



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 23, 2015

Public Access Opinion 15-002
(Request for Review – 2014 PAC 31746)

FREEDOM OF INFORMATION ACT:
Home Rule Ordinance Does Not Supersede FOIA;
Negotiated Terms of Contracts with Public Bodies
Do Not Constitute Trade Secrets; Correspondence
With Third Parties Is Not Part of A Public Body's
Deliberative Process

Ms. Stacy St. Clair
Chicago Tribune
435 North Michigan Avenue, Fourth Floor
Chicago, Illinois 60611

Ms. Debbie Drehobl
Village Clerk
Village of Rosemont
9501 W. Devon Avenue
Rosemont, Illinois 60018

Dear Ms. St. Clair and Ms. Drehobl:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons discussed below, this office concludes that the Village of Rosemont (Village) violated the requirements of FOIA by denying, in part, Ms. Stacy St. Clair's request for copies of certain Village contracts and related correspondence with a third party who represented independent interests.

BACKGROUND

On behalf of the *Chicago Tribune*, Ms. St. Clair submitted an undated FOIA request to the Village seeking "all documents related to singer Garth Brooks['] appearance at the All State [sic] Arena."¹ The Allstate Arena "is an arena-sized entertainment venue owned and operated by the Village of Rosemont."² Ms. St. Clair's request included, but was not limited to:

- All contracts between the arena/city and any of the following: Mr. Brooks, Mr. Brooks' representatives, Ben Farrell, Aiken Productions and/or Varnell Enterprises[.]
- All contracts related to Mr. Brooks' appearance.
- All correspondence between the arena/city and any of the following: Mr. Brooks, Mr. Brooks' representatives, Ben Farrell, Aiken Productions and/or Varnell Enterprises[.]
- Any emails sent by city/arena employees to : Mr. Brooks, Mr. Brooks' representatives, Ben Farrell and/or Varnell Enterprises[.]
- Any emails received by city/arena officials from: Mr. Brooks, Mr. Brooks' representatives, Ben Farrell, Aiken Productions and/or Varnell Enterprises[.]
- Any contracts or written agreements mentioning Trisha Yearwood[.]
- All expenses incurred in connection to Mr. Brooks' concerts and or marketing the venue to Mr. Brooks or his representatives.
- All documents – including, but not limited to, emails and memorandum – sent or received by Mayor Stephens, Pat Nagle and/or village trustees that mention Mr. Brooks, his representatives, his tour or his Rosemont concerts.^{3]}

¹FOIA request from Stacy St. Clair to Debbie Dreihobl, Rosemont Village Hall (undated).

²Letter from Peter Coblenz, Rosenthal, Murphey, Coblenz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 1.

³FOIA request from Stacy St. Clair to Debbie Dreihobl, Rosemont Village Hall (undated).

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On October 6, 2014, the Village provided Ms. St. Clair with some responsive records.⁴ However, the Village redacted certain financial information from the documents provided and withheld other records, citing as its bases sections 7(1)(b), 7(1)(f), and 7(1)(g) of FOIA (5 ILCS 140/7(1)(b), (1)(f), (1)(g) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). Specifically, the Village withheld "emails in which ticket pricing for the Garth Brooks concerts was being formulated and decided"⁵ pursuant to section 7(1)(f) of FOIA, which exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]" The Village also redacted rental amounts from the contract and other records it provided pursuant to section 7(1)(g) of FOIA, which exempts from disclosure certain trade secrets and commercial or financial information. The Village's response stated:

[t]he amounts that were to be paid as rent for use of the Allstate Arena for presentation of the Garth Brook's [sic] concerts, and amounts to be rebated to the concert promoter for each show presented at the Allstate Arena, have been redacted from the contract for the concerts and from the settlement statement. * * * [T]his information is considered to be highly sensitive commercial or financial information, the disclosure [of] which would cause substantial competitive harm to the Allstate Arena's concert business where it competes with privately owned venues, and to the competitive and proprietary interests of the artist and promoter.^{16]}

In addition, the Village's response stated that personal telephone numbers and e-mail addresses were redacted from the records pursuant to section 7(1)(b) of FOIA.⁷

⁴Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Stacy St. Clair, *Chicago Tribune* (October 6, 2014), at 1.

⁵Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Stacy St. Clair, *Chicago Tribune* (October 6, 2014), at 1.

⁶Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Stacy St. Clair, *Chicago Tribune* (October 6, 2014), at 1.

⁷Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Stacy St. Clair, *Chicago Tribune* (October 6, 2014), at 1.

