



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 22, 2025

Via electronic mail



Via electronic mail

The Honorable Kim Enke
City Clerk
City of Centralia
PO Box 569
101 South Locust
Centralia, Illinois 62801
kaenke@cityofcentralia.org

RE: FOIA Request for Review – 2025 PAC 86063

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 2023 Supp.)).

On March 22, 2025, [REDACTED] submitted a FOIA request to the City of Centralia (City) seeking records related to business transfer verification, tobacco licensing and enforcement, and the City's enforcement plan for a business located at a specified address. On March 28, 2025, the City granted the request in part and denied it in part pursuant to sections 7(1)(b), 7(1)(m), and 7(1)(q) of FOIA.¹ On April 1, 2025, [REDACTED] submitted the above-referenced Request for Review contesting City's response. Specifically, he contested the City's partial denial of his request and the adequacy of the City's search for responsive records.

¹5 ILCS 140/7(1)(b), (1)(m), (1)(q) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024; 103-865, effective January 1, 2025).

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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On April 10, 2025, this office forwarded a copy of the Request for Review to the City and asked it to provide unredacted copies of the contested records for this office's confidential review, together with a detailed explanation of the legal and factual bases for the asserted exemptions. This office also asked the City to provide a detailed description of its search for responsive records. On April 16, 2025, the City furnished those materials to this office, including both a complete copy of its written response and a redacted copy for forwarding to [REDACTED]. On that same date, this office forwarded the redacted copy to [REDACTED]; he replied the same day.

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 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

Reasonable Search

When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). Whether a particular search is reasonable depends on the specific facts and is judged on a case-by-case basis. *Better Gov't Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. The crucial issue is whether the search was reasonably calculated to discover the requested documents. *Better Gov't Ass'n*, 2020 IL App (1st) 190038, ¶ 31. Speculation that records may exist does not "undermine the reasonableness of the agency's search[.]" *Moore v. F.B.I.*, 366 Fed. Appx. 659, 661 (7th Cir. 2010).

In its response to this office, the City explained that tobacco licensing applications are submitted to the Clerk's office, licenses are issued and revoked by the Mayor, and the Police Department investigates compliance. The Clerk's office maintains the application records in paper files by year of issuance, business name, and address, which the Clerk confirmed searching in response to this FOIA request. The City further stated that the Clerk searched for responsive e-mails using the business address and e-mail address of the applicant. The City also confirmed that the Mayor and Police Department performed searches but found no additional records responsive to this FOIA request. In his reply, [REDACTED] speculated that additional enforcement records should exist because similar businesses, which he alleges are connected to the subject business, have recently lost licenses.

The City's search efforts appear to have been reasonably calculated to locate any records responsive to [REDACTED] FOIA request. The City consulted with the divisions responsible for the application process, compliance, and maintenance of business records. The City also conducted an e-mail search using relevant keywords. Although [REDACTED] speculates that the City should have additional enforcement records because of a recent license revocation action against a previous business at the specified address, he has not provided any basis from which this office could conclude that the City is withholding additional records. The City confirmed that its Police Department, which is responsible for enforcement and therefore would be aware of any enforcement activities related to the business, conducted a search for responsive records. Accordingly, this office concludes that the City performed a reasonable search for records responsive to [REDACTED] March 22, 2025, FOIA request.

Section 7(1)(b) of FOIA

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 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2023 Supp.)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or **personal telephone numbers**, and **personal email addresses**. Private information also includes **home address** and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

In its response, the City explained that it redacted personal telephone numbers, personal e-mail addresses, and home addresses of the officers of a corporation. This office's confidential review of the unredacted records confirmed the City's description of the redacted private information.

