



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 6, 2024

Via electronic mail



Via electronic mail

Ms. Leslie Quade Kennedy
Senior Partner
Odelson, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
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RE: FOIA Request for Review – 2024 PAC 80023

Dear [REDACTED] and Ms. Kennedy:

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 explained below, the Public Access Bureau concludes that the Village of Bolingbrook (Village) did not improperly withhold e-mails responsive to [REDACTED] January 11, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Village seeking "all emails to and from Chief Michael Rompa pertaining to [REDACTED] between March 24, 2021 through October 18, 2021[.]" not to include medical documents.¹ On January 24, 2024, the Village provided some redacted records but withheld others pursuant to sections 7(1)(a), 7(1)(m),

¹FOIA portal message from [REDACTED] to [Fran] Miller, FOIA Officer, Village of Bolingbrook (January 11, 2024).

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and 7(1)(s) of FOIA.² On February 5, 2024, ██████████ submitted a Request for Review of the Village's partial denial; she stated that she's only seeking information pertaining to herself.

On March 6, 2024, this office sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of the requested e-mails for this office's confidential review. This office also requested a detailed explanation of the factual and legal bases for withholding some of the e-mails pursuant to the section 7(1)(a), 7(1)(m), and 7(1)(s) exemptions. On May 3, 2024, the Village furnished those materials and a written answer, with certain portions provided confidentially pursuant to section 9.5(d) of FOIA.³ On May 6, 2024, this office forwarded a redacted copy of the Village's answer to ██████████; she did not submit a 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 2022); *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 2022).

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 (1st Dist. 1997). A party asserting that a confidential communication is protected by the attorney-client privilege must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it

²5 ILCS 140/7(1)(a), (1)(m), (1)(s) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

³5 ILCS 140/9.5(d) (West 2022), as amended by Public Act 103-069, effective January 1, 2024 ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

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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 (2d Dist. 2006); *see also Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 327 (N.D. Cal. 1985) ("The proponent of the privilege carries the burden of establishing all elements of the privilege, including confidentiality, which is not presumed"). 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 (5th Dist. 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.").

Because the Village provided a mostly confidential explanation for how the withheld e-mails constitute privileged attorney-client communications, this office is precluded from detailing that explanation in this determination. *See* 5 ILCS 140/9.5(d) (West 2022). This office has considered that explanation and reviewed the withheld e-mails, and determined that all but two of them reflect communications between Village employees and the attorney representing the Village, in which legal advice was sought or provided. Accordingly, this office concludes that those e-mails are exempt from disclosure pursuant to section 7(1)(m).

Section 7(1)(s) of FOIA

With respect to the remaining two e-mails, section 7(1)(s) of FOIA exempts from inspection and copying:

Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. **Insurance or self insurance** (including any intergovernmental risk management association or self insurance pool) **claims, loss or risk management information, records, data, advice or communications.** (Emphasis added.)

Again, the Village provided a mostly confidential explanation for the applicability of section 7(1)(s). This office's review determined that the two e-mails that did not directly involve the Village's attorney instead reflected communications concerning the management of a claim that were exchanged by a Village employee and representatives of an entity that processes its insurance claims. This office has previously determined that similar claims management communications fall within the scope of section 7(1)(s). *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 38449, issued May 31, 2016 (communications between fire district and its insurance company concerning management of an insurance claim fell within the scope of the 7(1)(s) exemption); Ill. Att'y Gen. PAC Req. Rev. Ltr. 56329, issued May 13, 2019 (notes and


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communications by a claims representative employed by transit authority concerning management of a claim against the transit authority fell within the scope of the 7(1)(s) exemption). Because the remaining e-mails reflect similar claims management information, this office concludes that the e-mails are exempt from disclosure pursuant to section 7(1)(s).⁴

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, you may contact me at michael.knight@ilag.gov.

Very truly yours,


MICHAEL J. KNIGHT
Assistant Attorney General
Public Access Bureau

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⁴Because this office has determined that e-mails at issue are exempt from disclosure under either section 7(1)(m) or 7(1)(s), it is not necessary to address the applicability of the other exemptions raised in the Village's response.