



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 8, 2020

**PUBLIC ACCESS OPINION 20-003
(Request for Review 2020 PAC 61510)**

FREEDOM OF INFORMATION ACT:
Disclosure of Applications for Adult
Use Cultivation Center Licenses

Mr. Brendan J. Healey
Baron Harris Healey
225 West Washington Street, Suite 2200
Chicago, Illinois 60606

Mr. John Teefey
General Counsel
Illinois Department of Agriculture
P.O. Box 19281
Springfield, Illinois 62794-9281

Dear Mr. Healey and Mr. Teefey:

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 2018)). For the reasons discussed below, this office concludes that the Illinois Department of Agriculture (Department) violated the requirements of FOIA by improperly redacting portions of applications for adult use cultivation center licenses requested by Mr. Robert McCoppin.

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BACKGROUND

On December 6, 2019, Mr. McCoppin, on behalf of the *Chicago Tribune*, e-mailed a FOIA request to the Department seeking "a copy of all applications for adult use cannabis cultivation center licenses."¹ The request added:

While I understand that you may want to redact some information for privacy, such as social security numbers, I would expect you to please include the names and addresses of each principal officer and board member under (7),^[2] as required in the statute, and in keeping with the intent of sponsors to provide transparency to this newly legal industry.^[3]

On December 26, 2019, the Department's FOIA Officer furnished copies of the responsive applications to Mr. McCoppin but redacted "private information" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2018), as amended by Public Act 101-455, effective August 23, 2019).⁴ On January 27, 2020, Mr. Brendan J. Healey, counsel for the *Chicago Tribune*, submitted a Request for Review disputing the redactions of (1) names of owners, principal officers, and board members of cannabis cultivation centers, (2) facility addresses, and (3) dates of birth of principal officers and board members of cannabis cultivation centers.⁵

On January 31, 2020, the Public Access Bureau forwarded a copy of the Request for Review to the Department, along with a letter asking it to provide this office with unredacted copies of the applications furnished to Mr. McCoppin and a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(b) exemption to each category of

¹E-mail from Robert McCoppin, *Chicago Tribune*, to [Pam] Harmon (December 6, 2019).

²Section 20-10(b)(7) of the Cannabis Regulation and Tax Act (added by Public Act 101-027, effective June 25, 2019; amended by Public Act 101-593, effective December 4, 2019, to be codified at 410 ILCS 705/20-10(b)(7)) requires a medical cannabis cultivation center seeking the issuance of an Early Approval Adult Use Cultivation Center License to submit an application that includes "[t]he name, address, social security number, and date of birth of each principal officer and board member of the cultivation center[.]"

³E-mail from Robert McCoppin, *Chicago Tribune*, to [Pam] Harmon (December 6, 2019).

⁴E-mail from Pam Harmon, FOIA Officer, Illinois Department of Agriculture, to [Robert] McCoppin (December 26, 2019).

⁵Letter from Brendan J. Healey, Baron Harris Healey, to Sarah Pratt, Public Access Counselor, Public Access Bureau, Office of the Attorney General (January 27, 2020), at 1.

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information that was redacted, with the exception of social security numbers.⁶ On February 6, 2020, the Department requested a 30-day extension to respond. The request stated that the Department had "recently posted information on its website that includes the names and addresses of all currently licensed 'early approval adult use cultivation centers[.]" which it believed to be partially responsive to McCoppin's request, and that it was "anticipating legislation that may address its ability to disclose the additional requested information, which is currently confidential."⁷ The Department cited section 145(a) of the Compassionate Use of Medical Cannabis Program Act (Medical Use Act) (added by Public Act 101-363, effective August 9, 2019, to be codified at 410 ILCS 130/145(a)) as its basis for redacting information from the requested applications.⁸ In a telephone conversation with an Assistant General Counsel for the Department, an Assistant Attorney General (AAG) in the Public Access Bureau stated that this office could not grant a 30-day extension for the Department to submit its response to the Request for Review; the Assistant General Counsel stated that the Department would respond by February 13, 2020.⁹ On February 13, 2020, the AAG spoke with the Department's General Counsel, who requested that the Department be allowed to respond by February 21, 2020; the AAG did not object.¹⁰

