



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 26, 2020

Via electronic mail

Mr. Sam Stecklow
Invisible Institute
Experimental Station
6100 South Blackstone Avenue
Chicago, Illinois 60637
foia@invisibleinstitute.com

Via electronic mail

Ms. Courtney P. Willits, Esq.
Del Galdo Law Group, LLC
1441 South Harlem Avenue
Berwyn, Illinois 60402
willits@dlglawgroup.com

RE: FOIA Request for Review – 2019 PAC 61358

Dear Mr. Stecklow and Ms. Willits:

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 discussed below, this office concludes that the Town of Cicero (Town) did not improperly deny records requested by Mr. Sam Stecklow which are prohibited from being disclosed by a court order.

On December 26, 2019, Mr. Stecklow, on behalf of the Invisible Institute, submitted a FOIA request to the Town seeking records related to complaints against sworn employees of the Town's police department which were closed in 2017. On January 2, 2020, the Town provided certain records with redactions but withheld fifteen pages of records in their entirety, citing as its basis a confidentiality order issued by a federal judge. On January 3, 2020, Mr. Stecklow requested a copy of the confidentiality order and questioned why he did not receive a copy of file No. 17-014 that he said was referenced in a memorandum detailing which files were provided in the Town's response to his request. On January 7, 2020, the Town responded that File No. 17-014 was not provided because disclosure was prohibited by the

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confidentiality order and that the Town did not possess a copy of that order. In his Request for Review, Mr. Stecklow questioned whether the confidentiality order prohibits disclosure of File No. 17-014.

On January 21, 2020, this office sent a copy of the Request for Review to the Town and asked it provide a copy of the protective order and a detailed explanation for the assertion that the protective order prohibits disclosure of the records at issue. On January 27, 2020, counsel for the Town furnished those materials. On January 28, 2020, this office forwarded a copy of the Town's response to Mr. Stecklow; he did not submit a reply.

ANALYSIS

"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 2018); *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 2016).

The Attorney General has previously determined, in accordance with the United States Supreme Court decision in *GTE Sylvania, Inc. v. Consumers Union of the United States*, 445 U.S. 375, 100 S. Ct. 1194 (1980), that a public body does not violate FOIA when it withholds records pursuant to a binding court order; *see also In re Appointment of Special Prosecutor*, 2017 IL App (1st) 161376, ¶53, 91 N.E. 3d 424, 435 (2017) (City of Chicago (City) did not improperly withhold materials generated in connection with a grand jury investigation and special prosecution because two protective orders barred the release of grand jury materials by the City); Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 22-23 (village did not improperly withhold records specifically prohibited from disclosure by court).

The Town provided this office with a copy of a confidentiality order to which the parties agreed in *Bull v. Town of Cicero*, Docket No. 19-CV-01308 (N.D., Ill.). Among other things, the order designates as confidential all "information and documents generated by, related to, and/or included in any investigation of any and all claims made by or against any of the individual parties[.]"¹ In a telephone conversation with an Assistant Attorney General in the Public Access Bureau, counsel for the Town confirmed that the records from File No. 17-014 that were withheld pursuant to the agreed confidentiality order relate to the investigation of the underlying claims in the lawsuit. Because the confidentiality order broadly prohibits disclosure of such materials, this office concludes that the Town did not improperly withhold those records in its response to Mr. Stecklow's request.

¹*Bull v. Town of Cicero*, Docket No. 19-CV-01308 (N.D., Ill., August 1, 2019) (court order).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This file is closed.

Very truly yours,

A solid black rectangular box used to redact the signature of Steve Silverman.

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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