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On October 10, 2014, the Public Access Bureau received Ms. St. Clair's Request for Review in which she disputed the Village's bases for its partial denial of her FOIA request.⁸ Ms. St. Clair alleged that: (1) the responsive records should include hospitality-related riders; (2) factual information contained in e-mails was impermissibly withheld under section 7(1)(f); and (3) section 7(1)(g) is inapplicable to the information redacted from public contracts.⁹ Ms. St. Clair contended, "[j]ust like in any public contract, the public has the right to see figures that could shed light on whether the village cut a good deal or bad deal. The public cannot judge the effectiveness of its leaders without these most basic of details."¹⁰

On October 21, 2014, the Public Access Bureau sent a copy of the Request for Review to the Village's attorney and requested unredacted copies of the records at issue for this office's confidential review, together with a detailed explanation of the factual and legal bases for asserting the cited exemptions.¹¹ The Village, through its attorney, furnished those materials on November 7, 2014, noting that its assertion of section 7(1)(b) was uncontested by Ms. St. Clair, and reiterating its position that the other information that it redacted or withheld is exempt from disclosure pursuant to sections 7(1)(f) or 7(1)(g) of FOIA.¹²

Additionally, with regard to questions regarding the completeness of its response, the Village stated that "[t]here was no hospitality-related rider to the * * * Allstate Arena License Agreement * * * that could be produced to the requester because the artist ultimately decided to use his own caterer for such backstage hospitality items."¹³ The Village also furnished an affidavit from Mr. Patrick Nagle, General Manager of the Allstate Arena, asserting that Allstate Arena's competitive position will be harmed if it is compelled to disclose the financial terms of its agreements, as will the "taxpayers and citizens of the Village of Rosemont, and the local

⁸E-mail from Stacy St. Clair, *Chicago Tribune*, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 10, 2014).

⁹E-mail from Stacy St. Clair, *Chicago Tribune*, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 10, 2014).

¹⁰E-mail from Stacy St. Clair, *Chicago Tribune*, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 10, 2014).

¹¹Letter from Josh Jones, Assistant Attorney General, Public Access Bureau, to Pete Coblentz, Rosenthal, Murphey, Coblentz & Donahue, Law Offices (October 21, 2014).

¹²Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014).

¹³Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 6.

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businesses that enjoy increased economic activity as a result of the acts booked at the Allstate Arena[.]” Nagle Aff. ¶¶9-11.

On November 10, 2014, this office sent a copy of the Village's response to Ms. St. Clair.¹⁴ On November 14, 2014, this office received Ms. St. Clair's reply. In addition to maintaining her contention that the Village had improperly asserted sections 7(1)(f) and 7(1)(g), Ms. St. Clair also questioned the Village's assertion that it does not possess hospitality-related riders, alleging that the Village's attorney had told her in an earlier telephone conversation that a rider was included in the responsive records and "that [she] must have overlooked it."¹⁵

On November 20, 2014, this office received a supplemental response in which the Village asserted that:

the redacted and withheld confidential financial or proprietary information[] that is the subject of this Request for Review is exempt from disclosure pursuant to Village of Rosemont Ordinance No. 2014-11-12, which was adopted on November 12, 2014 by the Board of Trustees of the Village of Rosemont pursuant to the Village's home rule authority under Article VII, Section 6(a) of the Illinois Constitution.¹⁶

This office sent a copy of the Village's supplemental response to Ms. St. Clair on November 26, 2014.¹⁷ On December 5, 2014, this office received a reply from Daniel M. Feeney of Miller Shakman & Beem LLP, on behalf of Ms. St. Clair and the Chicago Tribune Company.¹⁸ Mr.

¹⁴Letter from Joshua M. Jones, Assistant Attorney General, Public Access Bureau, to Stacy St. Clair, *Chicago Tribune* (November 10, 2014). Ms. St. Clair did not receive the November 10, 2014, correspondence from the Office of the Attorney General. She was e-mailed a copy of the November 10, 2014, letter and the Village's response on November 13, 2014. See e-mail from Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Stacy St. Clair, *Chicago Tribune* (November 13, 2014).

¹⁵E-mail from Stacy St. Clair, *Chicago Tribune*, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 14, 2014).

¹⁶Letter from Peter Coblenz, Rosenthal, Murphey, Coblenz & Donahue, to Joshua Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 20, 2014).

¹⁷Letter from Joshua M. Jones, Assistant Attorney General, Public Access Bureau, to Stacy St. Clair, *Chicago Tribune* (November 26, 2014).