On February 21, 2020, the Department provided this office with a written response, but did not furnish unredacted copies of the applications as requested by this office in its January 31, 2020, letter of inquiry.¹¹ In addition to the Department's argument that it had withheld personal financial information, signatures, home addresses, and social security numbers pursuant to section 7(1)(b) of FOIA, the response asserted for the first time that: (1) dates of birth are exempt from disclosure pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West

⁶Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Pam Harmon, FOIA Officer, Illinois Department of Agriculture (January 31, 2020).

⁷E-mail from John Teefey, General Counsel, Illinois Department of Agriculture, to Steven Silverman (February 6, 2020).

⁸E-mail from John Teefey, General Counsel, Illinois Department of Agriculture, to Steven Silverman (February 6, 2020).

⁹Telephone conversation between Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, and Albert Coll, Assistant General Counsel, Illinois Department of Agriculture (February 7, 2020).

¹⁰Telephone conversation between Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, and John Teefey, General Counsel, Illinois Department of Agriculture (February 13, 2020).

¹¹Letter from John Teefey, General Counsel, Illinois Department of Agriculture, to Steve Silverman, Esq., Bureau Chief, Public Access Bureau, Illinois Attorney General, Kwame Raoul (February 21, 2020).

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2018), as amended by Public Act 101-455, effective August 23, 2019);¹² and (2) names of cultivation centers' principal officers and board members and street addresses of cultivation centers are exempt from disclosure pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2018), as amended by Public Act 101-455, effective August 23, 2019). The response further stated, "[i]n light of the lack of clarity in the law, the Department requests that the Public Access Bureau issue a binding opinion so that the Department can conform its actions to an authoritative interpretation."¹³ On February 24, 2020, this office forwarded a copy of the Department's response to Mr. Healey;¹⁴ he submitted a reply on March 5, 2020.¹⁵

On March 27, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to May 8, 2020, pursuant to section 9.5(f) of FOIA.¹⁶

With respect to the records requested by this office for confidential review, on March 4, 2020, this office transmitted a second request to the Department to provide unredacted copies of the applications.¹⁷ The Department did not respond. On March 27, 2020, an AAG in the Public Access Bureau left a voice mail message for the Department's General Counsel seeking a status update.¹⁸ On April 2, 2020, the Department's General Counsel responded via e-mail by stating that he should be able to provide copies of the applications by the end of the following day (April 3, 2020).¹⁹ Having still not received the requested applications, on April

¹²Letter from John Teefey, General Counsel, Illinois Department of Agriculture, to Steve Silverman, Esq., Bureau Chief, Public Access Bureau, Illinois Attorney General, Kwame Raoul (February 21, 2020), at 1-2.

¹³Letter from John Teefey, General Counsel, Illinois Department of Agriculture, to Steve Silverman, Esq., Bureau Chief, Public Access Bureau, Illinois Attorney General, Kwame Raoul (February 21, 2020), at 5.

¹⁴Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Brendan J. Healey, Baron Harris Healey (February 24, 2020).

¹⁵Letter from Brendan J. Healey, Baron Harris Healey, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 5, 2020).

¹⁶Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Brendan J. Healey, Baron Harris Healey, and John Teefey, General Counsel, Illinois Department of Agriculture (March 27, 2020).

¹⁷E-mail from Steven Silverman to John Teefey (March 4, 2020).

¹⁸Voice mail message from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John Teefey, General Counsel, Illinois Department of Agriculture (March 27, 2020).

¹⁹E-mail from John Teefey to [Steve] Silverman (April 2, 2020)

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14, 2020, the AAG sent an e-mail to the General Counsel inquiring as to the status of the Department's efforts to provide the applications.²⁰ The Department did not respond.

