



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 16, 2018

PUBLIC ACCESS OPINION 18-009
(Request for Review 2018 PAC 52464)

FREEDOM OF INFORMATION ACT:
Disclosure of Property Index Numbers

Mr. Alan J. Dunleavy
1940 West Henderson Street
Chicago, Illinois 60657

Ms. Martha-Victoria Díaz
Senior Corporation Counsel
City of Chicago Department of Law
30 North LaSalle Street, Suite 1720
Chicago, Illinois 60602-2580

Dear Mr. Dunleavy and Ms. Díaz:

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 2016)). For the reasons discussed below, this office concludes that the City of Chicago (City) Department of Business Affairs and Consumer Protection (Department) violated the requirements of FOIA by redacting property index numbers from the records furnished in response to Mr. Alan J. Dunleavy's February 28, 2018, FOIA request.

BACKGROUND

On February 28, 2018, Mr. Dunleavy submitted a FOIA request to the Department seeking "a list of all properties in the City of Chicago that have been granted a Commissioner's Adjustment under the Section 4-6-300(l) of the Shared Housing ordinance

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(6/22/2016). Please include the property identification number^[1] and which condition the Commissioner granted the adjustment outlined within the above section."² On March 29, 2018, the Department provided "a list of 'granted' Commissioner Adjustment properties by registration number and final status."³ Specifically, the Department provided a list showing the application numbers of properties that had been granted an adjustment, but denied property index numbers as private information under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2017 Supp.))⁴ On April 2, 2018, the Public Access Bureau received a Request for Review from Mr. Dunleavy contesting the denial of the property index numbers.⁵

On April 11, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the Department and asked it to provide this office with a representative sample of the withheld records together with a detailed written response to the allegations in the Request for Review.⁶ Because the Department did not respond to the April 11, 2018, letter, on May 10, 2018, the Public Access Bureau sent a second request to the Department for copies of records and a response.⁷ On May 15, 2018, Ms. Martha-Victoria Díaz, Senior Corporation Counsel for the City of Chicago Department of Law, responded on behalf of the Department, stating that the property index numbers were exempt "private information" under section 7(1)(b) of FOIA and

¹Mr. Dunleavy's Request for Review and the related correspondence refers to the "property identification numbers" or "property identification Pins." We have assumed that Mr. Dunleavy's Request for Review relates to "property index numbers" as that phrase is defined in the Property Tax Code (*see* 35 ILCS 200/1-1 *et seq.* (West 2016)). This office will use the phrase "property index numbers" to refer to the information that Mr. Dunleavy is seeking. A property index number is "[a] number used to identify a parcel of property for assessment and taxation purposes." 35 ILCS 200/1-120 (West 2016).

²City of Chicago FOIA request form submitted by Alan Dunleavy (February 28, 2018).

³Letter from Angel Hawthorne, Freedom of Information Office, Department of Business Affairs and Consumer Protection, City of Chicago, to Alan Dunleavy (March 29, 2018).

⁴Letter from Angel Hawthorne, Freedom of Information Office, Department of Business Affairs and Consumer Protection, City of Chicago, to Alan Dunleavy (March 29, 2018).

⁵E-mail from Alan Dunleavy to Sarah Pratt, [Public Access Counselor, Office of the Attorney General] (April 1, 2018).

⁶Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Angel Hawthorne, Freedom of Information Officer, City of Chicago Department of Business Affairs and Consumer Protection (April 11, 2018).

⁷Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Angel Hawthorne, Freedom of Information Officer, City of Chicago Department of Business Affairs and Consumer Protection (May 10, 2018).

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also exempt "personal information" pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2017 Supp.)).⁸ On May 16, 2018, Ms. Díaz provided for this office's confidential review an unredacted copy of the responsive records which included the property index numbers.⁹ On May 16, 2018, this office forwarded a copy of the Department's response letter to Mr. Dunleavy.¹⁰ He did not reply.