¹⁸Letter from Daniel M. Feeney, Miller, Shakman & Beem LLP, to Joshua M. Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 5, 2014).

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Feeney argued that the Village's "position that home rule authorities have the power to carve out their own exemptions to the FOIA statute as they see fit * * * would eviscerate the statute and wholly undermine the vital public policy it seeks to protect of assuring transparent and accountable government throughout the state."¹⁹

On December 5, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014).²⁰

ANALYSIS

Rosemont Ordinance No. 2014-11-12

After this Request for Review was filed and a further inquiry letter was sent by this office to the Village, the Village adopted an ordinance purporting to exempt from disclosure the type of financial information that it withheld in this matter. The Village asserts that Village of Rosemont Ordinance No. 2014-11-12 (Ordinance) exempts from disclosure "the amount of money paid as rent to secure the use of the Allstate Arena for the Garth Brooks concert events" and "the amount paid by the Village as a revenue rebate to the promoter of the Garth Brooks concert series."²¹ Section 3 of the Ordinance provides:

Notwithstanding the provision of any non-pre-emptive state law, including but not limited to the Illinois Freedom of Information Act, no officer or employee of the Village of Rosemont shall knowingly disclose confidential financial or proprietary information relating to any Amusement Event held or to be held at an Entertainment Venue. Confidential financial or proprietary information relating to an Amusement Event held at an Entertainment Venue may be disclosed by the Director of Entertainment Facilities or by the Mayor of the Village if they determine that the disclosure of such information will not cause substantial harm to the competitive position of the Village or its

¹⁹Letter from Daniel M. Feeney, Miller, Shakman & Beem LLP, to Joshua M. Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 5, 2014), at 2.

²⁰Letter from Josh Jones, Assistant Attorney General, Public Access Bureau, to Stacy St. Clair, *Chicago Tribune*, and Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue (December 5, 2014).

²¹Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Joshua Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 20, 2014), at 2.

Entertainment Venues, or if the producer of the amusement event consents to the disclosure.^[22]

The Village claims that it has the authority under its home rule powers to adopt an ordinance regulating its obligation to disclose records to the public. If the Ordinance is a valid exercise of home rule power, then its enactment might arguably moot the issues raised in Ms. St. Clair's Request for Review and render further analysis irrelevant. Accordingly, we will initially address whether the Ordinance supersedes the pertinent provisions of FOIA.²³

The Village of Rosemont is a home rule municipality.²⁴ Article VII, section 6(a) of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, §6(a)) provides, in pertinent part:

Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Article VII, section 6(i) of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, §6(i)) adds: "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly *by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.*" (Emphasis added.)

Accordingly, a home rule ordinance is a valid exercise of home rule power if: (1) the subject of the ordinance pertains to the home rule unit's "government and affairs"; and (2) the

²²Rosemont, Ill., Ordinance No. 2014-11-12, §3, (adopted November 12, 2014). The Ordinance defines "confidential financial and proprietary information" as:

information pertaining to the amount of money paid by a Producer to secure the use of an Entertainment Venue for production and presentation of an Amusement Event and any financial incentives, considerations or payments to be made to a Producer as an inducement to license or rent the Entertainment Venue for production and presentation of an Amusement Event. Ordinance §2(c).

²³We also note that the Ordinance was adopted after the Village had received and had denied, in part, Ms. St. Clair's FOIA request. Because the Ordinance appears to be substantive in nature, rather than merely procedural, it would not ordinarily be applicable retroactively to Ms. St. Clair's request. In view of our determination regarding the validity of the Ordinance, however, it is not necessary to address or resolve this issue.

²⁴Illinois Municipal League, Home Rule Municipalities, <http://www.iml.org/page.cfm?key=2>.

legislature has not expressly preempted the exercise of home rule powers on that subject. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 36 (2013). The General Assembly has not expressly limited or preempted the exercise of home rule powers in FOIA. *Contrast* 5 ILCS 120/6 (West 2012) ("The provisions of [the Open Meetings] Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings."). The sole issue, therefore, is whether an ordinance regulating access to public records "pertains to the government and affairs" of the Village, within the meaning of article VII, section 6(a) of the Constitution.

