



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 23, 2023

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

Mr. David Siegel
FOIA Officer
DeKalb County Housing Authority
310 North 6th Street
DeKalb, Illinois 60115
FOIA@dekcohousing.com

RE: FOIA Request for Review – 2022 PAC 71823; 2022 PAC 73490;
2022 PAC 73492

Dear [REDACTED] and Mr. Siegel:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). We have consolidated the above-referenced Requests for Review for purposes of this determination because the requested records are comparable, and the applicable FOIA exemptions are identical for them.

On March 21, 2022, [REDACTED] submitted a FOIA request to the DeKalb County Housing Authority (Housing Authority) seeking copies of the personnel files of three employees, excluding any performance reports. On March 28, 2022, the Housing Authority denied the request pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), and 7.5(q) of FOIA.¹ On May 12, 2022, this office received [REDACTED] Request for Review (2022 PAC 71823) challenging the denial. On May 23, 2022, this office forwarded a copy of the Request for

¹5 ILCS 140/7(1)(a), (1)(b), (1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021; 5 ILCS 140/7.5(q) (West 2020), as amended by Public Acts 102-036, effective June 25, 2021; 102-237, effective January 1, 2022; 102-292, effective January 1, 2022; 102-520, effective August 20, 2021; 102-559, effective August 20, 2021; 102-813, effective May 13, 2022.

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Review to the Housing Authority and asked it to provide unredacted copies of the records, together with a detailed explanation of the asserted exemptions.

On June 9, 2022, and June 17, 2022, ██████████ submitted additional requests to the Housing Authority seeking the same records for six other employees. On July 18, 2022, the Housing Authority provided responsive records but redacted certain information pursuant to sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA.² The Housing Authority also issued an amended response to the March 21, 2022, request, releasing responsive records but redacting them pursuant to the same exemptions. On September 15, 2022, ██████████ submitted Requests for Review (2022 PAC 73490 and 2022 PAC 73492) challenging the partial denial of his two June requests; he also challenged the amended response to his March 21, 2022, request.

On September 14, 2022, this office requested a written response to 2022 PAC 71823 that addressed the contested redactions, as well as unredacted copies of the records. On September 23, 2022, this office forwarded copies of the two new Requests for Review to the Housing Authority and requested the same materials. On October 24, 2022, and October 25, 2022, this office received the requested materials. In its response, the Housing Authority withdrew its assertion of section 7(1)(a). On October 27, 2022, this office forwarded a copy of the Housing Authority's responses to ██████████; he replied on November 7, 2023.

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 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that redacts records "has the burden of proving by clear and convincing evidence" that the information is exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

In his Requests for Review, ██████████ contended that particular portions of the records he received were improperly redacted. The Housing Authority's response to this office stated that some of the contested redactions would be withdrawn. Specifically, the Housing Authority stated it would issue an amended response withdrawing the redaction of

²5 ILCS 140/7(1)(a), (1)(b), (1)(c) (West 2021 Supp.), as amended by Public Acts 102-694, effective January 7, 2022, revised February 3, 2022; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

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FEINs, "spot awards," and business information.³ With respect to the remaining contested redactions, the Housing Authority maintained that it properly redacted the following:

- Footnotes in documents
- Employment applications, resumes, and references
- Employee retirement investment elections
- Social security cards and driver's licenses
- Middle initials of employee names

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2020)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

The Public Access Bureau has previously determined that business information is not exempt from disclosure under section 7(1)(b) because it identifies businesses rather than individuals. Ill. Att'y Gen. PAC Req. Rev. Ltr. 48986, issued July 1, 2020, at 4. Thus, business addresses, business telephone numbers, and other similar information do not fall within the scope of the exemption. Ill. Att'y Gen. PAC Req. Rev. Ltr. 22902, issued June 27, 2016, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 23125, issued March 26, 2014, at 2.

Footnotes in Documents

In its response to this office, the Housing Authority asserted that it properly redacted footnotes contained in the records pursuant to section 7(1)(b) because they revealed "the

³Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 4.

