



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

July 19, 2021

Via electronic mail

Mr. Jonah Meadows
North Shore Editor
Patch Media
jonah.meadows@patch.com

Via electronic mail

Ms. Carrie Dick
Executive Secretary/FOIA Officer
Village of Lincolnwood
6900 North Lincoln Avenue
Lincolnwood, Illinois 60712
cdick@lwd.org

RE: FOIA Request for Review – 2018 PAC 56194

Dear Mr. Meadows and Ms. Dick:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the Village of Lincolnwood (Village) is obligated under FOIA to disclose settlement agreements responsive to Mr. Jonah Meadows' December 18, 2018, FOIA request that are in the possession or custody of its contracted fire protection and paramedic services.

On December 18, 2018, Mr. Meadows, on behalf of Patch Media, submitted a FOIA request to the Village seeking copies of: "[a]ny settlement agreement or agreements between Paramedic Services of Illinois or any of its agents and [name] with regard to 1:17-CV-6301"¹ On December 20, 2018, the Village responded that "[t]he Specified Records are neither

¹E-mail from Jonah Meadows, North Shore Editor, Patch, to Lincolnwood FOIA Officer (December 18, 2018).

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prepared by or for the Village, nor have the Specified Records been or are being used by, or received by, the Village."² Mr. Meadows' Request for Review disputed the Village's response. Specifically, Mr. Meadows contended that the responsive records in the possession of Paramedic Services of Illinois (PSI) are the Village's public records pursuant to section 7(2) of FOIA (5 ILCS 140/7(2) (West 2018)) because although PSI is a private company, it was contracted by the Village to provide fire department services.

On January 2, 2019, this office sent a copy of the Request for Review to the Village and asked it to provide a written response to Mr. Meadows' allegations and to address the applicability of section 7(2) of FOIA to the requested records in the physical custody of PSI. On January 11, 2019, counsel for the Village submitted both confidential and non-confidential responses. On January 14, 2019, this office forwarded the Village's non-confidential response to Mr. Meadows. He replied on January 25, 2019, maintaining that the denial was improper.

DETERMINATION

Section 7(2) of FOIA provides:

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

This provision was created to "respond to the growing concern related to the privatization of government responsibilities and its impact on the right of public information access and transparency." *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶62, 89 N.E.3d 376, 390 (2017).

In its answer to this office, the Village asserted that for a record to be subject to disclosure under section 7(2), it first must be a "public record" as defined by section 2(c) of

²Letter from Carrie Dick, Freedom of Information Officer, Village of Lincolnwood to Jonah Meadows, Patch (December 20, 2018).

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FOIA (5 ILCS 140/2(c) (West 2018)).³ According to the background information provided by the Village, the responsive settlement agreement concerns a federal complaint filed by a former employee of PSI concerning PSI's termination of his employment. The Village contended that the settlement agreement in question does not qualify as a "public record" because it was not prepared by, used by, or within the physical possession of the Village at the time of Mr. Meadows' request. The Illinois Supreme Court, however, has concluded that records in the possession of a private entity that has entered into a contract with a public body fall within the scope of 7(2) if: (1) the private entity possesses the records and (2) has contracted with the public body to perform a "governmental function" on the public body's behalf, and, (3) the requested records are "directly related" to that governmental function. *Rushton v. Department of Corrections*, 2019 IL 124552, ¶41, 63, 160 N.E.3d 929, 942-43 (2019). The Illinois Supreme Court has construed the term "governmental function" for purposes of section 7(2) in accordance with the Black's Law Dictionary definition of that term: "a government agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public." *Illinois High School Ass'n*, 2017 IL 121124, ¶63, 89 N.E.3d at 390 (quoting Black's Law Dictionary 812 (10th ed. 2014)).

In this instance, the Village contracted with PSI to provide fire protection and emergency medical services on behalf of the Village, including an agreement that PSI would furnish the "personnel, leadership and professionalism necessary to provide said services."⁴ Under section 11-5-7 of the Illinois Municipal Code (65 ILCS 5/11-5-7 (West 2018)), "[t]he corporate authorities of each municipality may license and regulate and establish standards for the operation of ambulances. The corporate authorities of each municipality may either contract for the operation of or operate ambulances as a municipal service." Section 11-6-1 of the Illinois Municipal Code (65 ILCS 5/11-6-1 (West 2018)), provides, in pertinent part, "[t]he corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires." The administration of

³Section 2(c) of FOIA defines "public records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

⁴Agreement for Fire Protection and Emergency Medical Services, Village of Lincolnwood, Illinois, Paramedic Services of Illinois, Inc., §2, April 19, 2016.