On April 17, 2020, the AAG left another voice mail message for the Department's General Counsel seeking another status update.²¹ On the same day, the General Counsel responded by sending an e-mail which indicated that the Department's FOIA Officer was having "a difficult time accessing files while working remotely[.]" presumably because of the COVID-19 pandemic,²² but that he hoped to provide the applications later that day.²³ The General Counsel also indicated that the type of information that had been redacted was apparent from the redacted applications because "[t]he redactions all come after a specific title such as 'address,' 'owner name', etc. Beyond that, checks #'s were redacted and signatures."²⁴ The AAG replied that it was necessary for this office to review the addresses that had been redacted, partly to determine whether they are home addresses or business addresses. The AAG also asked if the General Counsel would consider providing Mr. McCoppin with the years of birth from the redacted dates of birth, while withholding the days and months.²⁵ The General Counsel

²⁰E-mail from Steven Silverman to John Teefey (April 14, 2020).

²¹Voice mail message from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John Teefey, General Counsel, Illinois Department of Agriculture (April 17, 2020).

²²On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19, a novel coronavirus. The Governor then issued a series of executive orders for coping with the disaster.

Executive Order No. 2020-10, issued March 20, 2020, provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order." Executive Order No. 2020-10, §1(1), issued March 20, 2020. The Order exempts from these prohibitions "Essential Governmental Functions," and authorizes each government body to "determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions." Executive Order No. 2020-10, §1(10), issued March 20, 2020. Order 2020-10 was twice extended, first through April 30, 2020 (Executive Order No. 2020-18, issued April 1, 2020) and then through May 31, 2020, with relatively minor modifications (Executive Order No. 2020-32, issued April 30, 2020). As a result of these Orders' restrictions on movements and activities, many State agencies and other government bodies have been operating with reduced staffing and office hours and/or working remotely with limited access to their public records.

²³E-mail from John Teefey, General Counsel, Illinois Department of Agriculture, to Steven Silverman (April 17, 2020).

²⁴E-mail from John Teefey, General Counsel, Illinois Department of Agriculture, to Steven Silverman (April 17, 2020).

²⁵E-mail from Steven Silverman to John Teefey (April 17, 2020).

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responded that the Department was willing to disclose the years of births. He also stated that the addresses were business addresses rather than residential addresses, and that they were not redacted as "private[]" information under section 7(1)(b) of FOIA, "but were redacted under the Compassionate Use of Medical Cannabis Act's confidentiality provisions."²⁶

On April 17, 2020, this office asked Mr. Healey if the Department's disclosure of years of birth on the applications would resolve the portion of his Request for Review disputing the redaction of dates of birth.²⁷ On April 24, 2020, Mr. Healey replied that his client wished to obtain the full dates of birth.²⁸ On the same day, this office again requested that the Department provide unredacted copies of the applications for confidential review.²⁹ On April 26, 2020, the Department's General Counsel responded that he had "made many attempts to get the unredacted records, but no one is able to do so until we can go back in the office (which now looks like June 1)."³⁰ He added, "[i]t is extremely straightforward, and there is no dispute about the information behind the redactions. All redactions (besides signatures and check #'s) come directly after a specific, objective application request."³¹

ANALYSIS

As a threshold matter, section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2018)) provides that "within 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor." On January 31, 2020, this office first requested that the Department provide unredacted copies of the applications in question; the Department did not provide those records when it responded to this office on February 21, 2020. It appears that the Department's subsequent efforts to furnish the records were hampered by operational limitations related to the COVID-19 pandemic. However, Mr. Healey provided this office with the redacted copies of applications that the Department had provided to Mr. McCoppin, and the type of information that was redacted is apparent from the face of the redacted applications. Further, the Department also confirmed that, although its response to the FOIA request indicated that home addresses were

²⁶E-mail from John Teefey to Steven Silverman (April 17, 2020).