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internal locations of the documents referred to in each document."⁴ The Housing Authority argued that those internal locations are akin to access codes and thus within the scope of the exemption. It argued: "If the location of the document on the HACD server is known via a document, then the possibility exists of the use of this information to attempt to access the HACD server."⁵

██████████ disagreed with that claim. He argued, in relevant part:

To log into an internal server or cloud server, you need to have a user id and password. You cannot access a file unless you have been granted permission to access the file after being authenticated by logging into the system (internal server or cloud server such as Microsoft OneDrive or Google Drive). If the file is on an internal server behind a firewall, like I believe the housing authority uses, you need to have an user id (access code) and password to get behind the firewall into the organization's internal network.^[6]

Based on this office's review of a sampling of the unredacted records, the footnotes do not contain information that would uniquely identify a person. Rather than revealing any access codes for individual employees, the footnotes provide information about the recordkeeping practices of the Housing Authority. The records do not appear to be accessible unless the Housing Authority authorizes access to its internal server, as ██████████ noted. The Housing Authority also redacted passwords and user identification information for individual employees listed in some of the forms.⁷ Although passwords and user IDs are unique identifiers within the scope of section 7(1)(b), the footnotes do not constitute "private information" that is exempt from disclosure under the exemption.

This office's review also determined that the Housing Authority redacted driver's license numbers, signatures, and birthdates contained in some of the contested records. Among those records, the Housing Authority redacted driver's license numbers and birthdates in the

⁴Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 4.

⁵Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 4.

⁶Letter from ██████████ to AAG Teresa Lim, PAC (November 7, 2022), at [4].

⁷*E.g.*, page 2 of the Capps file provided by ██████████; page 82 of the Perkins file provided by ██████████.

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letters to the AHRMA⁸ and signatures in the "Employee Statement of Understanding and Compliance with the Drug-Free Workplace Act of 1988" forms.⁹ The Housing Authority also redacted signatures in certain other correspondence.¹⁰ Because those details either constitute "private information" under section 7(1)(b) or would constitute a clearly unwarranted invasion of personal privacy if disclosed under section 7(1)(c),¹¹ the Housing Authority did not improperly redact that information. However, this office requests that the Housing Authority provide ██████████ with copies of the records that disclose the footnotes.

As noted above, the Housing Authority stated it would withdraw the redaction of business information contained in some of the records, acknowledging that the information does not fall within the scope of sections 7(1)(b) or 7(1)(c). The Housing Authority identified some pages of the records that it would amend. This office notes that business e-mail addresses, business telephone numbers, and other business contact details were redacted in other pages of the records.¹² Those redactions also do not fall within the scope of section 7(1)(b). Although the Authority indicated it would disclose FEINs, it has the option of redacting them pursuant to section 7(1)(kk) of FOIA.¹³

Additionally, the Housing Authority redacted copies of certificates of notary public and certain details in other records. With respect to the certificates of notary public, the Housing Authority redacted, in relevant part, the commission beginning and ending dates, commission number, and county. The Housing Authority did not explain how those details are

⁸E.g., page 9 of Bright file, part 1, provided by ██████████.

⁹E.g., page 12 of Bright file, part 1, provided by ██████████.

¹⁰E.g., pages 1, 2 of Bright file, part 3, provided by ██████████; page 51 of Perkins file provided by ██████████.

¹¹The Public Access Bureau has consistently determined that personal signatures and birthdates are exempt from disclosure pursuant to sections 7(1)(b) and 7(1)(c) of FOIA respectively. Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014, at 11 (signatures); Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12 (birthdates).

¹²E.g., pages 8, 10 of Bright file provided by Housing Authority (pages 10, 17 of Bright file, part 1, provided by ██████████); Page 33 of Perkins file provided by Housing Authority (page 66 of Perkins file provided by ██████████).

¹³5 ILCS 140/7(1)(kk) (West 2021 Supp.), as amended by Public Acts 102-694, effective January 7, 2022, revised February 3, 2022; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022 (exempting from disclosure "[t]he public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information, the disclosure of which could result in identity theft or impression or defrauding of a governmental entity or a person.").

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exempt from disclosure under sections 7(1)(b) or 7(1)(c). Further, that public notary information may be found on the Illinois Secretary of State website.¹⁴ As to the other records, the Housing Authority did not explain the factual or legal bases for redacting certain details¹⁵ not otherwise discussed below. Accordingly, this office requests that the Housing Authority disclose the contested parts of the notary public certificates and other contested details that are not determined to be exempt from disclosure in subsequent sections of this determination.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's assertion that the release of information would constitute a clearly unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

¹⁴Office of the Illinois Secretary of State, Notary Public Search, <https://apps.ilsos.gov/notarysearch/> (last visited June 23, 2023).