On May 31, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to July 16, 2018, pursuant to section 9.5(f) of FOIA.¹¹

ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further 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." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)) are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

The portions of the records at issue are the property index numbers of each property that was granted an adjustment under section 4-6-300(l) of the City of Chicago Municipal Code (Ordinance) (CHICAGO, ILL., MUNICIPAL CODE § 4-6-300(l) (2018) (effective June 22, 2016)). The Ordinance regulates vacation rentals by setting out registration and licensing requirements and limitations on the types of dwellings that may be rented. CHICAGO, ILL., MUNICIPAL CODE § 4-6-300 (effective June 22, 2016). Section 4-6-300(l) permits a person to seek an adjustment from the commissioner, which allows for a vacation

⁸Letter from Martha-Victoria Díaz, Senior Corporation Counsel, City of Chicago, Department of Law, to Edie Steinberg, Assistant [Attorney General], Office of Attorney General (May 15, 2018).

⁹E-mail from Martha-Victoria Díaz, Senior Corporation Counsel, City of Chicago Department of Law, Investigations & Prosecutions Division, to [Edie] Steinberg (May 16, 2018).

¹⁰Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Alan Dunleavy (May 16, 2018).

¹¹Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Alan Dunleavy and Martha-Victoria Díaz, Senior Corporation Counsel, City of Chicago Department of Law (May 31, 2018).

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rental under certain circumstances when the dwelling unit does not otherwise comply with the Ordinance's dwelling unit requirements. The application for a commissioner's adjustment must be submitted to the Department and requires the applicant to include the property index number.¹²

Section 7(1)(b) of FOIA

The Department redacted property index numbers from the responsive records pursuant to section 7(1)(b) of FOIA, which 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 2016)) defines "private information" to include:

[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. (Emphasis added.)

In construing statutes such as FOIA, the primary goal is to ascertain and effectuate the intent of the General Assembly. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). "[W]hen a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *Board of Trustees of Southern Illinois Univ. v. Illinois Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994). In other words, the listed terms are examples of what the General Assembly intended the statute to cover. *See Duffy v. Illinois Dep't of Human Rights*, 354 Ill. App. 3d 236, 239 (4th Dist. 2004).

"The examples of 'unique identifiers' cited in section 2(c-5) include information, such as a social security number, that is alone sufficient to identify a particular individual, as well as information which is both unique to an individual and of a type in which there is a significant personal privacy interest[.]" Ill. Att'y Gen. Pub. Acc. Op. No. 12-003, issued January

¹²City of Chicago, Department of Business Affairs and Consumer Protection, Commissioner's Adjustment Application for Shared Housing Units & Vacation Rentals, available at <https://www.cityofchicago.org/content/dam/city/depts/bacp/Small%20Business%20Center/cmsradjustmentapp51817-instructions52417.pdf> (last viewed June 5, 2018).

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18, 2012, at 7. A property index number "is a numerical code for the legal description of a piece of land as it has been defined for the purposes of real estate taxation. The formatted code points to the parcel's location on the county's tax maps."¹³ Thus, although a property index number does identify a property, standing by itself it does not identify the owner or occupant thereof.

In its response to this office, the Department argued that because a property index number "identifies a distinct property[,]"¹⁴ a search can be conducted on the Cook County Assessor's website to determine the address for that property, and the address can be used to search websites for the name of the property owner.¹⁵ Mr. Dunleavy stated in his Request for Review, and the Department did not dispute, that property index numbers are readily available on the Cook County Property Tax Portal¹⁶ and on the Cook County Assessor's website.¹⁷ By entering the address of the property, any user can retrieve a property index number as well as the name of the property owner. Indeed, section 9-45 of the Property Tax Code (35 ILCS 200/9-45 (West 2016)) specifically provides that a county's property index number system "shall be open to public inspection and be made available to the public."

