



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 14, 2025

Via electronic mail



Via electronic mail

Mr. Andrew S. Paine
Tressler LLP
233 South Wacker Drive, 61st Floor
Chicago, Illinois 60606
APaine@tresslerllp.com

RE: FOIA Request for Review – 2024 PAC 82252

Dear [REDACTED] and Mr. Paine:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons explained below, the Public Access Bureau concludes that the Palatine Park District (Park District) did not improperly withhold a record responsive to [REDACTED] July 11, 2024, FOIA request.

On that date, [REDACTED] submitted a six-part FOIA request to the Park District seeking copies of various records, including the "Risk Management Agency (PDRMA) [Park District Risk Management Agency] report received by the park district regarding the risk, if any, that the stable buildings present to the citizens/users of said property"² On July 18, 2024, the Park District withheld the document responsive to this portion of [REDACTED] request pursuant

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

²E-mail from [REDACTED] to FOIA Officer, Palatine Park District (July 11, 2024).

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to sections 7(1)(m), 7(1)(s), and 7(1)(v) of FOIA.³ On July 26, 2024, this office received the documents necessary to complete ██████████ Request for Review disputing the Park District's partial denial of his request.

On August 2, 2024, this office forwarded a copy of the Request for Review to the Park District and asked it to provide a copy of the withheld record for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On August 12, 2024, this office received the requested materials. This office forwarded the Park District's written answer to ██████████ who submitted a reply on August 16, 2024.

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). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

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.)

The Attorney General has issued a binding opinion analyzing the scope of section 7(1)(s) which concluded that "management" is the operative word in section 7(1)(s), and that the exemption is limited to "information regarding the policies, procedures, and practices that an intergovernmental risk management association or self-insurance pool adopts to manage its

³5 ILCS 140/7(1)(m), (1)(s), (1)(v) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

claims, loss, and risk exposure." Ill. Att'y Gen. Pub. Acc. Op. No. 11-004, issued April 15, 2011, at 5-6.

Further, this office has previously determined that a public body can withhold communications between itself and a claim representative from its insurance company regarding the management of a claim. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 56329, issued May 13, 2019 (notes and communications by a claims representative employed by transit authority concerning management of a claim against the transit authority fell within the scope of the section 7(1)(s) exemption). However, the section 7(1)(s) exemption "does not exempt from disclosure all records that in some way relate to insurance." Ill. Att'y Gen. PAC Req. Rev. Ltr. 28619, issued November 27, 2019, at 2. Records that do not discuss "sensitive business information about how to handle the claim," and for which disclosure would not "reveal sensitive business policies or provide an unfair advantage to persons" dealing with a public body or its insurance provider, do not fall within the scope of section 7(1)(s) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 65021, issued November 17, 2021, at 3-4. Therefore, to fall within the scope of this provision, a record must reflect claims management, loss management, or risk management information, the disclosure of which would reveal sensitive information concerning any policies, procedures, or practices that a public body may use to manage claims, loss, or risk exposure or provide an unfair advantage to persons dealing with a public body or its insurance provider.

The Park District's answer to this office explained that PDRMA "is an intergovernmental joint self-insurance pool" that offers "legal advice, risk management advice, pooled self-insurance coverage, crisis management, and training services to its members."⁴ The Park District argued that the withheld record at issue "clearly consists of risk management advice and communications."⁵ Specifically, the Park District contended:

[T]he plain language of [section 7(1)(s) of FOIA] makes it clear that the exemption applies to a variety of documents, specifically including all risk management related communications and advice. In this case, all records at issue are, at a minimum, communications and advice with the Park District's risk management agency, which brings those records clearly within the [s]ection 7(1)(s) exemption.^[6]

⁴Letter from Andrew S. Paine, Tressler LLP, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (August 12, 2024), at 2.

⁵Letter from Andrew S. Paine, Tressler LLP, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (August 12, 2024), at 4.

⁶Letter from Andrew S. Paine, Tressler LLP, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (August 12, 2024), at 4.

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In his Request for Review and reply, ██████████ contended that the record is not exempt from disclosure under any of the cited exemptions and argued that the "only reason for this denial is [because] the report does not concur with the [Park] [D]istrict[']s published narrative of a dangerous facility."⁷

Based on this office's review, the withheld letter constitutes communications and advice between the Park District and PDRMA regarding loss or risk management. The disclosure of this letter would reveal sensitive business information that may be used by the Park District or PDRMA to formulate risk management policies and procedures. Accordingly, this office has determined that the record is exempt from disclosure pursuant to section 7(1)(s).⁸

Lastly, the Public Access Counselor's authority is limited to resolving disputes concerning FOIA and the Open Meetings Act (OMA).⁹ *See* 15 ILCS 205/7(c) (West 2022). Therefore, the Public Access Counselor does not have the authority to review any alleged violations raised in ██████████ correspondence to this office related to the Park District's underlying decisions concerning the stables.

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 FOIA questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,

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SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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⁷E-mail from ██████████ to Attorney General (July 19, 2024).

⁸Because this office has determined that the record at issue is exempt from disclosure under section 7(1)(s) of FOIA, it is not necessary to address the applicability of the other exemptions raised in the Park District's response.

⁹5 ILCS 120/1 *et seq.* (West 2022).