²⁷E-mail from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Brendan] Healey (April 17, 2020).

²⁸E-mail from Brendan Healey, Baron Harris Healey, to Steve [Silverman] (April 24, 2020).

²⁹E-mail from Steven Silverman to John Teefey (April 24, 2020).

³⁰E-mail from John Teefey to Steven Silverman (April 26, 2020).

³¹E-mail from John Teefey to Steven Silverman (April 26, 2020).

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redacted pursuant to section 7(1)(b), only business addresses were actually redacted from the applications. Because the nature of the information at issue is clear and not in dispute, the Attorney General is able to issue a binding opinion in this matter without obtaining and reviewing unredacted copies of the requested applications.

"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 2018). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) 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 2018), as amended by Public Act 101-455, effective August 23, 2019) are to be construed narrowly. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(a) of FOIA

Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation *specifically prohibited* from disclosure by federal or State law or rules and regulations implementing federal or State law." (Emphasis added.) "[A]n exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated—that is, such a proposed disclosure must be *specifically prohibited*." (Emphasis in original.) *Better Gov't Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 816 (4th Dist. 2008).

In its answer to this office, the Department maintained that section 145(a)(2) of the Medical Use Act (added by Public Act 101-363, effective August 9, 2019, to be codified at 410 ILCS 130/145(a)(2)) prohibits it from disclosing the applications for adult use cultivation licenses that Mr. McCoppin requested. Section 145(a) of the Medical Use Act provides:

(a) The following information received and records kept **by the** Department of Public Health, Department of Financial and Professional Regulation, **Department of Agriculture**, or Department of State Police **for purposes of administering this Act are** subject to all applicable federal privacy laws, **confidential, and exempt from the Freedom of Information Act**, and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of those authorized agencies to perform official duties under this Act and the following information received and records kept by

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Department of Public Health, Department of Agriculture,
Department of Financial and Professional Regulation, and
Department of State Police, excluding any existing or non-existing
Illinois or national criminal history record information as defined
in subsection (d), may be disclosed to each other upon request:

* * *

(2) Applications and renewals, their contents, and
supporting information submitted by or on behalf of cultivation
centers and dispensing organizations in compliance with this Act,
including their physical addresses. (Emphasis added.)

The applications at issue, however, were submitted to the Department pursuant to a different statute, the Cannabis Regulation and Tax Act (added by Public Act 101-027, effective June 25, 2019, to be codified at 410 ILCS 705/1-1). Section 55-30(a) of the Cannabis Regulation and Tax Act (added by Public Act 101-027, effective June 25, 2019; amended by Public Act 101-593, effective December 4, 2019, to be codified at 410 ILCS 705/55-30(a)) states that "[i]nformation provided by the cannabis business establishment licensees or applicants to the Department of Agriculture, * * * is subject to the provisions and limitations contained in the Freedom of Information Act[.]" Indeed, section 55-30(f) of the Cannabis Regulation and Tax Act (added by Public Act 101-027, effective June 25, 2019; amended by Public Act, 101-593, effective December 4, 2019, to be codified at 410 ILCS 705/55-30(f)) requires the Department to publish on its website a list of the ownership information of licensees under its jurisdiction and to include in the list "the name of the person or entity holding each cannabis business establishment license; and the address at which the entity is operating under this Act."

Nevertheless, the Department's response to this office asserted that the Department is prohibited from disclosing applications submitted under the Cannabis Regulation and Tax Act because section 20-10(b)(3) of that Act (added by Public Act 101-027, effective June 25, 2019; amended by Public Act 101-593, effective December 4, 2019, to be codified at 410 ILCS 705/20-10(b)(3)) provides that if a medical cannabis cultivation center seeks early approval of an adult use cultivation center license, the adult use cultivation center license application must be submitted by the same person who holds the medical cannabis cultivation center's registration. According to the Department, an application for early approval of an adult use cultivation center license contains the same information that is confidential under the Medical Use Act. "As a result, the Department is concerned that the Medical Use Act's

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prohibition on disclosure of ownership information continues to apply to that same ownership information when submitted for an Early Approval Adult Use Cultivation Center License."³²

The primary objective "when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Dep't of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2014). Statutes must be construed "as a whole, so that no part is rendered meaningless or superfluous." *People v. Jones*, 223 Ill. 2d 569, 581 (2006). When two statutes relate to the same subject, they are presumed to be "governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious." *Uldrych v. VHS of Illinois, Inc.*, 239 Ill. 2d 532, 540 (2011).

