



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 30, 2021

*Via electronic mail*



*Via electronic mail*

Ms. Kim Enke  
City Clerk and FOIA Officer  
City of Centralia  
101 South Locust Street  
Centralia, Illinois 62801  
kaenke@cityofcentralia.org

RE: FOIA Request for Review – 2020 PAC 66131

Dear [REDACTED] and Ms. Enke:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the response by the City of Centralia (City) improperly redacted certain portions of records responsive to [REDACTED] December 7, 2020, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the City seeking copies of purchase orders and invoices for payments made by the City to a particular law firm since October 1, 2019. On December 14, 2020, the City provided the responsive records but redacted certain information pursuant to sections 7(1)(c), 7(1)(m), 7(1)(n), and 7(1)(p) of FOIA (5 ILCS 140/7(1)(c), (1)(m), (1)(n), (1)(p) (West 2019 Supp.)). On December 15, 2020, this office received Mr. Lyberger's Request for Review disputing the City's redactions to those documents.

On January 6, 2021, this office sent a copy of the Request for Review to the City and asked it to provide unredacted copies of the responsive records for our confidential review and a written explanation of the factual and legal bases for the assertion of the above-stated sections of FOIA to the redacted information. On January 11, 2021, the City furnished those

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materials and a written answer. On January 12, 2021, this office forwarded a copy of the City's answer to [REDACTED]; he did not reply.

### 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 2018); *see also Southern Illinoisan v. Illinois Dep't 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 2018).

Section 7(1)(m) of FOIA exempts from disclosure communications between a public body and an attorney which would not be subject to discovery in litigation, including communications covered by the attorney-client privilege. The attorney-client privilege applies to communications:

(1) Where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are permanently protected, (7) from disclosure by himself or the legal advisor, (8) except the protection be waived. *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 467 (2003).

*In People v. ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 203-04 (1997), the Illinois Supreme Court held that "information regarding a client's fees generally is not a 'confidential communication' between an attorney and client, and thus is not protected by the attorney client privilege. [Citations.] The payment of fees is merely incidental to the attorney-client relationship and typically does not involve the disclosure of confidential communications arising from the relationship." The Court, however, acknowledged that "[c]ertain types of billing records may contain explanations for legal fees and may indicate the type of work done or matters discussed between the attorney and client. As such, they **could** reveal the substance of confidential attorney-client discussions, and be subject to valid claims of attorney-client privilege or exemption under [FOIA]." (Emphasis added.) *Stukel*, 294 Ill. App. 3d at 201. Because the records at issue "made no reference to the pending litigation other than to name the payee law firm, and designate the amount and the date of each payment[.]" (*Stukel*, 294 Ill. App. 3d at 201), the Court did not further elaborate on the type of information that could be properly redacted from legal billing invoices based on the attorney-client privilege.

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In analyzing whether legal billing invoices were subject to disclosure pursuant to an administrative subpoena, a Federal appeals court distinguished privileged material from general information concerning legal services:

Not all communications between attorney and client are privileged. Our decisions have recognized that the **identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.** [Citations.] However, correspondence, bills, ledgers, statements, and time records which also reveal the **motive** of the client in seeking representation, litigation strategy, or the **specific nature of the services provided, such as researching particular areas of law**, fall within the privilege. (Emphasis added.) *Clarke v. American Commerce National Bank*, 974 F.2d 127, 130 (9th Cir. 1992).

*See also Hampton Police Association v. Town of Hampton*, 162 N.H. 7, 15, 20 A.3d 994, 1001 (N.H. 2011) ("Courts generally agree that billing statements that provide only general descriptions of the nature of the services performed and do not reveal the subject of confidential communications with any specificity are *not* privileged." (Emphasis in original.)); *U.S. v. Naegele*, 468 F.Supp.2d 165, 171 (D.D.C. 2007) (billing statements that are "general and do not reveal any litigation strategy or other specifics of the representation or any confidential client communications[] \* \* \* are not protected by the attorney-client privilege."). To be privileged, billing invoices must "include *detailed* entries which advise, analyze or discuss privileged communications." (Emphasis in original.) *Tipton v. Barton*, 747 S.W.2d 325, 332 (Mo. Ct. App. 1988); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999) (billing invoices that identified the specific federal statutes that an attorney researched were privileged because disclosure "would divulge confidential information regarding legal advice"). Construing *Stukel* and other legal precedents on the subject of legal billing invoices, the Attorney General has issued two binding opinions (Ill. Att'y Gen. Pub. Acc. Op. No. 12-005, issued March 12, 2012; Ill. Att'y Gen. Pub. Acc. Op. No. 14-002, issued April 15, 2014) concluding that while detailed descriptions of work performed may be redacted pursuant to section 7(1)(m), generic descriptions (such as "held telephone conference" or "drafted e-mail") are not exempt from disclosure.

In its response to this office, the City asserted that the information redacted from the responsive invoices contained, "detailed information covering a wide range of confidential

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and sensitive information"<sup>1</sup> and indicated that the redactions related to the subject matter of the legal services provided, including: "correspondence and communication discussing opinions with an attorney for the ongoing matters involving multiple employees and collective bargaining units."<sup>2</sup> This office has reviewed and compared the redacted version of the invoices to the complete version. The redacted version reveals the dates on which work was performed, the initials of the attorney who performed the work, the numbers of hours billed, and the total amount billed for those entries. Each entry also discloses the type of work performed (such as "[t]elephone conference," "[e]mail correspondence," "[a]nalysis of records"), and the subject of the work in instances when the subject is stated in general terms (such as "[a]nalysis of COBRA rules for health FSA").

Nearly all of the information redacted from the invoices concerns particular subjects of legal advice and contains details about the advice that was sought or given. Because the disclosure of this information would reveal the substance of confidential attorney-client communications, it falls within the scope of section 7(1)(m) of FOIA and was not improperly redacted prior to the disclosure of the bills to [REDACTED].

However, the City also redacted some information that would not reveal legal strategy or confidential attorney-client communications. In particular, the City's redactions included names of clients and attorneys with whom the attorneys had communicated. As stated in *Clarke*, the identity of a client generally is not privileged. *See Clarke*, 974 F.2d at 130 ("The identity of the client [is] \* \* \* usually not protected from disclosure by the attorney-client privilege."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 56112, issued April 8, 2019, at 8 (concluding that village improperly redacted client's name and title from legal invoices). The City has not described how the disclosure of the identity of these individuals would reveal the substance of litigation strategy or confidential communications, and this office cannot discern how these details are protected by the attorney-client privilege. Accordingly, this office finds that the City improperly relied on section 7(1)(m) of FOIA to redact client and attorney names from the responsive billing entries. This office requests that the City furnish [REDACTED] with copies of the redacted legal bills which disclose the names of the clients and attorneys.

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<sup>1</sup>Letter from Kim Enke, City Clerk, City of Centralia, to Shannon Barnaby, [Assistant Attorney General], Office of the Attorney General, Public Access Bureau (January 11, 2021).

<sup>2</sup>Letter from Kim Enke, City Clerk, City of Centralia, to Shannon Barnaby, [Assistant Attorney General], Office of the Attorney General, Public Access Bureau (January 11, 2021).

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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 closes this matter.<sup>3</sup> If you have questions, you may contact me by mail at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]  
SHANNON BARNABY  
Assistant Attorney General  
Public Access Bureau

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<sup>3</sup>Because this determination resolves this matter, the Public Access Bureau need not address the applicability of sections 7(1)(c), 7(1)(n), and 7(1)(p) of FOIA to the redacted information.