



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 15, 2014

PUBLIC ACCESS OPINION 14-002
(Request for Review 2014 PAC 27500)

FREEDOM OF INFORMATION ACT:
Disclosure of Invoices for Legal Services

Mr. Patrick Wade
The News-Gazette
15 East Main Street
Champaign, Illinois 61820

Mr. Todd E. Rent
Human Resources/Compliance Officer
City of Urbana
400 South Vine Street
Urbana, Illinois 61801

Dear Mr. Wade and Mr. Rent:

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 2012)). For the reasons discussed below, this office concludes that the City of Urbana improperly withheld legal billing invoices in their entirety in response to Mr. Patrick Wade's FOIA request.

BACKGROUND

On December 16, 2013, Mr. Wade, on behalf of *The News-Gazette*, submitted a FOIA request to the City of Urbana (City) seeking electronic copies of:

1. All records of payments to Corey Franklin, Whitney Cooney, the Lowenbaum Partnership, or the firm's employees or representatives within the past calendar year (including but not limited to attorneys' fees and

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reimbursement for mileage, hotel accommodations or food or drink).

2. All invoices the city has received from Corey Franklin, Whitney Cooney, the Lowenbaum Partnership, or the firm's employees or representatives within the past calendar year.¹

On December 23, 2013, as permitted by FOIA, the City extended its time for response by five business days.² On December 31, 2013, the City provided Mr. Wade with records of payments responsive to item 1 of his request. The City denied the request for the invoices referenced in item 2, however, asserting that the records are exempt from disclosure pursuant to: (1) section 7(1)(m) of FOIA (5 ILCS 140/7(1)(m) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013) (attorney-client privilege); and (2) section 7(1)(p) of FOIA (5 ILCS 140/7(1)(p) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013) (records relating to collective negotiating matters).³

On January 3, 2014, the Public Access Bureau received Mr. Wade's Request for Review in which he disputed the City's denial of invoices from the Lowenbaum Partnership.⁴ On January 13, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the City and asked the City to provide a written explanation of its basis for asserting the exemptions and to furnish unredacted copies of the records it withheld.⁵ On January 30, 2014, the City forwarded a written response explaining its assertion of sections 7(1)(m) and 7(1)(p),

¹Letter from Patrick Wade, Reporter, *The News-Gazette*, to Phyllis Clark, City of Urbana (December 16, 2013). "Lowenbaum Partnership" refers to the law firm Lowenbaum Partnership, L.L.C. Corey Franklin and Whitney Cooney are attorneys employed by that firm. See <http://www.lowenbaumlaw.com/>. The "invoices" discussed in this opinion are bills for legal services from that firm, including Attorneys Franklin and Cooney.

²Letter from Todd E. Rent, Human Relations/Compliance Officer, City of Urbana, to Patrick Wade, *The News-Gazette* (December 23, 2013).

³E-mail from Todd E. Rent, Human Relations/Compliance Officer, City of Urbana, to Patrick Wade, *The News-Gazette* (December 31, 2013).

⁴Letter from Patrick Wade, *The News Gazette*, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (January 2, 2014).

⁵Letter from Christopher Boggs, Assistant Attorney General, Public Access Bureau, to Todd Rent, Compliance Officer, City of Urbana (January 13, 2014).

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and, in addition, asserted that the withheld records are also exempt from disclosure pursuant to section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013).⁶

On January 31, 2014, the Public Access Bureau forwarded a copy of the City's response to Mr. Wade, and notified him of his opportunity to reply under section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2012)).⁷ On February 3, 2014, Mr. Wade replied, in relevant part:

In the city's response, it adds an exemption – 7(1)(n) – which it did not state in its original denial of my records request. In any case, this exemption covers "records relating to a public body's adjudication of employee grievances or disciplinary cases." Billing invoices are not created as part of the adjudicatory process and therefore should not be covered by this exemption.⁸

On February 3, 2014, the City furnished this office with a supplemental response that included representative sample copies of unredacted legal billing invoices.⁹ On February 24, 2014, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2012)).¹⁰

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying."

⁶Letter from Todd Rent, Human Relations/Compliance Officer, City of Urbana, to Office of the Attorney General, Public Access Bureau, Attn. Christopher R. Boggs (January 30, 2014).

⁷Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, to Patrick Wade (January 31, 2014).

⁸E-mail from Patrick Wade, Reporter, *The News-Gazette*, to Christopher Boggs (February 3, 2014).

⁹E-mail from Todd E. Rent, Human Relations Officer, City of Urbana, to Christopher Boggs (February 3, 2014).

¹⁰Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, to Patrick Wade, *The News-Gazette*, and Todd E. Rent, Human Resources/Compliance Officer, City of Urbana (February 24, 2014).

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Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997). Further, section 7(1) of FOIA (5 ILCS 140/7(1) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013) provides that "[w]hen 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 disclosure, the public body may elect to redact the information that is exempt[,]" but "shall make the remaining information available for inspection and copying."