The plain language of section 145(a)(2) of the Medical Use Act prohibits the Department and certain other State agencies from disclosing information they receive and keep, including applications, "for purposes of administering" the Medical Use Act. The Department did not receive the applications for adult use cultivation center licenses for the purpose of administering the Medical Use Act, however. Rather, it received the applications for the purpose of administering the Cannabis Regulation and Tax Act. Conspicuously absent from that statute is any prohibition on disclosure of applications for adult use cultivation center licenses. Instead, as noted above, section 55-30(a) of the Cannabis Regulation and Tax Act provides that information furnished by businesses and licensees "is subject to the provisions and limitations contained in the Freedom of Information Act[.]"³³ The contrast between that provision and the broad confidentiality protections of section 145(a) of the Medical Use Act is striking. It is readily apparent from the plain language of the statutes that the General Assembly intended to protect the confidentiality of applicants regulated by the latter, but not the former. This is further illustrated by the requirement, in section 55-30(f) of the Cannabis Regulation and Tax Act, that the Department publish and update information identifying the name of the persons or entities

³²Letter from John Teefey, General Counsel, Illinois Department of Agriculture, to Steve Silverman, Esq., Bureau Chief, Public Access Bureau, Illinois Attorney General, Kwame Raoul (February 21, 2020), at 4.

³³Section 55-65 of the Cannabis Regulation and Tax Act (added by Public Act 101-027, effective June 25, 2019; amended by Public Act 101-593, effective December 4, 2019, to be codified at 410 ILCS 705/55-65) concerns disclosure to and by financial institutions that engage in business with cannabis business establishments; it does not prohibit the disclosure of information under FOIA.

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that hold licenses under the Cannabis Regulation and Tax Act, as well as the addresses where the entities operate. This is the exact information Mr. McCoppin is seeking.

There is no conflict between the confidentiality provisions of the Medical Use Act and the disclosure requirements of the Cannabis Regulation and Tax Act. Based on the plain language of section 55-30(a) of the Cannabis and Regulation Tax Act, a licensee under the Medical Use Act that chooses to apply for an adult use cultivation center license has no expectation that the Medical Use Act's confidentiality protections will somehow extend to protect the application. If the General Assembly intended to prohibit disclosure of applications for adult use cultivation center licenses, it would have done so expressly as it did for applications under the Medical Use Act. It did not. Accordingly, this office concludes that the Department has not sustained its burden of demonstrating that the information related to adult use cultivation center applications that was redacted is exempt from disclosure pursuant to section 7(1)(a) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) exempts from inspection and copying "[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." The exemption defines "unwarranted invasion of personal privacy" as "the 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." 5 ILCS 140/7(1)(c) (West 2018), as amended by Public Act 101-455, effective August 23, 2019). A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Dep't of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001).

The resolution of a personal privacy exemption claim requires balancing the public interest in disclosure of the specific information against the involved individuals' interests in privacy. See *Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 23-24 (1st Dist. 1997). This determination is made by considering and weighing 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." *Gibson*, 289 Ill. App. 3d at 23-24.

