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

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In his Request for Review, Mr. Schmid asserted that the section 7(1)(k) exemption is inapplicable because disclosure of building plans would not compromise security. Because the plain language of section 7(1)(k) exempts from disclosure building plans for projects constructed entirely with private funds regardless of whether or not disclosure would compromise security, this office asked the City to address whether the buildings in question were constructed or developed in whole or in part with public funds. The City's responded, in relevant part:

The warehouses in question, including the "Amazon" warehouse were all privately constructed projects. The warehouses were constructed in the Gateway Commerce Center Enterprise Zone which is an economic development tool utilized throughout many parts of the State. The Gateway Commerce Center Enterprise Zone is an intergovernmental incentive program through the State, Madison County, the City of Edwardsville and the Village of Pontoon Beach that does not provide any direct funding like in some TIF grant or sales tax rebate, but rather abates local property taxes for a set period on eligible improvements constructed in the enterprise zone and the state exempts sales tax on building materials and certain utility taxes. However, these are only incentives and do not constitute public funding in whole or in part[.]<sup>[3]</sup>

In his reply, Mr. Schmid contended that the projects at issue should be considered publicly funded because "the public is, in some ways, subsidizing these types of projects and thus has a right to know more specific details about the buildings their dollars are supporting."<sup>4</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). "[W]hen a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *Board of Trustees of*

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<sup>3</sup>E-mail from Jeffrey S. Berkbigler, City Attorney/Corporation Counsel, City of Edwardsville, Illinois, to [Steve] Silverman (March 2, 2020).

<sup>4</sup>E-mail from Eric Schmid, Metro East Reporter, St. Louis Public Radio, to Steve Silverman (March 15, 2022).

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*Southern Illinois Univ. v. Illinois Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994). In other words, the listed terms are examples of what the General Assembly intended the statute to cover. See *Duffy v. Illinois Dep't of Human Rights*, 354 Ill. App. 3d 236, 239 (4th Dist. 2004).

FOIA does not define the term "public funds." Black's Law Dictionary defines "[p]ublic fund" as "[t]he revenue or money of a governmental body." Black's Law Dictionary, 743 (9th ed. 2009). While subsidies in the form of tax breaks relieve or reduce future obligations to contribute to a governmental body's funding, they do not directly convey government funds to private entities. Even if the definition of "public fund" could be considered ambiguous because it lacks a temporal element, the examples in section 7(1)(k) of projects constructed in whole or in part with public funds are dissimilar to the private property of a business which is inaccessible to the public. They consist of those that provide the public with (1) resources such as water and electricity; (2) airports that provide the public with access to transportation; (3) sports stadiums for public recreation; and (4) convention centers for public events. These examples, as well as the language in section 7(1)(k) that covers "all government owned, operated, or occupied buildings," indicate that the General Assembly intended the exemption to apply to projects that are under government control or developed for the use or benefit of the general public.

Although no Illinois reviewing court appears to have interpreted the meaning of "public funds" in Illinois FOIA, the Arkansas Supreme Court considered whether leasing public property to a charitable organization for a nominal fee of \$1 per year constituted the use of "public funds" under that state's version of FOIA.<sup>5</sup> *American Red Cross v. Weatherford*, 311 Ark. 656, 846 S.W.2d 641 (Ark. 1993). The Arkansas statute defined "public records" as documentation "of the performance of lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds."<sup>6</sup> (Emphasis added.) Based on the plain meaning of the term, the court construed "public funds" as limited to "moneys belonging to government[ ]" and rejected as contrary to legislative intent a more expansive interpretation:

Refusal to read indirect government benefits or subsidies into the term "public funds" is not at odds with a liberal construction of the FOIA. Were we to construe "public funds" to include an entirely separate and new category of government support, we would be amending the FOIA to expand its application significantly. \* \* \* Did the General Assembly, without saying so,

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<https://pubs.alexis.com/document/11> (West 1992).

<https://pubs.alexis.com/16> (West 1992).

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intend the application of the FOIA to all private organizations which receive some government benefit, no matter how minor? We think not. *Weatherford*, 311 Ark. at 661, 846 S.W.2d at 644.

The building plans at issue in this matter concern businesses that received tax breaks for developing private property. It is undisputed that these projects did not benefit from direct payments of government funds. Further, the examples in section 7(1)(k) for projects developed in whole or in part with public funds concern property that is directly controlled by the government or property or resources for the use or benefit of the general public. Such projects are readily distinguishable from the warehouses of private businesses for which Mr. Schmid seeks building plans. Accordingly, this office concludes that the City did not improperly deny those records under section 7(1)(k) of FOIA.<sup>7</sup>

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have questions, you may contact me at (312) 814-6756 or ~~mailto:~~mailto:silverman@ilag.gov.

Very truly yours,



STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

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<sup>7</sup>Because that determination is dispositive, it is not necessary for this office to determine whether disclosure of the records would compromise security.