Section 7(1)(m) of FOIA

The records at issue here are billing invoices that the City received from the Lowenbaum Partnership law firm for calendar year 2013. The City withheld these invoices citing section 7(1)(m) of FOIA, which exempts from disclosure communications between a public body and an attorney which would not be subject to discovery in litigation, including communications covered by the attorney-client privilege. The City has not sustained its burden of demonstrating that the invoices are exempt from disclosure in their entireties pursuant to section 7(1)(m) of FOIA.

The Illinois Supreme Court has summarized the attorney-client privilege as:

(1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are permanently protected, (7) from disclosure by himself or the legal advisor, (8) except [if] the protection [is] waived. *Illinois Education Association v. Illinois State Board of Education*, 204 Ill. 2d 456, 467 (2003).

The Supreme Court has specifically concluded that "information regarding a client's fees generally is not a 'confidential communication' between an attorney and client, and thus is not protected by the attorney client privilege. [Citations.] * * * The payment of fees is merely

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incidental to the attorney-client relationship and typically does not involve the disclosure of confidential communications arising from the relationship." *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 203-04 (1997).

The court in *Ulrich* also acknowledged, however, that "[c]ertain types of billing records may contain explanations for legal fees and may indicate the type of work done or matters discussed between the attorney and client. As such, they could reveal the substance of confidential attorney-client discussions, and be subject to valid claims of attorney-client privilege or exemption under [FOIA]." *Ulrich*, 294 Ill. App. 3d at 201; *see also Matter of Witnesses Before the Special March 1980 Grand Jury*, 729 F.2d 489, 495 (7th Cir. 1984) ("information about a known client's fees is privileged only if, under the circumstances, its disclosure would in effect reveal confidential communications between the attorney and client.").

The City asserts that the invoices generated by the Lowenbaum Partnership are exempt from disclosure in their entirety because, pursuant to *Ulrich*, these records could reveal confidential attorney-client communications. This office has previously determined, however, that "the court in *Ulrich* drew a distinction between descriptions of work that could reveal privileged information, and fee information which is not privileged, and concluded that the latter must be produced." Ill. Att'y Gen. Pub. Acc. Op. No. 12-005, issued March 12, 2012, at 4.

The billing invoices provided by the City document the dates on which legal services were performed, the initials of the attorney performing the work, the numbers of hours billed, and the corresponding amount billed for each entry. Such information would not reveal any privileged attorney-client communication, and therefore the information is not exempt from disclosure under section 7(1)(m).

Each billing entry, however, also provides a description of the work performed. Some entries identify subjects of research or details of other tasks performed, the identities of specific individuals with whom attorneys met, and topics of discussion during those meetings. In contrast, other billing entries contain only general descriptions of services performed, such as holding a telephone conference, exchanging emails, or drafting and revising a memo. To the extent that individual billing entries include detailed descriptions of legal services that reveal privileged information, those descriptions may be redacted from the invoices. General descriptions of tasks that an attorney performed that would not reveal any privileged information, however, may not be withheld. Similarly, the dates on which services were performed, the attorneys' initials, the time spent on the tasks described, and the amounts billed do not disclose privileged material and must be produced.

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Section 7(1)(p) of FOIA

The City has also asserted that the requested legal billing invoices are exempt under section 7(1)(p) of FOIA, which exempts from disclosure records "relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying."

In an opinion discussing the exception for collective negotiating matters in the Open Meetings Act (Ill. Rev. Stat. 1979, ch. 102, par. 42a, now codified at 5 ILCS 120/2a (West 2012)), Attorney General Scott noted that "the fact that the Illinois legislature has specifically provided an exception for [closed meetings concerning] collective negotiating matters indicates a recognition of the view that the very nature of meaningful collective bargaining requires that certain phases of the negotiating process must be conducted privately." 1980 Ill. Att'y Gen. Op. 105, 110. Section 7(1)(p) of FOIA serves the corollary purpose of exempting from disclosure records pertaining to such aspects of the collective bargaining process as the negotiating of wages and salaries, terms and conditions of employment, working conditions, and similar matters which are subject to collective bargaining.

The fact that a public body has secured and paid for the services of an attorney or attorneys to assist with collective bargaining matters, however, is not information pertaining to the collective bargaining process, as such. As discussed with respect to section 7(1)(m), if the invoices contain specific information regarding the collective bargaining process, such as a description of an issue that the public body is considering raising in the negotiations, then that information may be redacted pursuant to section 7(1)(p). General descriptions of services that do not reveal such information, as well as the number of attorney hours expended, hourly rates, and the amounts billed, are not exempt from disclosure. Therefore, the City has not sustained its burden of demonstrating that the legal billing records are exempt from disclosure under section 7(1)(p) in their entirety.

Section 7(1)(n) of FOIA

In its response, the City further asserted that the billing invoices, or portions of the invoices, are exempt from disclosure pursuant to section 7(1)(n), because "Lowenbaum Partnership is providing counsel to the City on a pending disciplinary matter that may proceed to arbitration and/or a Civil Service Hearing, as well as other pending investigations that may result in discipline, terminations, and/or civil litigation."¹¹ Section 7(1)(n) exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary

¹¹Letter from Todd Rent, Human Relations/Compliance Officer, to Office of the Attorney General, Public Access Bureau, Attn. Christopher R. Boggs (January 30, 2014).