¹⁵E.g., redacted part concerning insurance and benefits located near the bottom of page 4 of Rodr file provided by Housing Authority (page 5 of the Rodr file provided by ██████████).

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Employment Applications, Resumes, and References

The Attorney General has previously issued a binding opinion concluding that information pertaining to a public employee's past employment and educational experience was improperly withheld under section 7(1)(c) because the "education, training, and experience that * * * presumably were considered in determining [a public employee's] eligibility * * * 'bear on' his ability to perform his public duties satisfactorily." Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014, at 6; *see also Core v. United States Postal Service*, 730 F.2d 946, 947-48 (4th Cir. 1984) (disclosure of successful applicants' work history would not constitute an unwarranted invasion of personal privacy because it "is simply the type of information every applicant seeks to bring to the attention of a prospective employer.").

The Housing Authority acknowledged Binding Opinion 14-015 but asserted it properly redacted parts of the employees' resumes and application materials because "[a] reasonable person would conclude it would be objectionable to disclose a resume or application an employee submitted 14 years ago."¹⁶ In particular, the Housing Authority contended that the references for the employees at issue may no longer remember the individuals and have no bearing on the employee's current public duties.¹⁷ It also asserted that the references provide personal information that is exempt from disclosure under section 7(1)(b). The Housing Authority similarly questioned the relevancy of an employee's high school and other educational history to the individual's current public duties and contended that "other means exist to get this information such as a yearbook."¹⁸

In reply to that answer, ██████████ argued that the information was still relevant and explained that he sought "to verify that special considerations were not given to friends, and that employees were hired for merit and skills necessary to perform the duties of the job."¹⁹ He also noted that he could not look up some of the information in other sources without knowing, for instance, the school district that the individual had attended.

Based on this office's review, the Housing Authority redacted portions of past employer information, educational and community service histories, certain application

¹⁶Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 7.

¹⁷Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 8.

¹⁸Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 8.

¹⁹Letter from ██████████ to AAG Teresa Lim, PAC (November 7, 2022), at [9].

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questions, and professional references. The Public Access Bureau has previously determined that the identities of current and past employers and the dates on which the applicants worked for those employers do not fall within the scope of section 7(1)(c) because those details bear on the applicants' qualifications for public employment. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39447, issued November 28, 2017, at 3-4. The Public Access Bureau has likewise determined that an applicant's educational history, references, and award and leadership information are not exempt under section 7(1)(c), as that information also reflects on an individual's qualifications. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39447, at 3-4. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 65940, issued September 2, 2021 (employment history of successful employment applicant bears on his or her qualifications for the offered position, as would any details regarding special courses taken, certifications received, and special skills or experiences that relate to the position); Ill. Att'y Gen. PAC Req. Rev. Ltr. 49902, issued May 22, 2018 (educational history and application questions regarding criminal history, legal history, and citizenship relevant to successful applicant's qualifications for public duty and character and fitness for position); Ill. Att'y Gen. PAC Req. Rev. Ltr. 33143, issued November 19, 2015 (employment references not exempt under section 7(1)(c) because there is a compelling public interest in disclosure of a public employee's credentials to enable the public to assess the employee's qualifications for public duty).

Even if the individuals at issue were long-time employees, there is a significant public interest in the information that an applicant for public employment provided to a prospective public employer and that the employer considered in its hiring decision. An employee's educational history and references show, for instance, that the individual possessed the basic education and credentials required for the position at the time of hire, while responses to questions concerning an applicant's goals and objectives reflect on the individual's ability to further the public body's mission. Disclosure of this information clearly outweighs the subject's limited right to privacy in such information. Ill. Att'y Gen. PAC Req. Rev. Ltr. 49902, issued May 22, 2018, at 7 (noting that an employee's interest in privacy was mitigated by the passage of more than five years since the submission of the application, as well as by the fact that the employee voluntarily disclosed the information in an application for public employment). Accordingly, the Housing Authority did not demonstrate by clear and convincing evidence that it properly redacted portions of the resumes and other application materials pursuant to section 7(1)(c) of FOIA.

This office requests that the Housing Authority disclose the full employment and educational histories, references, and other above-described information that do not fall within the scope of section 7(1)(c). The Housing Authority may withhold any personal telephone

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numbers or home addresses²⁰ provided by the references pursuant to section 7(1)(b), but any business contact information does not fall within the scope of that exemption.