In *City of Chicago v. StubHub, Inc.*, 2011 IL 111127 (2012), the Illinois Supreme Court noted that "the concept of a vital state policy trumping municipal power is analytically appropriate under section 6(a)." *StubHub*, 2011 IL 111127, ¶22, n.2; *see also Palm*, 2013 IL 110505 at ¶36. In analyzing whether a subject pertains to a home rule municipality's government and affairs for purposes of article VII, section 6(a) of the Illinois Constitution, therefore, "a subject [is] off-limits to local government control * * * where the state has a vital interest and a traditionally exclusive role." *StubHub*, 2011 IL 111127, ¶25; *see also Palm*, 2013 IL 110505, ¶36. In making that determination, the following factors are relevant: (1) the nature and extent of the problem; (2) whether the State or the municipality has the greater interest in solving that problem; and (3) whether the State or the municipality has a traditional role in solving the problem. *StubHub*, 2011 IL 111127, ¶¶26-36; *see also Gurba v. Community High School District No. 155*, 2014 IL App (2d) 140098, ¶79 (2014).

Section 1 of FOIA (5 ILCS 140/1 (West 2012)) provides, in pertinent part:

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that *all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act.*

* * *

Restraints on access to information, *to the extent permitted by this Act*, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people.

The General Assembly declares that providing records *in compliance with the requirements of this Act* is a primary duty of public bodies to the people of this State[.]

This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public. (Emphasis added.)

Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act."

With respect to the first factor enumerated by the court in *StubHub*, that being the nature and extent of the problem to be addressed by the proposed exercise of home rule powers, the General Assembly clearly recognized in enacting FOIA that ensuring the public's access to governmental records on a uniform basis is a matter of Statewide concern. Thus, the Act is applicable to all "public bodies," a term that is defined to include "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof," with very limited exceptions. See 5 ILCS 140/2(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. Logic dictates that there should be uniform provisions for accessing information from public bodies in all parts of the State, rather than potentially requiring members of the public to comply with numerous local requirements established to suit local officials. These reasons also make it clear, with respect to the second factor enumerated in *StubHub*, that it is the State, and not home rule municipalities, that has the greater interest in addressing issues pertaining to the public's right to access governmental information.

With regard to the third factor enumerated by the court in *StubHub*, the first version of FOIA was enacted by the General Assembly effective July 1, 1984. See Public Act 83-1013, effective July 1, 1984. We are aware of no instance during the intervening 30 year period in which a home rule unit has successfully attempted to supplant or supersede the provisions of FOIA through the exercise of home rule powers. To the contrary, it is evident that since the enactment of FOIA, prescribing the conditions for accessing public records has been considered to be an exclusive State prerogative.

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Based upon our consideration of the factors discussed in *StubHub*, we conclude that the regulation of access to governmental information is an area in which "the state has a vital interest and a traditionally exclusive role." *StubHub*, 2011 IL 111127, ¶25. Therefore, the Village of Rosemont's Ordinance No. 2014-11-12 does not pertain to the Village's government and affairs within the meaning of article VII, section 6(a) of the Illinois Constitution of 1970, and consequently is not a valid exercise of home rule power. The Village cannot pass an Ordinance to avoid disclosing public records to the public. Thus, the Ordinance has no effect upon the Village's duty to comply with Ms. St. Clair's FOIA request. Having resolved this initial issue, we will proceed to address the specific statutory exceptions asserted by the Village.

Section 7(1)(g) of FOIA

Pursuant to section 7(1)(g) of FOIA, the Village redacted the rental amounts and the revenue rebate terms contained in the contract between the Village and Varnell Enterprises, the organization presenting the Garth Brooks concert, and also withheld an invoice seeking payment from the Village. Section 7(1)(g) exempts from disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

The Village asserted that the financial and revenue information in question constitutes trade secrets within the arena-sized venue market.²⁵ Venues like the United Center, the Village argued, would gain an unwarranted competitive advantage over the Allstate Arena if the Village was required to disclose the specific amount of money received and paid to host events at Allstate Arena.²⁶ The Village also asserted that section 2 of the Illinois Trade Secrets Act (765 ILCS 1065/2 (West 2012)) does not differentiate between private entities and public

²⁵Letter from Peter Coblenz, Rosenthal, Murphey, Coblenz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 4; Nagle Aff. ¶6.

²⁶Letter from Peter Coblenz, Rosenthal, Murphey, Coblenz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 4; Nagle Aff. ¶¶3, 4, 9.