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cases[.]" Although this exemption was not cited by the City in its denial of Mr. Wade's FOIA request, and therefore could be considered to have been waived, we have elected nonetheless to address its possible application to the requested records.

In *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶¶2-3, __N.E.3d__ (2014), the Illinois Appellate Court considered whether the Chicago Police Department properly withheld complaint register or "CR" files documenting investigations of citizen complaints against police officers pursuant to section 7(1)(n). The court noted that the term "adjudication" is undefined in FOIA, but is "generally understood to involve a formalized legal process that results in a final and enforceable decision." *Kalven*, 2014 IL App (1st) 121846, ¶13, __N.E.3d__. The court held that CRs are neither adjudicatory nor related to any formalized legal process that may eventually result from the investigation:

While information obtained during the investigation may potentially be introduced during adjudication of a disciplinary case, a CR does not initiate that adjudication, nor can CRs themselves be considered disciplinary. Indeed, if a complaint is unsubstantiated, then no disciplinary adjudication ever occurs and that CR necessarily cannot 'relate to' an adjudication. This is a further indication that CRs are distinct from disciplinary adjudications and therefore not encompassed by section 7(1)(n). *Kalven*, 2014 IL App (1st) 121846, ¶20, __N.E.3d__.

Although the City contends that the billing invoices at issue in this matter concern a pending disciplinary matter that could result in an adjudication such as arbitration, the City has not asserted that any such adjudication has been initiated. Moreover, even if the billing invoices concern legal services provided in connection with a disciplinary matter that eventually results in an adjudication within the scope of section 7(1)(n), the billing invoices themselves would not be part of or related to the adjudicatory process. The invoices exist independently of any possible future adjudication. Therefore, the invoices are not exempt from disclosure under section 7(1)(n) of FOIA.

FINDINGS AND CONCLUSIONS

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

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1) On December 16, 2013, Mr. Patrick Wade, on behalf of *The News-Gazette*, submitted a two-part FOIA request to the City of Urbana seeking copies of records, including invoices for legal services submitted by a specific law firm or its attorneys for the past calendar year.

2) On December 31, 2013, the City denied the request for the invoices asserting that the records are exempt from disclosure under sections 7(1)(m) and 7(1)(p) of FOIA.

3) On January 2, 2014, Mr. Wade submitted a Request for Review of the City's partial denial of his FOIA request. Mr. Wade's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).

4) On January 13, 2014, this office forwarded a copy of Mr. Wade's Request for Review to the City and asked the City to provide a written explanation of its assertion of the section 7(1)(m) and 7(1)(p) exemptions and copies of the records it withheld.

5) On January 30, 2014, the City responded to this office regarding its assertion of the section 7(1)(m) and 7(1)(p) exemptions, and further asserted that the invoices are also exempt from disclosure pursuant to section 7(1)(n) of FOIA.

6) On February 3, 2014, Mr. Wade replied to the City's response by disputing the applicability of the section 7(1)(m), 7(1)(p), and 7(1)(n) exemptions.

7) On February 3, 2014, the City provided this office with a representative sample of the requested legal billing invoices.

8) On February 24, 2014, the Public Access Counselor extended the time to issue a binding opinion by 30 business days, to April 15, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

9) Based upon a review of a representative sample of the legal billing invoices provided by the City, descriptive entries contained in those records describing services rendered which reveal privileged attorney-client communications may be redacted pursuant to section 7(1)(m) of FOIA. However, the remaining information contained in the legal billing invoices, including general descriptions of the nature of the services performed by an attorney, dates on which work was performed, the initials of the attorney performing the work, the numbers of hours billed, and the corresponding dollar amount billed for each entry, may not properly be withheld under section 7(1)(m).

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10) With respect to the applicability of section 7(1)(p), the fact that a public body has secured and paid for the services of an attorney or attorneys to assist it with collective bargaining matters is not information pertaining to the collective bargaining process, as such. Accordingly, the invoices may not be withheld in their entireties under section 7(1)(p). To the extent that descriptive entries contained in those records describe services rendered and contain specific information regarding the collective bargaining process, then that information may be redacted pursuant to section 7(1)(p) of FOIA.

11) Lastly, the legal billing invoices are not "records relating to a public body's adjudication of employee grievances or disciplinary cases," for purposes of section 7(1)(n) of FOIA. Consequently, the invoices are not exempt from disclosure under that section.

Therefore, it is the opinion of the Attorney General that the City has violated sections 3(a) and 7(1) of FOIA by withholding the legal billing invoices from the Lowenbaum Partnership in their entireties, and by failing to disclose non-exempt information in those invoices to Mr. Wade. Accordingly, the City is directed to take immediate and appropriate action to comply with this opinion by furnishing copies of the invoices to Mr. Wade, after redacting only those portions of any descriptions of legal services that reveal: (1) information subject to attorney-client privilege; or (2) specific information regarding the collective bargaining process.

This opinion shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Patrick Wade as defendants. See 5 ILCS 140/11.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
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