The Housing Authority also redacted academic transcripts and records of courses taken.²¹ The Public Access Bureau has previously determined that, although relevant to an individual's hiring, "academic transcripts that pre-date an individual's employment with a public body and include detailed information about courses taken and grades received that have no direct relationship to the employee's public duties are highly personal in nature[.]" and the individual's right to privacy outweighs any legitimate public interest in disclosure of this information. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37877, issued May 9, 2018, at 5. By contrast, there is a strong public interest in the disclosure of academic transcripts and records of courses taken during an individual's employment and that are paid for by a public body because the information relates to the individual's public duties and is required to be disclosed under section 2.5 of FOIA.²² Accordingly, if the Housing Authority paid for any of the coursework reflected in the transcripts and records of courses taken, those records do not fall within the scope of section 7(1)(c), and this office requests that the Housing Authority disclose the information.

Additionally, the Housing Authority redacted some salary history information. Because salary history for public employment reflects payments of public funds, the Attorney General has determined that such information is expressly subject to disclosure pursuant to section 2.5 of FOIA. Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014, at 8. However, the salary history of an applicant's private sector jobs does not concern the expenditure of public funds. The Public Access Bureau has thus determined that "[g]iven its apparently limited relevance to hiring decisions, there is little public interest in obtaining information regarding individuals' private employment salaries, but the information is sensitive and highly personal to the individual applicants." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39447, issued November 28, 2017, at 6. In those circumstances, the individual's privacy interest outweighs the minimal public interest in that information, and the information falls within the scope of section 7(1)(c). Ill. Att'y Gen. PAC Req. Rev. Ltr. 39447, at 6. Here, the Housing Authority did not improperly redact the salary history disclosed in one e-mail²³ because the salary history corresponded with private sector jobs. If any of the remaining records contain salary histories

²⁰*E.g.*, page 91 of Perkins file provided by ██████████.

²¹*E.g.*, pages 36, 40 of Perkins file provided by ██████████ (pages 25, 26 of Perkins file provided by Housing Authority).

²²Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2020)) provides that "[a]ll 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."

²³Page 27 of Bright file, part 1, provided by ██████████.

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corresponding with private sector jobs, the Housing Authority may also withhold that information, but any public sector salaries are not exempt under section 7(1)(c).

Employee Retirement Investment Elections

The Public Access Bureau has previously determined that information reflecting the personal financial decisions of an individual and an individual's elections on employee benefits, such as insurance coverage, generally fall within the scope of section 7(1)(c) because they reflect the discretionary decisions and other highly personal information of individual employees. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 54786, issued December 6, 2021 (public body did not improperly withhold information concerning individual employees' dependents and individual contribution amounts to insurance plans pursuant to section 7(1)(c)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 17922, issued June 26, 2012 (amounts contributed by employees for particular benefit plans that the employees opted to participate in and information concerning employee benefits deductions exempt from disclosure pursuant to section 7(1)(c)).

The Housing Authority stated it had redacted information concerning "participant direction of investment to the Trustees of the HACD Retirement Plan."²⁴ The Housing Authority argued that this information constituted "personal financial information" and thus was exempt from disclosure under section 7(1)(b). It also asserted that the information fell within the scope of section 7(1)(c).

Based on this office's review of a sampling of the records, the Housing Authority redacted generally three forms related to employee retirement investment and benefit plans: (1) "Checklist for Retirement Program Enrollment," (2) "Participant Direction of Investment," and (3) "Checklist for New Employees." With respect to the first form, the Housing Authority disclosed some details (e.g., enrollment and processing dates and month of employee contribution sheet) for a number of the employees, but not all of them.²⁵ It is unclear the reason for this discrepancy. Because the contested parts of this form appear to have been disclosed for most of the employees, the Housing Authority did not illustrate that the information is highly personal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Housing Authority did not demonstrate by clear and convincing evidence that the contested redactions in the Checklist for Retirement Program Enrollment fall within the scope of section 7(1)(c).

²⁴Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 7.

²⁵*Compare* page 20 of Bright file *with* page 14 of Price file provided by Housing Authority (*Compare* page 35 of Bright file, part 1, *with* page 18 of the Price file provided by ██████████).

