



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 9, 2024

*Via electronic mail*

Mr. William J. Seitz  
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*Via electronic mail*

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RE: FOIA Request for Review – 2023 PAC 76890

Dear Mr. Seitz and Ms. Tappendorf:

This determination letter 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 Counselor concludes that the Village of Glenview (Village) did not improperly deny Mr. William J. Seitz's March 21, 2023, FOIA request.

On that date, Mr. Seitz submitted a FOIA request to the Village seeking a copy of "[t]he Proforma developed by Ballyhoo Hospitality in requesting a 15-year loan repayment period from the Village."<sup>1</sup> On April 4, 2023, the Village denied the request in its entirety

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<sup>1</sup>Written Request for Inspection or Copying of Public Records from William J. Seitz to Village of Glenview (March 21, 2023).

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pursuant to section 7(1)(r) of FOIA.<sup>2</sup> On June 2, 2023, Mr. Seitz submitted a Request for Review contesting the denial of the request. He explained that "[t]his FOIA Request for Review relates to a 'Purchase and Sale Agreement' between the Village of Glenview and Ballyhoo Hospitality, LLC. ('Ballyhoo'), in which the Village would sell 6,000 square feet of land owned by the Village of Glenview to Ballyhoo for \$10."<sup>3</sup> Mr. Seitz claimed:

This is clearly not a market value price.

This FOIA relates to **other commitments of public money** into this private project.

That is because the Village is not simply selling the land for \$10 (purchase price of \$210,000 being reduced to \$10 at Closing).

Attaching a "Redevelopment Agreement", as an exhibit to a "Purchase and Sale Agreement" to sell the real estate, the Village is giving Ballyhoo a "Restaurant Grant" of 1,750,000 and a "Restaurant Loan" of \$2,250,000 @ 2% over 15 years.

That is **\$4,000,000** of public money that is beyond the sale of the property. (Emphasis in original.)<sup>4</sup>

Mr. Seitz thus argued that section 7(1)(r) did not apply because "[t]he exemption relates to *'real estate sale negotiations'*. This is a loan and a grant, not a real estate sale for \$10." (Emphasis in original.)<sup>5</sup> He also argued that the pro forma cannot be withheld because it was already disclosed to a third-party consultant—Mallon and Associates, Inc. (Mallon)—whose "public contract does not include real estate negotiations."<sup>6</sup>

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<sup>2</sup>5 ILCS 140/7(1)(r) (West 2022).

<sup>3</sup>Letter from William J. Seitz, The Law Offices of William J. Seitz, LLC, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (June 2, 2023), at 2.

<sup>4</sup>Letter from William J. Seitz, The Law Offices of William J. Seitz, LLC, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (June 2, 2023), at 2.

<sup>5</sup>Letter from William J. Seitz, The Law Offices of William J. Seitz, LLC, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (June 2, 2023), at 4.

<sup>6</sup>Letter from William J. Seitz, The Law Offices of William J. Seitz, LLC, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (June 2, 2023), at 4.

On June 8, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Village and requested an unredacted copy of the withheld record for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of section 7(1)(r). As part of its response, this office asked the Village to address the allegations that the matter concerns a loan rather than a sale and that the Village waived the exemption by disclosing the record to one or more other third parties that were not acting as consultants with respect to any real estate purchase negotiations. On June 19, 2023, the Village provided those materials, including a complete version of its written answer for this office's confidential review, and a version with its entire argument redacted for purposes of forwarding to Mr. Seitz. On June 30, 2023, Mr. Seitz replied to that response.

### DETERMINATION

Under FOIA, 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 2022); *see also Southern Illinoisan v. Illinois Department 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)(r) exempts from disclosure:

The records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents, and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. *The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.* (Emphasis added.)

In response to Mr. Seitz's Request for Review, the Village defended its denial under section 7(1)(r) of FOIA. The Village noted that Mr. Seitz did not dispute that the sale had not been completed, and stated that it "only withheld the Proforma because it is clearly exempt from disclosure under section 7(1)(r) of FOIA as a record or document that related to a real estate sale that has not yet closed."<sup>7</sup> Because the remainder of the Village's explanation was submitted under a claim of confidentiality, however, this office is not at liberty reveal the Village's other substantive claims.

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<sup>7</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Assistant Attorney General Public Access Bureau (June 19, 2023), at 3.

