



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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June 18, 2024

*Via electronic mail*

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*Via electronic mail*

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RE: FOIA Request for Review – 2021 PAC 66688

Dear Mr. Sarver and Mr. Regis:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons stated below, the Public Access Bureau concludes that the Joliet Police Department (Department) improperly redacted certain information from a report responsive to Mr. Felix Sarver's December 30, 2020, FOIA request.

On that date, Mr. Sarver, on behalf of the *Herald-News*, submitted a FOIA request to the Department seeking copies of certain police reports. On January 7, 2021, the Department denied the request pursuant to section 7(1)(d)(iii) of FOIA (5 ILCS 140/7(1)(d)(iii) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). Mr. Sarver

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Mr. Felix Sarver  
Mr. Christopher Regis  
June 18, 2024  
Page 2

submitted a Request for Review disputing the denial of the request (2021 PAC 64433). On January 21, 2021, the Department withdrew its denial and provided Mr. Sarver with records but redacted certain information pursuant to sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). On January 22, 2024, Mr. Sarver then submitted this Request for Review (2021 PAC 66688) disputing the redactions on pages 11 and 13 of the records he received.

On February 10, 2021, the Public Access Bureau forwarded a copy of the Request for Review to the Department and asked it to provide this office with an unredacted copy of the two pages for this office's confidential review and a detailed explanation of the factual and legal bases for the applicability of the 7(1)(b) and 7(1)(c) exemptions. The Department responded on February 19, 2021. On February 23, 2021, this office forwarded the written response to Mr. Sarver; 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." 5 ILCS 140/1.2 (West 2020); *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 2022).

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information."

Although this office requested in its further inquiry letter an explanation for the applicability of sections 7(1)(b) and 7(1)(c), the Department provided the below response:

The redacted pages contain details of conversations which were held between the Corporation Counsel for the City of Joliet and certain employees of the City of Joliet. The content of these conversations would not be subject to discovery in litigation, and were had in preparation for litigation.<sup>[1]</sup>

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<sup>1</sup>Letter from Christopher Regis, Assistant Corporation Counsel, City of Joliet, to Steve Silverman Assistant Attorney General (February 19, 2021).

This office construes the Department's response as withdrawing the assertion of sections 7(1)(b) and 7(1)(c) and instead asserting section 7(1)(m) of FOIA, which exempts from disclosure:

Communications between a public body and an attorney  
\* \* \* representing the public body that would not be subject to  
discovery in litigation, and materials prepared or compiled by or  
for a public body in anticipation of a criminal, civil or  
administrative proceeding upon the request of an attorney advising  
the public body[.]<sup>{2}</sup>

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). See *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1997). A party asserting that a communication to an attorney is protected by the attorney-client privilege must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2nd Dist. 2006). Moreover, "[t]he privilege applies not only to the communications of a client to his attorney, but also to the advice of an attorney to his client." *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (1990); see also *People v. Radojcic*, 2013 IL 114197, ¶40, 998 N.E.2d 1212, 1221-22 (2013) ("[T]he modern view is that the privilege is a two-way street, protecting both the client's communications to the attorney and the attorney's advice to the client."). A public body that withholds records under section 7(1)(m) "can meet its burden only by providing some *objective* indicia that the exemption is applicable under the circumstances." (Emphasis in original.) *Illinois Education Ass'n v. Illinois State Board Of Education*, 204 Ill. 2d 456, 470 (2003).

As set forth above, it is incumbent on a public body that redacts to provide some objective indicia that the elements of the privilege are met. Here, the Department's response is lacking sufficient detail to demonstrate that the redacted information is exempt from disclosure under section 7(1)(m). The City redacted portions of records that document or reference discussions between City employees and an Assistant Corporation Counsel. The mere fact that meetings or discussions were held involving the Assistant Corporation Counsel does not demonstrate that the information documented in the report originated in confidence and was for the purpose of seeking or providing legal advice. Additionally, the Department's response is lacking basic detail regarding how the communications were held in preparation for litigation.

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<sup>25</sup> ILCS 140/7(1)(m) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019).

Mr. Felix Sarver  
Mr. Christopher Regis  
June 18, 2024  
Page 4

Moreover, this office's confidential review of the unredacted pages show that the information is primarily a factual narrative as opposed to legal advice. Applying Illinois law, a federal district court concluded in *Dawson v. New York Life Ins. Co.*, 901 F. Supp. 1362, 1367 (N.D. Ill. 1995), that facts communicated by a corporation's attorneys to the corporation's employees were not protected by the attorney-client privilege because the attorneys were acting "more as 'courier[s] of factual information,' rather than 'legal advisers.'" The court further explained that "common sense tells us that there is a difference between merely providing legal information and providing legal 'advice.' Here, the attorneys were simply called upon to provide factual information to the \* \* \* employees at issue. The attorneys' purpose was not to instruct the employees on the proper use of this information." *Dawson*, 901 F. Supp. at 1367; *see also Digital Vending Services International, Inc. v. University of Phoenix, Inc.*, No. 2:09-CV-555, 2013 WL 1560212, at \*6 (E.D. Va., 2013) (e-mails discussing status of preparation for oral arguments in federal court are "simply status updates and no legal advice is given by counsel. Therefore, these communications are not privileged."); *Elder Care Providers of Indiana, Inc. v. Home Instead, Inc.*, No. 114-CV-01894SEBMJD, 2016 WL 881176, at \*4 (S.D. Ind. 2016); (e-mail asking an attorney how to respond to a request for a status update is not privileged because it did not seek legal advice).

Because the redacted information provides only factual information rather than privileged communications related to legal advice, this office concludes that the City has not sustained its burden of demonstrating that the redactions were permissible under section 7(1)(m) of FOIA. This office requests that the City disclose those portions of the records to Mr. Sarver.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (312) 814 3180 or Matthew.Rogina@ilag.gov. This file is closed.

Very truly yours,



MATTHEW C. ROGINA  
Senior Assistant Attorney General  
Public Access Bureau

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