The Department redacted the dates of birth of principal officers and board members of adult use cultivation centers under section 7(1)(c). Mr. McCoppin requested information on behalf of the *Chicago Tribune*, a media outlet that seeks to disseminate

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information from the records in question to the public. Therefore, his interest in the records and the public's interest are aligned. In his reply to the Department's response to this office, Mr. Healey asserted "a strong public interest in birth date not only because it is part of the application form but also because age is a critical element in cannabis laws (the adult use products may be sold and advertised only to individuals 21 and older)."³⁴ However, the applications do not contain the dates of birth of individuals who purchase cannabis or are subjected to cannabis advertising. The applications contain the dates of birth of officers and board members of cannabis businesses.

With respect to the degree of invasion of personal privacy, the Attorney General has concluded that under Illinois' FOIA, "[a]n individual's birth date is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information." Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12; *see also Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. § 552(b)(6) (1990)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and that disclosure "would constitute a clearly unwarranted invasion of personal privacy.");^{35, 36} *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 346-348, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "'nontrivial privacy interest'" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure). Mr. Healey's reply to the Department's response to this office cited the United States Supreme Court's observation that "[i]nformation such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal[.]" *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600, 102 S. Ct. 1957, 1961 (1982). That statement is dictum without precedential value. *Exelon Corporation v. Dep't of Revenue*, 234 Ill. 2d 266, 277 (2009) (dictum is "generally not binding authority or precedent"). The Court held that the citizenship information at issue in *United States Dep't of State* constituted "'similar files'" within the scope of Exemption 6 of Federal FOIA referenced above, and would be exempt if their disclosure constituted an unwarranted invasion of personal privacy; the Court remanded

³⁴Letter from Brendan J. Healey, Baron, Harris Healey, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 5, 2020), at [2].

³⁵Exemption 6 of Federal FOIA applies to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"

³⁶Because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing similar provisions of the Federal Act, while not controlling, may provide helpful and relevant precedents in construing the State Act. *See, e.g., Margolis v. Director, Ill. Dep't of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

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the case for a balancing of the interests. *United States Dep't of State*, 456 U.S. at 602-03, 102 S. Ct. at 161-62.

Lastly, there do not appear to be alternative means by which Mr. McCoppin can obtain the dates of birth.

Taking all of these factors into account, this office concludes that disclosure of the officers' and board members' dates of birth would constitute an unwarranted invasion of their personal privacy. A date of birth is highly personal information. Mr. Healey has not identified a legitimate public interest in disclosure of this information other than to note that it appears on the requested applications. An applicant does not surrender all rights to privacy of information contained in an application for a government-issued license. This office also notes that the Department has expressed a willingness to provide Mr. McCoppin with the years of birth from the applications, which would enable him to approximate the ages of the officers and board members within one year. Accordingly, this office concludes that the Department did not improperly redact dates of birth 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:

1) On December 6, 2019, Mr. Robert McCoppin, on behalf of the *Chicago Tribune*, submitted a FOIA request to the Illinois Department of Agriculture seeking copies of all applications for adult use cultivation center licenses.

2) On December 26, 2019, the Department's FOIA Officer furnished copies of the applications with certain information redacted pursuant to section 7(1)(b) of FOIA.

3) On January 27, 2020, Mr. Brendan J. Healey, counsel for the *Chicago Tribune*, submitted a Request for Review disputing the redactions of: (1) names of owners, principal officers, and board members of cannabis cultivation centers; (2) facility addresses; and (3) dates of birth of principal officers and board members of cannabis cultivation centers. 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 2018)).

4) On January 31, 2020, the Public Access Bureau forwarded a copy of the Request for Review to the Department, along with a letter asking it to provide unredacted copies of the applications furnished to Mr. McCoppin and a detailed explanation of the factual and legal

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bases for the applicability of section 7(1)(b) to each category of information that was redacted, with the exception of social security numbers.

