



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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March 26, 2025

Via electronic mail

Mr. Ronald Roenigk
Publisher, Inside Publications
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Via electronic mail

Mr. Peter Strazzabosco
Deputy Commissioner
Department of Planning and Development
City of Chicago
121 North LaSalle
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RE: FOIA Request for Review – 2025 PAC 85045; 2025 PAC 85216

Dear Mr. Roenigk and Mr. Strazzabosco:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)).

On January 3, 2025, Mr. Ronald Roenigk submitted a FOIA request to the City of Chicago (City) Department of Planning and Development (Department) seeking copies of all communications among four named individuals from December 10, 2024, through January 2, 2025. On January 17, 2025, the Department provided responsive records but redacted some information pursuant to sections 7(1)(f) and 7(1)(m) of FOIA.¹ On January 8, 2025, Mr. Roenigk submitted another FOIA request to the Department seeking an unredacted copy of a specific memo from the City's law department that was sent on April 18, 2024. On January 27,

¹ 5 ILCS 140/7(1)(f), (1)(m) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025.

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2025, the Department denied that request pursuant to section 7(1)(m). On January 31, 2025, Mr. Roenigk submitted Requests for Review challenging the redactions in the provided records.

On February 14, 2025, this office forwarded copies of the Requests for Review to the Department and asked it to provide unredacted copies of the records, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On February 25, 2025, this office received the requested materials. On March 3, 2025, this office forwarded a copy of the Department's response to Mr. Roenigk; he replied on March 5, 2025.

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 redacts records "has the burden of proving by clear and convincing evidence" that the redacted information is 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)(f) of FOIA

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (2003). Section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248. The exemption does not exempt from disclosure purely factual material but rather "[o]nly those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 24 (quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (2010)).

The Public Access Bureau has previously determined that e-mails in which a mayor and alderman conferred to formulate action constituted intra-agency communications within the scope of the section 7(1)(f). Ill. Att'y Gen. PAC Req. Rev. Ltr. 69562, issued March 23, 2022 (discussion concerning an already passed ordinance that also included an intertwined forward-looking component exempt from disclosure under section 7(1)(f)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 65053, issued February 17, 2021 (portions of e-mails between mayor and alderman reflecting predecisional formulation of action within scope of section 7(1)(f)).

In its response to this office, the Department contended that portions of the contested records are "deliberative and pre-decisional emails between City staff members" that are exempt from disclosure under section 7(1)(f).² Addressing the records provided in response to the January 3, 2025, request, the Department asserted that one of the e-mails (page 3), a communication between Department staff and the director of zoning and infrastructure for the 2nd Ward,³ fell within the scope of the exemption because the individuals "discuss[ed] the proper interpretation of rules and procedures for the Zoning Board of Appeals (ZBA)."⁴ The Department also stated it redacted some e-mails (pages 23-24, 31, 34, 36-42) between Department staff and staff members of other city agencies because they involved predecisional discussions of pending FOIA requests.

In reply to that answer, Mr. Roenigk questioned whether the e-mail on page 3 of the records fell within the scope of section 7(1)(f) as an intra- or inter-agency deliberative communication. He contended, in relevant part:

Neither the author or the recipients of the email are appointed members of the Chicago Zoning Board of Appeals. The Department also cannot identify a decision made by the Chicago Zoning Board of Appeals that was informed in any way by their chatter. They have no reporting relationship, or statutory authority to advise the Chicago Zoning Board of Appeals. There is also no indication that the Chicago Zoning Board of Appeal requested or in any way solicited their opinion on the matter.^[5]

Based on this office's review of an unredacted copy of the records, most of the redacted information in the e-mails consists of deliberations among Department staff concerning how to respond to FOIA requests. These e-mails reveal the Department preparing responses and consulting with other city departments, such as the Department of Technology and Innovation, as it formulated action. While the e-mails contain some factual information, those facts are

²Letter from Peter Strazzabosco, Deputy Commissioner, Department of Planning and Development, City of Chicago, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (February 23, 2025), at [1].

³The e-mail on page 3 is also reflected on page 6 and other pages of the records.

⁴Letter from Peter Strazzabosco, Deputy Commissioner, Department of Planning and Development, City of Chicago, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (February 23, 2025), at [1].

⁵Letter from Ronald Roenigk, Publisher, Inside Publications, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (March 6, 2025), at [1].

inextricably intertwined with the Department's deliberations. Accordingly, this office concludes that the e-mails concerning pending FOIA requests constitute predecisional, deliberative material within the scope of section 7(1)(f).

As to the remaining e-mails concerning the Zoning Board of Appeals (Board), this office has confirmed that they reveal Department staff deliberating on the proper rules and procedures of the Board. These communications show staff members expressing opinions and gathering input as the Department assessed how to appropriately apply the rules and procedures to zoning matters presented to the Board. This office has confirmed that the e-mail sent from the director of zoning and infrastructure for the 2nd Ward reveals the Department and alderman's office conferring on the proper interpretation of the rules. Although the e-mail does not include any members of the Board, neither the Department nor the alderman's office was required to serve as advisors to the Board for their communications concerning zoning issues to constitute inter-agency communications. The Department and the alderman's office are within City government, and the two entities appeared to share substantially the same interests in the proper interpretation of the zoning matter at issue and deliberated collaboratively. Because the e-mails reveal preliminary deliberations between the two entities, this office concludes that the e-mails constitute inter-agency predecisional communications that are exempt from disclosure under section 7(1)(f).

