



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 18, 2025

PUBLIC ACCESS OPINION 25-006
(Request for Review 2025 PAC 85693)

FREEDOM OF INFORMATION ACT:
Basis for Withholding Records Related
to Settlement Agreement

Mr. Pete Czosnyka
5745 North Menard Avenue
Chicago, Illinois 60646

Mr. Frank Davis
Assistant Director
City of Chicago Department of Finance
121 North LaSalle Street, Room 700
Chicago, Illinois 60602

Dear Mr. Czosnyka and Mr. Davis:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2024)). For the reasons discussed below, this office concludes that the City of Chicago (City) Department of Finance (Department) improperly withheld a record responsive to Mr. Pete Czosnyka's February 22, 2025, FOIA request.

On that date, Mr. Czosnyka submitted a FOIA request to the Department seeking: "A copy of the record of the \$87,500 payment to Alderman Gardiner * * * AND documents sufficient to show the nature and extent of the 'settlement' * * * AND documents sufficient to show the definition of a 'Contribution Claim.'"¹ (Emphasis in original.) On February 24, 2025, the Department extended its time to respond to Mr. Czosnyka's request by five business days

¹FOIA portal message from City of Chicago Finance Department acknowledging receipt of FOIA request submitted by Peter Czosnyka (February 22, 2025).

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pursuant to section 3(e)(vii) of FOIA (5 ILCS 140/3(e)(vii) (West 2024)).² On March 11, 2025, the Department granted the request in part and denied it in part pursuant to sections 7(1)(b), 7(1)(c), 7(1)(m), and 7(1)(kk) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(m), (1)(kk) (West 2024)).³ On that same date, Mr. Czosnyka submitted the above-referenced Request for Review contesting the Department's response.⁴

On March 27, 2025, the Public Access Bureau forwarded a copy of the Request for Review to the Department, accompanied by a letter requesting unredacted copies of any withheld records for this office's confidential review and a detailed written explanation of the legal and factual bases for the applicability of the asserted exemptions.⁵ This office also asked the Department to provide a detailed description of its search for responsive records.⁶ On April 8, 2025, the Department furnished those materials, including a complete version of its answer for this office's confidential review and a copy with confidential information redacted⁷ for forwarding to Mr. Czosnyka.⁸ On that same date, this office forwarded a copy of the Department's redacted answer to Mr. Czosnyka⁹ and notified him of his opportunity to reply in writing.¹⁰ Mr. Czosnyka replied on that same date.¹¹ On April 9, 2025, Mr. Czosnyka clarified

²FOIA portal message from Frank Davis, FOIA Officer/Assistant Director P&L, Department of Finance, to Peter Czosnyka (February 24, 2025).

³Letter from Frank Davis, FOIA Officer/Assistant Director P&L, Department of Finance, to Peter Czosnyka (March 11, 2025).

⁴E-mail from Pete Czosnyka to Illinois Attorney General Public Access Counselor (PAC) (March 11, 2025).

⁵Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Frank Davis, FOIA Officer, City of Chicago Department of Finance (March 27, 2025), at 2.

⁶Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Frank Davis, FOIA Officer, City of Chicago Department of Finance (March 27, 2025), at 2.

⁷Section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2024)) provides that "[t]he Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."

⁸Letter from Frank Davis, FOIA Officer, Department of Finance, City of Chicago, to Ben Silver, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (April 8, 2025).

⁹See 5 ILCS 140/9.5(d) (West 2024) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

¹⁰Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Pete Czosnyka (April 8, 2025).

¹¹E-mail from Pete Czosnyka to [Benjamin] Silver, [Supervising Attorney Public Access Bureau, Office of the Attorney General] (April 8, 2025).

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for this office that he wanted to limit the scope of his Request for Review to the withholding of records under section 7(1)(m) of FOIA.¹²

On May 6, 2025, the Public Access Bureau extended the time within which to issue a binding opinion by 30 business days, to June 24, 2025, pursuant to section 9.5(f) of FOIA.¹³

BACKGROUND

The record at issue in this matter relates to a class action lawsuit that Mr. Czosnyka and other plaintiffs filed against the City and Alderman Jim Gardiner. The plaintiffs alleged that: (1) Alderman Gardiner violated their constitutional rights by blocking them from his official Facebook page and/or deleting comments they posted; and (2) the City failed to reprimand Alderman Gardiner for that conduct. *Czosnyka v. Gardiner*, 2021 U.S. Dist. Lexis 205041, at *2 (N.D. Ill. October 25, 2021). On October 25, 2021, the court granted the City's motion to dismiss the City from the lawsuit. *Czosnyka v. Gardiner*, 2021 U.S. Dist. Lexis 205041, at *5 (N.D. Ill. October 25, 2021). On September 25, 2023, the court granted the plaintiffs' motion for summary judgment against Alderman Gardiner, enjoined him from blocking the plaintiffs on his Facebook page, and indicated that a trial would be scheduled to determine damages. *Czosnyka v. Gardiner*, 2023 U.S. Dist. Lexis 170294, at *18 (N.D. Ill. September 25, 2023).