In his reply, [REDACTED] argued that the City should not have redacted this information because it pertains to "corporate actors, not private citizens. The public has a clear interest in learning whether the same individuals—previously sanctioned—are simply repackaging under new names."² [REDACTED] explained that he wished to compare the officers of this business against the officers of previous businesses that had had licenses revoked. However, "private information" is exempt from disclosure under the plain language of section 7(1)(b) "unless disclosure is required by another provision of this Act, a State or federal law, or a court order." When an individual uses a home address, personal e-mail address, or personal

²Letter from [REDACTED] to [Benjamin] Silver, [Supervising Attorney, Public Access Bureau] (April 16, 2025), at [2].

phone number for both business and personal activities, that information constitutes "private information" as that term is defined by FOIA. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 17464, issued January 16, 2011, at 2-3 (residential phone numbers used for both personal and business purposes exempt from disclosure under section 7(1)(b)). There is no suggestion that another State law, a federal law, or a court order requires disclosure of the home or personal telephone numbers, personal e-mail addresses, or home addresses responsive to [REDACTED] request, despite the fact that the redacted information belongs to the officers of a corporation. Because personal phone numbers, personal e-mail addresses, and home addresses are exempt from disclosure under section 7(1)(b) of FOIA, this office concludes that the City did not improperly redact that information from its response to [REDACTED] request.

Section 7(1)(m) of FOIA

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

Communications between a public body and an attorney or auditor 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, and materials prepared or compiled with respect to internal audits of public bodies.

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *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 (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 ("[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).

In its response to this office, the City stated that it withheld correspondence with the City Attorney regarding the application specified in the FOIA request, as well as additional correspondence with the City Attorney. In his reply, [REDACTED] alleged that the City's

assertion of the 7(1)(m) exemption "appears to mask factual communications or policy advice, not privileged legal strategy. The redactions conceal the City's review process and recommendations for issuing licenses to rebranded entities—a matter of public concern, not privileged advice."³

The redacted version of the e-mails provided to [REDACTED] plainly shows that the communications occurred between the City Attorney and the Mayor and Clerk on behalf of the City. This office's confidential review of the records confirmed that they reflect communications in which legal advice was sought, and provided, relating to City business. There is no indication that these communications have been shared with any outside parties that would waive the attorney-client privilege. Accordingly, this office concludes that the City did not improperly redact those portions of the records under section 7(1)(m) of FOIA.

Section 7(1)(q) of FOIA

Section 7(1)(q) of FOIA exempts from disclosure "[t]est questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment." The Public Access Bureau has previously determined that public bodies may properly withhold certain information collected during the examination, testing, or interview process that could frustrate those processes as "other examination data" under section 7(1)(q). *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 71541, issued February 13, 2022, at 3 (concluding that "other examination data" includes interview questions, as well as "evaluative handwritten and typed notes by interviewers"); Ill. Att'y Gen. PAC Req. Rev. Ltr. 26217, issued July 10, 2014, at 2 (concluding that "test questions, answer sheets, interviewers' notes, rating forms, and other records relied upon to formulate results" of a police sergeants' promotional examination were "within the scope of the section 7(1)(q) exemption."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 40721, issued July 21, 2016 (test scores exempt from disclosure under section 7(1)(q)).

On the other hand, this office has also determined that portions of applications concerning the background of an applicant that do not arise from an examination, testing, or an interview of the applicant do not provide insight into the public body's evaluative process and are therefore outside the scope of the section 7(1)(q) exemption. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 18783, issued March 8, 2013, at 3 ("A background check assesses factual information concerning the applicant's personal history rather than his or her performance on an examination."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 61662, issued January 22, 2021, at 4 (concluding that background investigation results do not fall within the scope of section 7(1)(q) because they "are not test-related information or 'other examination data' that would frustrate the [public body's] applicant testing process if disclosed[.]").

³Letter from [REDACTED] to [Benjamin] Silver, [Supervising Attorney, Public Access Bureau] (April 16, 2025), at [2].

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The City stated that as part of its license application process, it examines and confirms the information provided by the applicant in its application, including registration information filed with the State of Illinois. The City asserted that records related to that review constitute "examination data" exempt from disclosure under section 7(1)(q).

This office's confidential review of the records withheld pursuant to section 7(1)(q) found that the records are not test questions, scoring keys, or other examination data collected as part of the City's testing or examination process, but are instead routine factual documents regarding the background of an applicant. Disclosure of these records would not frustrate the City's application process. Accordingly, this office concludes that the City has not demonstrated by clear and convincing evidence that these records are exempt pursuant to section 7(1)(q). This office requests that the City provide [REDACTED] with copies of those records subject only to permissible redaction of private information pursuant to section 7(1)(b) of FOIA.

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. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,

[REDACTED]
BENJAMIN J. SILVER
Supervising Attorney
Public Access Bureau

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