Because property index numbers are unique to properties, rather than to persons, they are not "unique identifiers" for purposes of section 7(1)(b). Even if they were considered "unique identifiers," property index numbers are a matter of public record, the disclosure of which is "otherwise provided" by section 9-45 of the Property Tax Code. There is not a significant personal privacy interest in information that is required by State law to be disclosed. Moreover, the fact that a person can combine various available pieces of information to ultimately identify otherwise exempt information does not render that information exempt from disclosure. Thus, when determining the City's duty to disclose property index numbers pursuant to FOIA, it is not dispositive that a person could use the property index numbers to research and identify the property's owner. Accordingly, the Department has not sustained its burden of

¹³About Property Index Number (PIN), David Orr, Cook County Clerk's Office, <https://www.cookcountyclerk.com/service/about-property-index-number-pin> (last visited June 5, 2018).

¹⁴Letter from Martha-Victoria Díaz, Senior Corporation Counsel, City of Chicago Department of Law, to Edie Steinberg, Assistant [Attorney General], Office of the Attorney General (May 15, 2018).

¹⁵Letter from Martha-Victoria Díaz, Senior Corporation Counsel, City of Chicago Department of Law, to Edie Steinberg, Assistant [Attorney General], Office of the Attorney General (May 15, 2018).

¹⁶Cook County Property Tax Portal, <http://www.cookcountypropertyinfo.com> (last visited July 29, 2018).

¹⁷Cook County Assessor's Office, Joseph Berrios, Property Search, <http://cookcountyassessor.com/Search/Property-Search.aspx> (last visited June 29, 2018).

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demonstrating that the property index numbers are exempt from disclosure pursuant to section 7(1)(b) of FOIA.

Section 7(1)(c) of FOIA

In its response to Mr. Dunleavy's Request for Review, the Department also raised, for the first time, section 7(1)(c) of FOIA. That section 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:

[T]he 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.

The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

As noted above, section 9-45 of the Property Tax Code specifically provides that a county's property index number system "shall be open to public inspection and be made available to the public." Because State law requires property index numbers to be publicly accessible, disclosure of property index numbers cannot be considered a clearly unwarranted invasion of personal privacy.

Even assuming, however, that property index numbers could be considered highly personal information for purposes of section 7(1)(c), the determination of whether their disclosure would constitute a clearly unwarranted invasion of personal privacy requires the weighing of four factors: "(1) the [requester'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).

Although Mr. Dunleavy has not stated his interest in disclosure, there is a significant public interest in the disclosure of information identifying properties that may be leased as vacation rentals because, as the Department indicates in its response to this office, it

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may affect the value of properties in the surrounding neighborhood. Further, there is a significant public interest in the disclosure of information that sheds light on whether the adjustment process is being conducted fairly and equitably throughout the City's various neighborhoods. That information could only be ascertained by identifying the properties that receive the adjustments. *See* 5 ILCS 140/1 (West 2016) (it is the public policy of this State that all persons are entitled to complete information to monitor "government to ensure that it is being conducted in the public interest.").

Concerning the third factor, the degree of invasion of personal privacy, the Department asserts that "a reasonable person may object to the disclosure that they own a property which they may intend to list for rent as shared housing or as a vacation rental."¹⁸ The Department also asserts that a person has a privacy interest in how they manage their property and that "revealing that a property was offered as shared housing or as a vacation rental may affect the resale value of that property."¹⁹ Listing a property for rent and renting it as a vacation rental, however, necessarily implies that the rental status of the property will be disseminated to the public to attract renters. As a result, the owner does not have a reasonable expectation of privacy in the property's address. And, as discussed above, a rental property's property index number can be readily determined by entering the property's address into a Cook County government website.