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bodies for purposes of determining whether financial data constitutes a trade secret.²⁷ The Village argued that section 7(1)(g) of FOIA should be construed consistently with the Illinois Trade Secrets Act (765 ILCS 1065/1 *et seq.* (West 2012)) to withhold the financial terms of the contracts related to the Garth Brooks concert because they constitute financial data that is sufficiently secret to derive economic value from its disclosure or use, and the Village makes reasonable efforts to maintain their secrecy.²⁸ In reply, Ms. St. Clair countered that section 8(b)(4) of the Illinois Trade Secrets Act (765 ILCS 1065/8(b)(4) (West 2012)) specifies that the Act does not affect the definition of "trade secret"²⁹ contained in any other statute.³⁰

Ms. St. Clair also cited a binding opinion in which the Attorney General concluded that the financial terms of a private company's contract to manage the Illinois Lottery were not exempt from disclosure under section 7(1)(g) of FOIA because article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012))³¹ require disclosure of records of receipts and expenditures by public bodies. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-005, issued June 30, 2014, at 8 ("Simply put, entities that contract to perform services for a governmental agency do not enjoy the same ability to withhold information that they do with respect to their private contracts."). Additionally, the Attorney General recently issued a binding opinion reaffirming that analysis and concluding that the Metropolitan Pier and Exposition Authority violated FOIA by withholding the financial terms of its lease agreements with private entities. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-016, issued December 2, 2014, at 8. Based on the plain language of section 7(1)(g), the more recent binding opinion concluded that although the exemption might "be applicable to the disclosure of financial information obtained from a private entity by a public body acting in a regulatory or

²⁷Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 5.

²⁸Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 5.

²⁹Section 8(b)(4) of the Trade Secrets Act provides that "[t]his Act does not affect: * * * the definition of a trade secret contained in any other Act of this State."

³⁰E-mail from Stacy St. Clair, *Chicago Tribune*, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 14, 2014).

³¹Article VIII, section 1(c) of the Illinois Constitution of 1970 provides that "[r]eports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law."

Similarly, section 2.5 of FOIA 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."

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investigatory capacity[.] * * * [t]he scope of section 7(1)(g) does not appear to encompass commercial or financial information relating to the public body's own business transactions." Ill. Att'y Gen. Pub. Acc. Op. No. 14-016, at 6.

Under the plain language of article VIII, section 1(c) of the Illinois Constitution and section 2.5 of FOIA, a public body cannot withhold information concerning funds it expends or receives from its agreements with private entities. Moreover, section 7(1)(g) does not apply to the financial terms of these agreements because the financial terms were not "obtained from a person or business" as section 7(1)(g) plainly requires, but rather were negotiated between the parties. Further, the Village's citation to the Illinois Trade Secrets Act is unavailing because that statute expressly provides that it does not displace the definition of "trade secrets" contained in other Acts, which includes FOIA. 765 ILCS 1065/8(b)(4)(West 2012). Therefore, the Village has failed to sustain its burden of demonstrating by clear and convincing evidence that the financial terms in the responsive records are exempt from disclosure pursuant to section 7(1)(g) of FOIA.

Section 7(1)(f) of FOIA

Pursuant to section 7(1)(f) of FOIA, the Village withheld e-mails relating to the setting of ticket prices for the Garth Brooks concerts. Section 7(1)(f) of FOIA exempts from inspection and copying "[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 (1st Dist. 2003). The exemption 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. Section 7(1)(f) is "the equivalent of the 'deliberative process' exemption found in section 552(b)(5) of the federal Freedom of Information Act, which exempts from disclosure interagency and intra-agency predecisional and deliberative material." *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶14, 994 N.E.2d 573, 578 (2013).

This office has reviewed copies of the e-mails withheld by the Village. None of these e-mails were exchanged between officials or employees of the Village or Allstate Arena. Instead, the e-mails were exchanged between the Executive Director of Allstate Arena and a representative of Varnell Enterprises, the concert's promoter. Therefore, the e-mails were sent to and received from a third party, rather than being components of any inter-agency or intra-agency decision-making process. Because the concert promoter represented independent interests in his communications with the Village, e-mails to and from the promoter cannot be

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withheld under the deliberative process exemption. See *Department of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 121 S. Ct. 1060, 1069 (2001) (communications with parties representing independent interests cannot be characterized as intra-agency communications). Accordingly, the Village has failed to sustain its burden of demonstrating by clear and convincing evidence that the e-mails it withheld are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Completeness of Response

The Village asserted that there is no hospitality-related rider to the agreement with Varnell Enterprises because the artist decided to use his own caterer.³² In reply, Ms. St. Clair stated that she sought an explanation for the change from the Village attorney's prior position that a rider did exist.³³ On December 10, 2014, an Assistant Attorney General in the Public Access Bureau asked the Village's attorney to address any prior contradictory statement by the Village.³⁴ Later that day, the Village's attorney explained by reply e-mail that he had originally misunderstood Ms. St. Clair's reference to "rider" and that the Allstate Arena did not provide backstage food/amenities at the time of the concert. He further stated that the Allstate Arena General Manager has confirmed:

that there is no backstage rider between the Allstate Arena and the promoter, the artist or any other person to provide any backstage food or amenities to Mr. Brooks and his crew during the Garth Brooks concert series in Rosemont. If such a rider exists, it is between the concert promoter Varnell Enterprises and the artist. If such a rider exists, it is not in the possession of the Village of Rosemont.³⁵

³²Letter from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 7, 2014), at 2-3.