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With respect to the remaining two forms, this office's review confirmed that the forms reveal the personal financial decisions and other personal details of the employees, which are unrelated to their public duties. The individuals' privacy interests in their elections on investments for retirement and insurance plans, including coverage for dependents, outweigh any legitimate public interest in disclosure of this information. Accordingly, the Housing Authority did not improperly redact in whole the Participant Direction of Investment and discrete details concerning benefit elections and dependents in the Checklist for New Employees pursuant to section 7(1)(c).

This office requests that the Housing Authority disclose the contested details in the Checklist for Retirement Program Enrollment.

Social Security Cards and Driver's Licenses

The Housing Authority redacted in their entirety the social security cards and driver's licenses of the individuals at issue. The Housing Authority's response to this office asserted that section 7(1)(b) expressly exempts from disclosure social security numbers and driver's license numbers, and "[c]learly each document is the social security number document or driver's license of the relevant employee."²⁶ ██████████ disputed the redaction of the names in those records.

The Public Access Bureau has previously determined that "[d]isclosure of a social security card, even with the social security number redacted, compromises the card holder's identity for purposes of identity theft." Ill. Att'y Gen. PAC Req. Rev. Ltr. 30407, issued June 9, 2015, at 4. Because release of a social security card would constitute a clearly unwarranted invasion of personal privacy, this office has concluded that social security cards are exempt in whole pursuant to section 7(1)(c). Ill. Att'y Gen. PAC Req. Rev. Ltr. 30407, at 5. Disclosure of a person's driver's license, even if mostly redacted, similarly compromises the license holder's identity for purposes of identity theft. Driver's licenses contain not only a person's license number but other highly personal information, such as a person's home address and birthdate, which would constitute a clearly unwarranted invasion of personal privacy if disclosed. Accordingly, the Housing Authority did not improperly redact the social security cards and driver's licenses pursuant to section 7(1)(c).

²⁶Letter from ██████████ to AAG Teresa Lim, PAC (November 7, 2022), at 7.

Middle Initials of Employee Names

The Housing Authority stated that it redacted the middle initials of the individuals at issue because of concerns of privacy and identity theft. In particular, the Housing Authority asserted that disclosure of the middle initials "significantly increases the chance" that someone's identity could be stolen.²⁷ It contended that the middle initials are exempt from disclosure under the balancing test of section 7(1)(c):

The middle initial of each employee is highly personal as it identifies that specific person. Identification of that specific person is information that is relevant when considering the issue of identity theft and what information is needed to commit identity theft. A reasonable person would find the disclosure of the middle initial of that person's name in this age of identity theft would outweigh the public interest in obtaining this information.^[28]

Additionally, the Housing Authority contended that middle initials constitute a "unique identifier" exempt from disclosure under section 7(1)(b): "With the advent of 1.4 million cases of identity theft in 2021, privacy expectations today are clearly different than when *Lieber* was decided. An individual's middle initial is clearly a unique identifier of the individual."²⁹ In support of that claim, the Housing Authority cited *Timpone v. Illinois Student Assistance Comm'n*, 2019 IL App (1st) 181115, 147 N.E.3d 873 (2019), among other cases. The Housing Authority argued that "*Timpone* held even though names were not expressly identified in Section 2 (c-5), the examples cited in this section are not inclusive."³⁰ It contended that names may constitute private information depending on the circumstances and that "the request must be considered in context in determining whether the personal information requested is nonexempt basic identification subject to disclosure or information of a confidential or private nature[.]"³¹

²⁷Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 5.

²⁸Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 6.

²⁹Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 5.

³⁰Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 5.

³¹Letter from Timothy F. Horning, Meyer & Horning, to Attorney Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2022), at 5.

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In reply to that answer, ██████████ maintained that names are not exempt under section 7(1)(b), and that a person's middle initial is a part of the person's name. He also argued that a person's full name "is used for the duties of the public employment, and it cannot be redacted under section 7(1)(c)."³²

Having reviewed the Housing Authority's response and cited case law, the Housing Authority did not demonstrate that the middle initial of a person's name constitutes a "unique identifier" within the scope of section 7(1)(b). The Attorney General has previously issued a binding opinion concluding that the names of students enrolled at a university did not constitute "private information" under the 7(1)(b) exemption. In reaching that conclusion, this office observed: "Section 7(1)(b) exempts only private information, and nothing in that definition or in reading FOIA as a whole suggests that a person's name, or basic identification, is private information." Ill. Att'y Gen. Pub. Acc. Op. No. 12-003, issued January 18, 2012, at 7.