The news media reported that the case subsequently was settled for \$157,500, with the City contributing \$87,500 to the settlement "even though U.S. District Judge Sharon Coleman dismissed the claims against the city[.]"¹⁴ The Department's redacted response to the FOIA request referenced a check that the City issued to Nathan & Kamionski LLP,¹⁵ which represented Alderman Gardiner in the lawsuit.¹⁶ The record that the Department withheld under

¹²E-mail from Pete Czosnyka to [Benjamin] Silver, [Supervising Attorney, Public Access Bureau, Office of the Attorney General] (April 9, 2025).

¹³Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Pete Czosnyka and Frank Davis, Assistant Director, City of Chicago Department of Finance (May 6, 2025).

¹⁴Heather Cherone, *Chicago Taxpayers to Pay \$87,500 to Settle Lawsuit Claiming Ald. Jim Gardiner Violated First Amendment by Blocking Critics from Official Facebook Page*, WTTW (January 7, 2025), <https://news.wttw.com/2025/01/07/chicago-taxpayers-pay-87500-settle-lawsuit-claiming-ald-jim-gardiner-violated-first>.

¹⁵Letter from Frank Davis, FOIA Officer, Department of Finance, City of Chicago, to Ben Silver, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (April 8, 2025), at 2.

¹⁶Heather Cherone, *Federal Judge Who Ruled Ald. Gardiner Violated First Amendment Admonishes Him for Approaching Her*, WTTW (August 30, 2024), <https://news.wttw.com/2024/08/30/federal-judge-who-ruled-ald-gardiner-violated-first-amendment-admonishes-him-approaching>.

section 7(1)(m) consists of a document concerning the settlement which is signed by Alderman Gardiner and an attorney with the City's Law Department.¹⁷

ANALYSIS

It is the public policy of the State of Illinois that "all persons are entitled to full and complete information regarding the affairs of government." 5 ILCS 140/1 (West 2024). Under FOIA, "[a]ll 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 2024).

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1997). A party asserting that a communication to an attorney is protected by the attorney-client privilege must show that "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2006). "The privilege applies not only to the communications of a client to his attorney, but also to the advice of an attorney to his client." *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (1990). A public body that withholds records under section 7(1)(m) "can meet its burden only by providing some *objective* indicia that the exemption is applicable under the circumstances." (Emphasis in original.) *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 470 (2003). Submitting a privileged record for confidential review "is the most effective way for the public body to objectively demonstrate that the exemption claimed does, in fact, apply." *Illinois Education Ass'n*, 204 Ill. 2d at 471.

The non-confidential portion of the Department's response to this office addressing section 7(1)(m) stated that the Department "withheld communications between City employees and their legal counsel in which legal advice was being sought and provided[]" and

¹⁷The Department redacted other information under sections 7(1)(b), 7(1)(c), and 7.5(kk) of FOIA, but did not claim those exemptions applied to the record at issue concerning the settlement.

that "the attorney-client privilege applies to this document[.]"¹⁸ Although Alderman Gardiner is an elected official rather than an employee of the City, the City of Chicago Municipal Code authorizes the City's Law Department to "[a]pppear for and protect the rights and interests of the City in all actions, suits and proceedings brought by or against it or any City officer, board or department, including actions for damages when brought against such officer in the officer's official capacity[.]"¹⁹ The City Law Department's authorization to represent City officers does not, however, make all of its communications with those officers in connection with litigation subject to the attorney-client privilege regardless of the context.

In *Chicago Public Media v. Cook County Office of the President*, 2021 IL App (1st) 200888, ¶ 15, the Illinois Appellate Court considered whether a public body properly withheld e-mails county officials exchanged with a private attorney under section 7(1)(m) of FOIA. The public body asserted that the e-mails contained legal advice to county officials concerning the plaintiff's FOIA request. *Chicago Public Media*, 2021 IL App (1st) 200888, ¶ 15. In holding that the e-mails were not protected by the attorney-client privilege, the court noted that the public body "has never offered substantiation to define the existence or nature of [the attorney's relationship] to" the president's office, the county board, or a county commissioner "with respect to plaintiff's FOIA requests. From our review of the e-mails, we could find no factual basis for concluding that an attorney-client relationship of any kind existed." *Chicago Public Media*, 2021 IL App (1st) 200888, ¶ 50. The court added that its review "did not show that any redacted material involved confidential legal advice from" the attorney. *Chicago Public Media*, 2021 IL App (1st) 200888, ¶ 50; see also *Chicago Trust Co. v. Cook County Hospital*, 298 Ill. App. 3d 396, 408-09 (1998) (concluding that the attorney-client privilege was inapplicable because the documents at issue did not show that the client was seeking legal advice).