5) On February 21, 2020, the Department provided this office with a written response, but did not furnish unredacted copies of the applications that this office requested in its January 31, 2020, letter of inquiry. The response asserted that: (1) names of cultivation centers' principal officers and board members and street addresses of cultivation centers are exempt from disclosure pursuant to section 7(1)(a) of FOIA; (2) personal financial information, signatures, home addresses, and social security numbers are exempt from disclosure pursuant to section 7(1)(b); and (3) dates of birth are exempt from disclosure pursuant to section 7(1)(c) of FOIA. Despite multiple subsequent requests for unredacted copies of the applications over the ensuing 8 weeks, the Department did not provide the requested records to this office, citing an inability to access the records because of operational limitations.

6) On February 24, 2020, this office forwarded a copy of the Department's response to Mr. Healey; he submitted a reply on March 5, 2020.

7) On March 27, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to May 8, 2020, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) On April 17, 2020, the Department's General Counsel asserted that the addresses redacted from the applications were business addresses rather than residential addresses, and that they were not redacted as "private" information under section 7(1)(b) of FOIA, but instead were redacted based on confidentiality provisions in the Compassionate Use of Medical Cannabis Act.

9) Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law."

10) Sections 145(a) and 145(a)(2) of the Compassionate Use of Medical Cannabis Act prohibit the Department from disclosing information received and records kept by the Department for purposes of administering that Act, including applications by or on behalf of cannabis cultivation centers. The Department asserted that this provision also prohibits it from disclosing applications submitted under the Cannabis Regulation and Tax Act because section 20-10(b)(3) of that Act provides that if a medical cannabis cultivation center licensee seeks early approval of an adult use cultivation center license, the adult use cultivation center license application must be submitted by the same person who holds the medical cannabis cultivation center's registration.

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11) The Cannabis Regulation and Tax Act does not prohibit disclosure of applications submitted by applicants for adult use cultivation center licenses. To the contrary, 55-30(a) of the Cannabis Regulation and Tax Act provides that information furnished by businesses and licensees "is subject to the provisions and limitations contained in the Freedom of Information Act [.]". Section 55-30(f) of the Cannabis Regulation and Tax Act further requires that the Department publish and update information identifying the name of the persons or entities that hold licenses under the Cannabis Regulation and Tax Act, as well as the addresses where the entities operate.

12) Under its plain language, the confidentiality provisions of section 145(a) and 145(a)(2) of the Compassionate Use of Medical Cannabis Act are inapplicable to applications submitted for adult use cultivation center licenses because the Department did not receive those applications for the purpose of administering the Compassionate Use of Medical Cannabis Act. If the General Assembly intended to prohibit disclosure of applications for adult use cultivation center licenses submitted under the Cannabis Regulation and Tax Act, it could have done so expressly. It did not. Accordingly, the Department did not sustain its burden of demonstrating that the information redacted from the applications is exempt from disclosure pursuant to section 7(1)(a) of FOIA.

13) Section 7(1)(c) exempts from inspection and copying "[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." The exemption defines "unwarranted invasion of personal privacy" as "the 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."

14) Dates of birth are highly personal information. No legitimate public interest in disclosure of dates of birth of principal officers and board members of adult use cultivation centers outweighs those individuals' privacy rights. Thus, the Department did not improperly redact dates of birth from the applications pursuant to section 7(1)(c).

Therefore, it is the opinion of the Attorney General that the Department has violated section 3(d) of FOIA by redacting names and addresses from the applications for adult use cultivation center licenses requested by Mr. McCoppin. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. McCoppin with copies of the applications that contain the information that was improperly redacted.

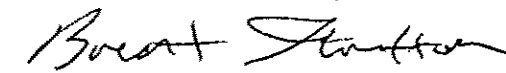
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This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Robert McCoppin or the Illinois Department of Agriculture as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

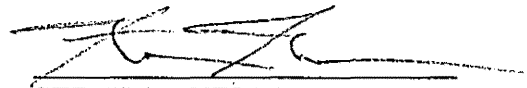
CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 20-003) upon:

Mr. Brendan J. Healey
Baron Harris Healey
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General Counsel
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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 Chicago, Illinois on May 8, 2020.


STEVE SILVERMAN
Bureau Chief

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