Section of 7(1)(m) of FOIA

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney
* * * representing the public body that would not be subject to
discovery in litigation, and materials prepared or compiled by or
for a public body in anticipation of a criminal, civil or
administrative proceeding upon the request of an attorney advising
the public body[.]

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1997). A party asserting that a communication to an attorney is protected by the attorney-client privilege must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2006). Moreover, "[t]he privilege applies not only to the communications of a client to his attorney, but also to the advice of an attorney to his client." *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (1990).

However, "[t]he privilege protects communications, not facts." *Specht v. Google, Inc.*, 268 F.R.D. 596, 601 (N.D. Ill. 2010). Further, "correspondence that merely notifies someone of scheduling matters, [citation], or which updates the recipient" is not privileged. *Towne Place Condominium Ass'n v. Philadelphia Indemnity Insurance Co.*, 284 F. Supp. 3d 889, 894 (N.D. Ill. 2018); *see also Digital Vending Services International, Inc. v. University of Phoenix, Inc.*, No. 2:09-CV-555, 2013 WL 1560212, at *6 (E.D. Va. 2013) (e-mails discussing status of preparation for oral arguments in federal court are "simply status updates and no legal advice is given by counsel. Therefore, these communications are not privileged.").

The Department asserted it properly redacted communications between City attorneys and staff members from the Department and other city agencies because they concerned matters in which legal advice or guidance was sought or given. The Department stated that a portion of those e-mails (pages 1-2, 4-5, 7, 10, 12) consisted of the Department's zoning administrator seeking and receiving "legal guidance regarding ZBA rules and procedures" and "legal guidance regarding a planned City Council resolution."⁶ The remaining e-mails (pages 31-36, 39-42) concerned City employees seeking "legal guidance regarding a pending FOIA request."⁷

In reply to that answer, Mr. Roenigk contended that communications that revealed the specific communications of legal counsel may fall within the scope of section 7(1)(m), but "redacting the entirety of the communication including elements that are not specific non-discoverable legal guidance is an abuse of the privilege[.]"⁸ He questioned whether legal advice was sought in one of the e-mail chains (pages 2, 5, 7), asserting that the zoning administrator addressed his question to the alderman's assistant and a non-attorney staff member while an attorney was merely copied. He similarly questioned whether legal advice was sought in another email chain (pages 10-11): "The email is not a request for legal counsel 'When is Fairbanks resolution expected?'. It tests any sense of rational thought to see it as a request for legal counsel. The decision had been made nearly 3 months earlier, and [the zoning administrator] had no responsibility for drafting the resolution."⁹

⁶Letter from Peter Strazzabosco, Deputy Commissioner, Department of Planning and Development, City of Chicago, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (February 23, 2025), at [1].

⁷Letter from Peter Strazzabosco, Deputy Commissioner, Department of Planning and Development, City of Chicago, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (February 23, 2025), at [2].

⁸Letter from Ronald Roenigk, Publisher, Inside Publications, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (March 6, 2025), at [2].

⁹Letter from Ronald Roenigk, Publisher, Inside Publications, to Teresa Lim, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (March 6, 2025), at [2].

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This office's review of the April 18, 2024, e-mail containing the memo responsive to the January 8, 2025, request confirmed that the e-mail contains legal guidance from a City attorney to the Department concerning a zoning-related issue. Although the Department noted that it inadvertently disclosed a portion of the e-mail, there is no indication that the remaining contents have been disclosed to any third parties to waive the attorney-client privilege. Accordingly, the Department did not improperly redact the e-mail pursuant section 7(1)(m).

As discussed above, most of the records provided in response to the January 3, 2025, request consisted of deliberative discussions of pending FOIA requests and the rules and procedures of the Board. These e-mails reveal Department staff members seeking the input and opinions of other City departments, including the legal guidance of attorneys in the City's law department. For the reasons described above, these communications (e.g., pages 2, 5, 7) fall within the scope of section 7(1)(f) because they consist of inter- and intra-agency communications in which action was formulated.

However, the Department did not demonstrate that the redacted line in the e-mail on page 10 reveals the substance of any legal guidance sought or given related to the referenced resolution. Although the e-mail at issue involved a communication from a City attorney, a public body that withholds records under section 7(1)(m) "can meet its burden only by providing some *objective* indicia that the exemption is applicable under the circumstances." (Emphasis in original.) *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 470 (2003). Because Department did not provide sufficient information to show that the line reflects legal guidance sought or given, the Department did not show by clear and convincing evidence that the information is exempt from disclosure pursuant to section 7(1)(m).

This office requests that the Department provide an unredacted copy of page 10 of the January 3, 2025, records.

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,



TERESA LIM
Deputy Bureau Chief
Public Access Bureau

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