³³E-mail from Stacy St. Clair, *Chicago Tribune*, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 14, 2014).

³⁴E-mail from Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue (December 10, 2014).

³⁵E-mail from Peter Coblentz, Rosenthal, Murphey, Coblentz & Donahue to Joshua Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 10, 2014).

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The Village's supplemental e-mail response was forwarded to Ms. St. Clair later that afternoon.³⁶ Ms. St. Clair replied to the supplemental response by noting that "I have to take the village's word that no such rider exists. * * * I consider that small portion of my appeal settled."³⁷ Therefore, there is no outstanding dispute concerning the completeness of the Village's response.

FINDINGS AND CONCLUSIONS

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

- 1) On behalf of the *Chicago Tribune*, Ms. Stacy St. Clair submitted an undated FOIA request to the Village of Rosemont seeking all documents related to Garth Brooks' appearance at the Allstate Arena.
- 2) On October 6, 2014, the Village provided certain responsive documents to Ms. St. Clair, but, citing sections 7(1)(b), 7(1)(f), and 7(1)(g) of FOIA, denied her request in part by redacting and withholding other information.
- 3) On October 10, 2014, the Public Access Bureau received Ms. St. Clair's Request for Review of the partial denial of her request.
- 4) On October 21, 2014, the Public Access Bureau sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of the records at issue for this office's confidential review, together with a detailed explanation for the asserted exemptions.
- 5) On November 7, 2014, the Village furnished the records and responded that it had properly denied Ms. St. Clair's request in part pursuant to sections 7(1)(f) and 7(1)(g).

³⁶E-mail from Joshua Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to Stacy St. Clair, *Chicago Tribune* (December 10, 2014).

³⁷E-mail from Stacy St. Clair, *Chicago Tribune*, to Joshua Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 10, 2014).

6) On November 20, 2014, the Village issued a supplemental response asserting that the financial information subject to the Request for Review is exempt from disclosure pursuant to Village Ordinance No. 2014-11-12, adopted November 12, 2014, a home rule ordinance that supersedes FOIA and exempts financial information concerning Allstate Arena from disclosure.

7) On December 5, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5 of FOIA, to January 23, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) The Village's ordinance is ineffective to supersede the requirements of FOIA because prescribing conditions for accessing governmental records is a matter of Statewide, rather than local, concern, and therefore does not pertain to the Village's government and affairs for purposes of exercising the home rule powers granted by article VII, section 6(a) of the Illinois Constitution of 1970.

9) The financial terms of contracts with public bodies are expressly subject to disclosure under article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA. Therefore, financial terms of contracts with public bodies are not exempt from disclosure as trade secrets under section 7(1)(g) of FOIA.

10) The e-mails withheld from disclosure are not inter-agency or intra-agency communications within the meaning of section 7(1)(f) of FOIA because they were exchanged with a third party who represented independent interests.

For the reasons stated above, it is the opinion of the Attorney General that the Village improperly denied, in part, Ms. St. Clair's Freedom of Information Act request in violation of the requirements of the Act. Accordingly, the Village is directed to take immediate action to comply with this binding opinion by providing Ms. St. Clair with all contracts, invoices, and e-mails responsive to her request. The Village may, pursuant to section 7(1)(b), redact "private information" as defined in section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)).

This opinion shall be considered a final decision of an administrative agency for the 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 with the Circuit Court of Cook or Sangamon County within

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35 days of the date of this decision naming the Attorney General of Illinois and Ms. Stacy St. Clair as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

cc: Mr. Peter Coblentz
Rosenthal, Murphey, Coblentz & Donahue
Law Offices
30 North LaSalle Street, Suite 1624
Chicago, Illinois 60602

Mr. Daniel M. Feeney
Miller Shakman & Beem LLP
Attorneys and Counselors
180 North LaSalle Street, Suite 3600
Chicago, Illinois 60601