In *Timpone v. Illinois Student Assistance Comm'n*, 2019 IL App (1st) 181115, ¶41, 147 N.E.3d 873, 887 (2019), the Illinois Appellate Court concluded that names may be withheld under section 7(1)(b) if their disclosure would reveal an individual's personal financial information. In that case, the Illinois Student Assistance Commission (ISAC) denied a FOIA request seeking, in relevant part, the names of all students who received a Monetary Award Program (MAP) grant in 2015, asserting that the information constituted private information. *Timpone*, 2019 IL App (1st) 181115, ¶7, 147 N.E.3d at 878. The court determined that the ruling in *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 414, 680 N.E.2d 374, 380 (1997), which also considered the disclosure of names, was not dispositive because that case involved different statutory language and circumstances. *Timpone*, 2019 IL App (1st) 181115, ¶35, 147 N.E.3d at 885. The court instead found the exemption for "personal financial information" under section 2(c-5) to be most relevant. *Timpone*, 2019 IL App (1st) 181115, ¶26, 147 N.E.3d at 884. Because ISAC posted "detailed personal income information of MAP applicants and recipients" on its website, the court determined that "the further disclosure of the names of MAP grant recipients would invade the privacy of those individuals." *Timpone*, 2019 IL App (1st) 181115, ¶41, 147 N.E.3d at 887. Accordingly, the court concluded that the names of the 2015 MAP recipients were exempt from disclosure under section 7(1)(b). *Timpone*, 2019 IL App (1st) 181115, ¶41, 147 N.E.3d at 887.

The circumstances in this matter are distinguishable from the situation in *Timpone*. Here, the contested records do not contain personal financial information with the exception of certain limited documents discussed above. A person's resume and employment application, for instance, do not reveal specific details about the individual's personal finances

³²Letter from ██████████ to AAG Teresa Lim, PAC (November 7, 2022), at [8].

and are not otherwise replete with other unique identifiers, such as those enumerated in section 2(c-5). The contested records instead mostly contain information that bear on the individual's qualifications and ability to perform the public duties assigned to a position. In contrast to personal financial information, information pertaining to the performance of a public employee's public duties are generally subject to disclosure under FOIA. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014. The Housing Authority did not demonstrate that the middle initials in this context would reveal unique identifiers as defined in FOIA. *Compare to Timpone*, 2019 IL App (1st) 181115, ¶41, 147 N.E.3d at 887 (names of recipients of financial aid exempt under section 7(1)(b) because disclosure would reveal personal financial information about their incomes and family members' incomes posted on ISAC's website). Accordingly, the Housing Authority did not sustain its burden of showing by clear and convincing evidence that a person's middle initial constitutes "private information" within the scope of section 7(1)(b).

The Housing Authority also did not illustrate that a person's middle initial reveals highly personal information, the disclosure of which would cause a clearly unwarranted invasion of personal privacy. The middle initials of elected officials' and public employees' names are often disclosed in documents and materials that are shared with the public. The Illinois General Assembly posts, for instance, the full names of all its members on its website, including the members' middle initials.³³ Although a middle initial reduces the number of people who share the same name, the Housing Authority's assertion that disclosure of a middle initial would significantly increase the risk of identity theft is speculative. Further, withholding a portion of a person's name would lead to absurd results, such as the public having no right to learn the full names of government employees or elected officials. *See Lieber*, 176 Ill.2d at 412, 680 N.E.2d at 379. There is a legitimate public interest in knowing the complete and accurate names of public employees and officials that outweighs the subjects' right to privacy in their middle initials. Under these circumstances, the Housing Authority did not demonstrate by clear and convincing evidence that the middle initials are exempt from disclosure pursuant to section 7(1)(c). This office requests that the Housing Authority disclose the middle initials of the individuals in the records.

³³Illinois General Assembly, Current House Members, 103rd General Assembly, <https://www.ilga.gov/house/> (last visited June 23, 2023); Illinois General Assembly, Current Senate Members, 103rd General Assembly, <https://www.ilga.gov/senate/> (last visited June 23, 2023).


Mr. David Siegel

June 23, 2023

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



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Supervising Attorney
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