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In his reply, Mr. Seitz reiterated his assertions that section 7(1)(r) is inapplicable because his request does not concern an actual real estate sale:

What the Village is characterizing as being a "Purchase and Sale Agreement" is really a \$4 million upfront public contribution being made to a private investment on public land. \$1.75M economic development grant and \$2.25M loan to be paid back at 2% interest over 15 years.

The real estate sale contemplated here is for a **sale price of \$10**, clearly not a market transaction.

Economic development activities, not the sale of public real estate, are the records, documents, or information that the Village is seeking to shield from public access. (Emphasis in original.)<sup>[8]</sup>

This office's review of the withheld record confirmed that it is a record relating to a real estate sale that had not been consummated. It is undisputed that the pro forma was generated pursuant to Village considerations concerning the sale of the land and potential economic incentives. Although Mr. Seitz highlighted that \$10 is not the market value price of the land, the plain language of section 7(1)(r) is not limited to market value sales. In drafting section 7(1)(r), the General Assembly did not distinguish records, documents, and information concerning pure sales of public property at market prices from sales of public property that are structured with financial incentives in excess of the purchase price component. "It is well settled that a court"—and therefore a reviewing body such as the Public Access Bureau—"may not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that the legislature did not express." *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 16. Accordingly, this office cannot overlook the real estate sale aspect of the Purchase and Sale Agreement Mr. Seitz furnished to this office, which provides, in relevant part: "The purchase price for the Property shall be Two Hundred Ten Thousand and No/100 (\$210,000.00) Dollars ('**Purchase Price**'), as adjusted by the Purchase Price Incentive \* \* \*. Purchaser shall pay the Purchase Price, if any, in full at Closing \* \* \* by transfer of immediately available funds, and subject to adjustments and proration as described in this Agreement." (Emphasis in original.)<sup>9</sup> Correspondingly, the "Redevelopment Agreement Terms"

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<sup>8</sup>Letter from William J. Seitz, The Law Offices of William J. Seitz, LLC, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 30, 2023), at 4.

<sup>9</sup>Purchase and Sale Agreement, Ballyhoo Hospitality, LLC – Village of Glenview, §3, March 21, 2023.

exhibit states that the "[s]eller will reduce the Purchase Price from \$210,000.00 to \$10 at closing ('Purchase Price Incentive')." <sup>10</sup> Mr. Seitz has not cited legal authority for the proposition that the language "real estate sale," as used in section 7(1)(m), does not apply when the price of a real estate transaction is offset by financial incentives. Regardless of what else it entails, the Purchase and Sale Agreement concerns the Village's prospective sale of real estate to a purchaser, and thus the pro forma falls within the scope of section 7(1)(r).

The evidence does not suggest that the Village waived the applicability of the exemption by sharing the pro forma with Mallon. In a previous Request for Review (2023 PAC 75181), Mr. Seitz provided this office with a copy of the Village's consulting contract with Mallon, in which Mallon agreed to perform "professional development advisory and business recruiting services and work for Village." <sup>11</sup> It is evident that the Village shared the pro forma with Mallon in Mallon's capacity as downtown economic development consultant for the Village. The Village's sharing of a downtown economic development record such as the pro forma with Mallon does not waive the applicability of section 7(1)(r) because FOIA's waiver principle protects against giving preferential treatment to some similarly situated parties over others, not sharing information with a consultant serving the public body's interests. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 412-13 (1997) ("If the address lists can be disclosed to campus ministries and the local newspaper, the University has no valid basis for withholding them from" the requester, a campus housing provider); *see also Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 201-03 (2004) (disclosure of names and addresses of beat meeting participants to a professor at a public policy research organization for a study on community policing did not waive the applicable exemptions as to all other parties because the information was provided in confidence for consulting purposes).

For the reasons explained above, the Public Access Bureau concludes that the Village did not violate FOIA by denying Mr. Seitz's FOIA request pursuant to the section 7(1)(r) exemption.

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<sup>10</sup>Purchase and Sale Agreement, Ballyhoo Hospitality, LLC – Village of Glenview, Exhibit B: Redevelopment Agreement Terms, March 21, 2023.

<sup>11</sup>Independent Contractor Agreement for Professional and Other Services, Village of Glenview – Mallon and Associates, Inc., June 15, 2022.

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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 file is closed. If you have any questions, please contact me at [joshua.jones@ilag.gov](mailto:joshua.jones@ilag.gov) or (773) 590-7951.

Very truly yours,



JOSHUA M. JONES  
Deputy Bureau Chief  
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