



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 25, 2012

PUBLIC ACCESS OPINION 12-009
(Request for Review 2012 PAC 18530)

FREEDOM OF INFORMATION ACT:
Disclosure of All Non-Exempt Portions
of Requested Records

Ms. MaryLynn Zajdel
2524 Pebble Creek Drive
Lisle, Illinois 60532

Mr. William Weidner
Freedom of Information Officer
Forest Preserve District of DuPage County
3S580 Naperville Road
P.O. Box 5000
Wheaton, Illinois 60189-8761

Ms. Linda Klett
Deputy Freedom of Information Officer
Forest Preserve District of DuPage County
3S580 Naperville Road
P.O. Box 5000
Wheaton, Illinois 60189-8761

Dear Ms. Zajdel, Mr. Weidner and Ms. Klett:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2010), as amended by Public Act 97-579, effective August 26, 2011). As discussed below, a FOIA requester who seeks entire documents, rather than specific information from within a document, is entitled to receive all non-exempt information in the requested records, including information that was not specifically requested. In these circumstances, a public body is not authorized to redact information from responsive records which it considers to be "outside the scope" of the FOIA request.

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BACKGROUND

On February 3, 2012, Ms. MaryLynn Zajdel submitted a FOIA request to the Forest Preserve District of DuPage County (the District) seeking copies of "any and all FOIA denial letters issued by the FPDDC which deny providing the requester copies of public records citing exemption **5 ILCS 140/7(1)(d)(vii)**,^[1] from May 1, 2011 to present, similar to the Jan 17, 2012 response letter the FPDDC issued in response to my Jan 9, 2012 FOIA request."²

On February 10, 2012, the District provided Ms. Zajdel with heavily redacted copies of four FOIA denial letters.³ The District's response to Ms. Zajdel stated that the District had redacted "[u]nique identifiers of private individuals" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011), which exempts "private information." Ms. Zajdel responded by e-mail on February 10, 2012, asking whether the District asserted section 7(1)(b) as to all of the redacted information.⁴ The District then informed Ms. Zajdel that in addition to private information, it had redacted "other information that was not germane to [her] FOI request."⁵ Ms. Zajdel replied, asking the District to provide the citation to statutory authority for redacting information that is "not germane" to a FOIA request.⁶ The District again responded that it had provided "all the information that was responsive to your

¹Section 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(d)(vii) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011) allows public bodies to withhold "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would * * * obstruct an ongoing criminal investigation by the agency that is the recipient of the request."

²E-mail from MaryLynn Zajdel to Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County (February 3, 2012, 2:55 p.m.).

³E-mail from Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County, to MaryLynn Zajdel (February 10, 2012, 4:27 p.m.).

⁴E-mail from MaryLynn Zajdel to Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County (February 10, 6:15 p.m.).

⁵E-mail from Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County, to MaryLynn Zajdel (February 13, 2012, 12:51 p.m.).

⁶E-mail from MaryLynn Zajdel to Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County (February 13, 2012, 1:25 p.m.).

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specific request. The information that was redacted (in addition to personal information) was outside the scope of your request[.]" (Emphasis in original.)⁷

On February 14, 2012, the Public Access Bureau received Ms. Zajdel's Request for Review pursuant to section 9.5 of FOIA (5 ILCS 140/9.5 (West 2010), as amended by Public Act 97-579, effective August 26, 2011).⁸ On February 23, 2012, this office forwarded a copy of Ms. Zajdel's Request for Review to the District and asked the District for unredacted copies of the letters provided to Ms. Zajdel.⁹ This office also asked the District to articulate the exemption or exemptions that the District relied upon with respect to each redaction, and the District's responded on March 5, 2012.¹⁰ On March 8, 2012, this office forwarded that response to Ms. Zajdel, except for the unredacted letters, which the District requested be kept confidential. Ms. Zajdel replied on March 9, 2012.¹¹

ANALYSIS

The sole issue in this matter is whether the City properly redacted information that it deemed to be outside the scope of Ms. Zajdel's request from the four responsive letters. Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2010)) requires each public body to "make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." Section 7(1) of FOIA (5 ILCS 140/7(1)(b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011) provides:

When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from

⁷E-mail from Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County, to MaryLynn Zajdel (February 14, 2012, 3:52 p.m.).

⁸E-mail from MaryLynn Zajdel to the Public Access Counselor, Office of the Illinois Attorney General (February 14, 2012, 4:51 p.m.).

⁹Letter from Sarah Kaplan, Assistant Attorney General, Public Access Bureau, to Linda Klett, Deputy Freedom of Information Officer, Forest Preserve District of DuPage County (February 23, 2012).

¹⁰Letter from Robert Mork, Kuhn, Mitchell, Moss, Mork & Lechowicz, LLC, to Sarah Kaplan, Assistant Attorney General, Public Access Bureau.

¹¹Letter from MaryLynn Zajdel to Sarah Kaplan, Assistant Attorney General, Public Access Bureau (March 9, 2012).

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disclosure, the public body may elect to redact the information that is exempt. *The public body shall make the remaining information available for inspection and copying.* (Emphasis added.)

These provisions require public bodies to provide all non-exempt portions of the records that respond to a FOIA request. Where a request seeks one or more entire documents, a public body may, but is not required to, redact exempt information from those documents. The public body must then release all other information in those documents, whether or not the information was particularly requested. *See Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003) ("when a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the Act applies").