Likewise, this office has reviewed the record at issue and is unable to discern any indication that legal advice was sought or provided or that the City attorney who signed the record was acting as Alderman Gardiner's attorney in connection with the settlement. The City had been dismissed from the case and Alderman Gardiner was represented by private counsel. Although part of the record briefly explains the City's involvement in the settlement, neither that statement nor any other portion of the record renders legal advice to Alderman Gardiner or indicates that Alderman Gardiner sought legal advice pertaining to the litigation and settlement from the City attorney. Rather, the withheld record is a document concerning the settlement which is signed by Alderman Gardiner and an attorney with the City's Law Department.

In short, the City attorney was representing the City while Alderman Gardiner had his own attorney, and the parties had separate interests in the subject that the withheld record

¹⁸Letter from Frank Davis, FOIA Officer, Department of Finance, City of Chicago, to Ben Silver, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (April 8, 2025), at 4.

¹⁹Chicago Municipal Code § 2-60-020(b) (last amended December 16, 2024), https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2600022#JD_Ch.2-60.

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addresses. The confidential information that the Department provided to this office does not establish that City attorneys represented Alderman Gardiner in connection with the withheld record.

Further, article VIII, section 1(c) of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VIII, § 1(c)) 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." The constitutional right to information regarding the use of public funds is incorporated into the provisions of FOIA. 5 ILCS 140/2.5 (West 2024) ("All 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."). The public has a right to know the purposes for which public funds are expended. Because the withheld record relates to such a purpose and because it is not a communication protected by the attorney-client privilege, this office concludes that the Department did not sustain its burden of proving that the record is exempt from disclosure under section 7(1)(m) 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 February 22, 2025, Mr. Pete Czosnyka submitted a FOIA request to the City of Chicago Department of Finance seeking, in relevant part, "[a] copy of the record of the \$87,500 payment to Alderman Gardiner * * * AND documents sufficient to show the nature and extent of the 'settlement'[".]"
- 2) On February 24, 2025, the Department extended its time to respond to Mr. Czosnyka's request by five business days pursuant to section 3(e)(vii) of FOIA.
- 3) On March 11, 2025, the Department granted the request in part and denied it in part pursuant to sections 7(1)(b), 7(1)(c), 7(1)(m), and 7(1)(kk) of FOIA.
- 4) On that same date, Mr. Czosnyka submitted the above-referenced Request for Review contesting the Department's response.
- 5) On March 27, 2025, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the contested records for this office's confidential review. This office also asked the Department to provide a detailed explanation of the factual and legal bases for its partial denial of Mr. Czosnyka's request and the measures that were taken to search for responsive records.

6) On April 8, 2025, the Department furnished the requested materials to this office, including a complete version of its answer for this office's confidential review and a redacted copy to forward to Mr. Czosnyka.

7) On that same date, the Public Access Bureau forwarded a copy of the Department's written answer to Mr. Czosnyka and notified him of his right to reply.

8) On April 8, 2025, Mr. Czosnyka replied to the Department's answer. On April 9, 2025, Mr. Czosnyka clarified for this office that the scope of his Request for Review is limited to the Department's assertion of section 7(1)(m) of FOIA.

9) On May 6, 2025, the Public Access Bureau extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

10) The one record withheld by the Department pursuant to the section 7(1)(m) exemption consists of a document concerning the settlement of a class action lawsuit that had been filed against Alderman Gardiner and the City. The City had been dismissed from the case, but the plaintiffs obtained summary judgment against Alderman Gardiner.

11) Section 7(1)(m) of FOIA exempts from disclosure "[c]ommunications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil, or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies."

12) The record at issue does not reflect Alderman Gardner seeking legal advice or a City attorney rendering legal advice. The City has not demonstrated that it had an attorney-client relationship with Alderman Gardiner in connection with the withheld record. That record is a document concerning the settlement which is signed by Alderman Gardiner and an attorney with the City's Law Department. Accordingly, this office concludes that the Department has not met its burden of proving that the withheld record is exempt from disclosure under section 7(1)(m) of FOIA.

Therefore, it is the opinion of the Attorney General that the City of Chicago Department of Law improperly withheld the contested record in response to Pete Czosnyka's February 22, 2025, Freedom of Information Act. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Czosnyka with a copy of the withheld record.

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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 2024). 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. Pete Czosnyka as defendants. *See* 5 ILCS 140/11.5 (West 2024).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

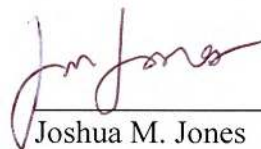
CERTIFICATE OF SERVICE

Joshua M. Jones, Bureau Chief, Public Access Bureau, Chicago, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 25-006) upon:

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petczosnyka@comcast.net

Mr. Frank Davis
Assistant Director
City of Chicago Department of Finance
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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 June 18, 2025.



Joshua M. Jones
Bureau Chief

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