Finally, there appears to be no other readily available means for Mr. Dunleavy to obtain the property index numbers for the adjustments granted by the Department's commissioner. Taking all these factors into account, this office concludes that the public interest in the disclosure of property index numbers of properties that have been granted adjustments outweighs any privacy interest that property owners may have in revealing that their property is available for vacation rental. Accordingly, the Department has not sustained its burden of demonstrating that the property index numbers are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

FINDINGS AND CONCLUSIONS

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

¹⁸Letter from Martha-Victoria Diaz, Senior Corporation Counsel, City of Chicago Department of Law, to Edie Steinberg, Assistant [Attorney General], Office of the Attorney General (May 15, 2018).

¹⁹Letter from Martha-Victoria Diaz, Senior Corporation Counsel, City of Chicago Department of Law, to Edie Steinberg, Assistant [Attorney General], Office of the Attorney General (May 15, 2018).

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1) On February 28, 2018, Mr. Alan J. Dunleavy submitted a FOIA request to the City of Chicago Department of Business Affairs and Consumer Protection seeking a list of all properties in the City that had been granted a Commissioner's Adjustment under Section 4-6-300(l) of the Shared Housing ordinance (6/22/2016), including the property index number of the property.

2) On March 29, 2018, the Department provided responsive records but redacted the property index numbers, citing as its basis section 7(1)(b) of FOIA.

3) On April 2, 2018, the Public Access Bureau received a Request for Review from Mr. Dunleavy contesting the Department's redactions of the property index numbers. The 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 2016)).

4) On April 11, 2018, the Public Access Bureau forwarded a copy of Mr. Dunleavy's Request for Review to the Department, together with a letter asking the Department to furnish within seven business days after its receipt copies of the withheld records for the Public Access Bureau's confidential review, as well as a detailed explanation of the factual and legal bases for withholding the property index numbers. The Department did not respond. On May 10, 2018, the Public Access Bureau sent a second request to the Department for the previously requested information.

5) On May 15, 2018, the Department furnished its written response. The Department asserted that the property index numbers were exempt pursuant to section 7(1)(b) as well as section 7(1)(c) of FOIA. On May 16, 2018, the Department provided for this office's confidential review a copy of the responsive records which included the property index numbers. On that same day, this office forwarded a copy of the Department's written response letter to Mr. Dunleavy.

6) On May 31, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to July 16, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 7(1)(b) of FOIA exempts from disclosure "private information." The definition of "private information" in section 2(c-5) of FOIA includes Social Security numbers and other such information that is unique to a person. A property index number identifies a specific parcel of property, not a particular individual. Further, property index numbers are readily available to the public on governmental websites and subject to public inspection pursuant to section 9-45 of the Property Tax Code. The Department has not sustained its burden

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of demonstrating that property index numbers are "private information" under the definition of that term in section 2(c-5) of FOIA.

8) Section 7(1)(c) exempts "personal information contained within public records, the disclosure of which would constitute an unwarranted invasion of personal privacy[.]" Because State law requires property index numbers to be publicly accessible, the Department has not sustained its burden of demonstrating that property index numbers are highly personal information within the meaning of section 7(1)(c) of FOIA. Further, even assuming that property index numbers are highly personal information, there is a significant public interest in the disclosure of information that identifies properties that have been granted adjustments so that the public may assess whether the adjustment process in question is conducted fairly and equitably and because of the potential impact of adjustments on property values of surrounding properties. The Department has not demonstrated that the privacy rights of property owners who have been granted adjustments outweigh the public interest in disclosure of this information.

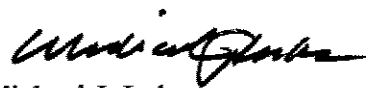
Therefore, it is the opinion of the Attorney General that the Department's response to Mr. Dunleavy's Freedom of Information Act request violated the requirements of the Act. The Department is directed to take immediate and appropriate action to comply with this opinion by providing Mr. Dunleavy with a list of all properties in the City that have been granted a commissioner's adjustment under the Section 4-6-300(l) of the Shared Housing Ordinance, including the property index numbers which were previously redacted.

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 2016). 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 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Alan J. Dunleavy as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-009) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on July 16, 2018.


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