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fire protection and paramedic services is authorized by statute and carried out for the benefit of the general public; therefore, they are governmental functions of the Village.

The Village's response to this office, however, argued that the settlement agreement:

does not *directly* relate to a government function; rather the settlement agreement involves employment claims made by a contractor's employee against the contractor. Even [if] it could be argued that PSI's employment dispute somehow relates to a government function performed by PSI on the theory that PSI assists the Village in providing a government function, and PSI's former employee was the contractor's agent in providing such services, the settlement agreement regarding the PSI's former employee's employment claims certainly does not *directly* relate the to the government function.⁵

FOIA does not define the term "directly relates." The Illinois Appellate Court has recognized that this modifier limits the scope of section 7(2) of FOIA: "This requirement makes clear the legislature's intention that the general public may not access all of a third party's records merely because it has contracted with a public body to perform a governmental function. FOIA is not concerned with private affairs." *Chicago Tribune v. College of DuPage*, 2017 IL App (2d) 160274, ¶53, 79 N.E.3d 694, 609 (2017). Courts have held that contracts and records that reflect the governmental function an entity has been hired to perform and that shed light on its performance directly relate to a governmental function and therefore are subject to disclosure under section 7(2) of FOIA. *College of DuPage*, 2017 IL App (2d) 160274, ¶55, 79 N.E.3d at 709 (affirming trial court decision that federal grand jury subpoena directly related to governmental function because college never asserted the subpoena concerned matters other than private development duties that a foundation had been contracted to perform for the college).

In *Rushton*, the Illinois Supreme Court found that a settlement agreement between Wexford and the estate of an inmate who died while receiving medical care from Wexford during his confinement at an Illinois Department of Corrections (IDOC) prison was a public record of IDOC for the purpose of FOIA. Wexford had argued that the settlement agreement did not "directly relate" to its contracted governmental function of providing medical care to IDOC inmates, but instead, was merely "a business decision to settle a legal dispute between private parties." *Rushton*, 2019 IL 124552, ¶6, 160 N.E.3d at 932. The court rejected this argument,

⁵Letter from Benjamin L. Schuster, Holland & Knight LLP, to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (January 11, 2019), at 4 (Emphasis in original).


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stating, "[t]he settlement agreement directly relates to performance of that governmental function. It is the settlement of a claim that Wexford's inadequate medical care—its *alleged inadequate performance of its governmental function*—led to the death of an inmate. The connection is neither indirect nor tangential. It is direct and obvious." (Emphasis in original.) *Rushton*, 2019 IL 124552, ¶31, 160 N.E.3d at 939-40.

Although not strictly analogous to the *Rushton* case, the settlement agreement sought by Mr. Meadows is directly related to the governmental function that the Village contracted with PSI to perform. In the underlying lawsuit, PSI's former employee alleged PSI's administration of the Village's fire department involved widespread sexual harassment of a female employee, retaliation against a whistleblower, and "ongoing abuse of prescription drugs by a superior officer while on duty that put the health and safety of patients, coworkers and the public at risk."⁶ Regardless of whether those allegations have any merit, the settlement of the employment dispute directly relates to PSI's working environment for the governmental function of providing fire protection and emergency medical services for the Village. If the work environment was hostile and unsafe, as alleged, such circumstances could clearly affect the quality of the services PSI was providing to the Village. Accordingly, this office concludes that the requested settlement agreement is considered to be the Village's record under section 7(2) of FOIA and is subject to disclosure under FOIA. This office requests that the Village issue a supplemental response to Mr. Meadow's request and disclose copies of the responsive settlement agreement.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This matter is closed. If you have questions, you may contact me Shannon.Barnaby@Illinois.gov or (312) 550-4480.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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⁶*Weller v. Paramedic Services of Illinois, INC.*, No. 1:17-cv-06301 (N.D. Ill. filed 11/27/17), at 1.