



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 13, 2016

Via electronic mail

Ms. Angela Caputo, Reporter
Chicago Tribune
435 North Michigan
Chicago, Illinois 60611
acaputo@tribune.com

Via electronic mail

Mr. Joel Diers
Legal Counsel
Illinois Department of Corrections
1301 Concordia Court
P.O. Box 19277
Springfield, Illinois 62794-9277
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RE: FOIA Request for Review – 2015 PAC 34503; IDOC – 150317195

Dear Ms. Caputo and Mr. Diers:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons stated below, the Public Access Bureau concludes that the Illinois Department of Corrections (IDOC) is obligated under FOIA to disclose certain records concerning prescription drug orders for inmates that are in the possession or custody of its contracted healthcare provider.

On March 17, 2015, Ms. Angelo Caputo, on behalf of the *Chicago Tribune*, submitted a FOIA request to IDOC seeking "complete copies of all vendor invoices, purchase orders, receipts or other relevant records that detail prescription drug orders placed on behalf of the Illinois Department of Corrections -- through Wexford Health Sources, Inc. [Wexford] or any other private vendor -- between fiscal year 2010 and the present."¹ The request further stated:

¹Freedom of Information Act request from Angela Caputo, Reporter, *Chicago Tribune*, to Illinois Department of Corrections (March 17, 2015).

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"To be clear, I do not wish to obtain any information about the medical treatment that may have been prescribed to individuals in the custody of IDOC. I am strictly seeking the details of relevant vendor and payment records."² On April 1, 2015, IDOC responded that "it does not maintain or possess records responsive to your request. Wexford Health Sources [Wexford] maintains these records[.]"³ In her Request for Review, Ms. Caputo asserted that IDOC must possess some responsive records because it did not contract with Wexford to provide medical services until 2011. She also contended that responsive records in the possession of Wexford are IDOC's public records pursuant to section 7(2) of FOIA (5 ILCS 140/7(2) (West 2014)).

On April 9, 2015, this office sent a copy of the Request for Review to IDOC and asked it to provide a detailed explanation of the specific measures that IDOC took to locate responsive records, including a description of the recordkeeping systems that were searched and the officials who were consulted. We also asked IDOC to provide a copy of its contract with Wexford, and to respond to the assertion that records in the physical custody of Wexford concerning prescription drug orders placed on behalf of IDOC should be considered IDOC's public records pursuant to section 7(2) of FOIA. IDOC submitted a written response on April 22, 2015, which stated that prescription drug orders for inmates are maintained in each inmate's medical file and therefore constitute medical records that are exempt from disclosure under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014)), and are prohibited from being disclosed by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Pub. L. No. 104-191, 110 Stat. 1936 (1996). Ms. Caputo replied on May 13, 2015, clarifying that she is seeking procurement records that account for IDOC's pharmaceutical purchases. She further clarified, during a telephone conversation with an Assistant Attorney General in the Public Access Bureau, that she is seeking corporate-level records documenting pharmaceutical purchases, and not records from inmates' medical files.

This office then requested additional information concerning IDOC's efforts to locate responsive records. On June 11, 2015, IDOC issued a supplemental response and provided a portion of Wexford's contract with IDOC as well as a subcontract for a pharmaceutical company that fills prescription drug orders. IDOC provided additional portions of its contract with Wexford on August 24, 2015.

²Freedom of Information Act request from Angela Caputo, Reporter, *Chicago Tribune*, to Illinois Department of Corrections (March 17, 2015).

³Letter from Anne Rayhill, Illinois Department of Corrections, to Angela Caputo, *Chicago Tribune* (April 1, 2015).

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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 2014). 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 2014).

IDOC stated in its supplemental response to this office that "prescription drug orders are placed through Wexford[]" and the "amounts of medications ordered and the associated costs are not maintained by the facilities."⁴ The supplemental response also indicated that "IDOC has contracted [with] Wexford since at least 2007."⁵ Wexford's contract shows that IDOC and the Illinois Department of Healthcare and Family Services contracted with Wexford to provide "medical, dental, vision, pharmaceutical and mental health services for offenders at specified State correctional centers."⁶ Under the contract, Wexford agreed to arrange for pharmacy services and to provide all medications other than those used to treat Hepatitis C and HIV/AIDS.⁷

In *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S. Ct. 285, 290 (1976), the United States Supreme Court held that the government has an "obligation to provide medical care for those whom it is punishing by incarceration." 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

⁴Letter from Anne Rayhill, Freedom of Information Office, Illinois Department of Corrections, to Steve Silverman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (June 11, 2015).

⁵Letter from Anne Rayhill, Freedom of Information Office, Illinois Department of Corrections, to Steve Silverman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (June 11, 2015).

⁶Contract for the purpose of providing health care to prison inmates, Wexford Health Sources, Inc., Illinois Department of Healthcare and Family Services, and Illinois Department of Corrections, §2, May 9, 2011.

⁷Contract for the purpose of providing health care to prison inmates, Wexford Health Sources, Inc., Illinois Department of Healthcare and Family Services, and Illinois Department of Corrections, Schedule Es, Exhibit I, May 9, 2011.

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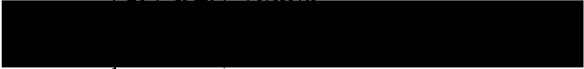
and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

Any records in the possession of Wexford documenting prescription drug orders for inmates directly relate to the governmental function of providing medical care to inmates, a function that Wexford has agreed to perform on behalf of IDOC. Therefore, even if IDOC does not have physical custody of responsive records, records concerning prescription drug orders for inmates in the possession of Wexford are considered IDOC's records under the plain language of section 7(2) of FOIA, unless they are exempt from disclosure. IDOC has not asserted that records maintained by Wexford – rather than in inmates' medical files – documenting prescription drug orders for inmates are exempt from disclosure under FOIA. Accordingly, we conclude that the requested records are considered IDOC's records under section 7(2) of FOIA, and must be disclosed because they relate to the use of public funds for inmates' medical care. *See* 5 ILCS 140/2.5 (West 2014)) ("All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.").

In accordance with the conclusions expressed above, this office requests that IDOC obtain responsive records from Wexford and furnish them to Ms. Caputo. In addition, IDOC should search for and provide records documenting purchases of prescription drugs for Hepatitis C and AIDS that are not covered by IDOC's contract with Wexford. If any responsive records identify individual inmates who were prescribed prescription drugs, their names and other identifying information may be properly redacted pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2014), as amended by Public Act 99-298, effective August 6, 2015), which exempts from disclosure information that would constitute an unwarranted invasion of personal privacy. Ill. Att'y Gen. PAC Req. Rev. Ltr. 13717, issued June 20, 2011, at 2 (disclosure of information identifying a specific individual's medical diagnosis and treatment would constitute an unwarranted invasion of personal privacy).

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 letter serves to close this file.

Very truly yours,


STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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