In its March 5, 2012, correspondence, the District stated that it had "fully complied with the requirements of [FOIA] by furnishing Ms. Zajdel with [] all the information she specifically requested in her FOIA request." (Emphasis in original.) The District asserted that "[t]here is nothing in the Act that requires a public body to provide information not specifically requested by a requester merely because the unrelated information is contained within a particular document."

The District is correct that FOIA does not require the disclosure of clearly nonresponsive information within documents simply because some portion of that document is responsive to a request for specific information. Although no Illinois court has addressed this issue, a number of Federal courts have approved redaction of clearly nonresponsive information under the federal FOIA (5 U.S.C. § 552 (2006)). *See, e.g., ViroPharma Inc. v. Department of Health and Human Services*, ___ F. Supp. ___, ___, 2012 WL 892926, at *5 (D.D.C. March 16, 2012) ("To the extent that the incoming correspondence discusses drug products other than vancomycin [the subject of the request] * * *, it is nonresponsive and FDA is not required to release it"); *Families for Freedom v. U.S. Customs and Border Protection*, ___ F. Supp. ___, ___, 2011 WL 6780896, at *6 (Dec. 27, 2011) (holding that "because plaintiffs did not request information from 2010, that data may be redacted as non-responsive"). An Illinois court would likely interpret our FOIA in a manner consistent with the federal FOIA. *See Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 202 (Ill. App. 2004) ("We are mindful that the Illinois Act, although different from the federal statute, is patterned after that statute and that the lawmakers intended that federal case law should be used in interpreting the Act" (internal citation omitted)).

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That analysis is not persuasive in this case, however. In the federal cases cited, the FOIA requests sought specific information and the courts approved only the redaction of information that clearly had not been requested. In *ViroPharma Inc.*, the FOIA requests specifically sought information relating to only one drug – vancomycin. In considering the redactions, the court concluded that discussions in the documents relating to other drug products were nonresponsive and could be redacted from the documents. When addressing other information in the documents that related to vancomycin, however, the court noted that the FOIA request "must be read broadly", and ordered the FDA to disclose that information. *ViroPharma Inc.*, ___ F. Supp. at ___, 2012 WL 892926, at *5 (citing *Milner v. Department of the Navy*, 131 S. Ct. 1259, 1265 (2011) (FOIA strongly favors openness and "broad disclosure" with narrowly construed exemptions)). In *Families for Freedom*, the FOIA request contained multiple requests for documents, some of which "were more expansive" than others. When considering one of the "broad request[s]", the court rejected a number of the redactions proposed by U.S. Customs and Border Protection. The court allowed the agency to withhold 2010 data only because the FOIA request expressly covered 2008 and 2009 data. *Families for Freedom*, ___ F. Supp. at ___, 2011 WL 6780896, at *6. Thus, while these cases confirm that clearly nonresponsive information need not be disclosed, they also emphasize that FOIA requests must be read broadly and exemptions must be construed narrowly to ensure the release of all responsive information.

Here, Ms. Zajdel's request was for FOIA denial *letters* issued by FPDDC that contained denials based on section 7(1)(d)(vii); she specifically requested copies of the entire letters, not just those particular portions of the letters referencing section 7(1)(d)(vii). Therefore, the entire contents of those letters are responsive to the request, and the District must comply with section 7(1)'s requirement to disclose all non-exempt information in those letters.

Based on our review of the unredacted copies of the letters in question, we find that the District permissibly redacted home addresses and personal e-mail addresses pursuant to section 7(1)(b). The remaining information that the District redacted is not exempt from disclosure. Indeed, the District does not claim that it is exempt. Accordingly, the District must provide that information to Ms. Zajdel.

FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

1) On February 3, 2012, Ms. MaryLynn Zajdel submitted a FOIA request to the Forest Preserve District of DuPage County seeking all of the letters in which the District had

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denied or partially denied a FOIA request citing section 7(1)(d)(vii) from May 1, 2011 to the date of the request.

2) On February 10, 2012, the Forest Preserve District of DuPage County granted the request in part and denied it in part, providing copies of four FOIA response letters after redacting private information from the responsive letters pursuant to section 7(1)(b), as well as information that the District determined was "not germane" to Ms. Zajdel's request.

3) On February 14, 2012, the Public Access Counselor received Ms. Zajdel's Request for Review of the District's response to her FOIA request. Ms. Zajdel's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011).

4) On April 12, 2012, this office sent a letter advising the parties that it was extending the statutory period for issuing a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. The Attorney General properly extended the time to issue a binding opinion. Therefore, the Attorney General may properly issue a binding opinion with respect to the District's partial denial of Ms. Zajdel's request.

5) Based upon this office's review of the requested records, home addresses and personal e-mail addresses contained in the responsive records were properly redacted pursuant to section 7(1)(b) of FOIA. The remaining information in these records, however, is not exempt from disclosure.

Therefore, it is the opinion of the Attorney General that the Forest Preserve District of DuPage County violated section 7(1) of FOIA by redacting non-exempt information from the requested public records. Accordingly, the District is directed to take appropriate action to comply with this opinion by furnishing Ms. Zajdel with complete copies of the letters she requested, subject only to the redaction of private information pursuant to section 7(1)(b) as detailed above. Under section 9.5 of FOIA, the District must either immediately comply with this binding opinion or initiate administrative review under section 11.5 of FOIA (5 ILCS 140/11.5(f) (West 2010)).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County

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within 35 days of the date of this decision, naming the Attorney General of Illinois and Ms. MaryLynn Zajdel as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General