



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 15, 2011

PUBLIC ACCESS OPINION No. 11-004
(Request for Review – 2011 PAC 12406)

FREEDOM OF INFORMATION ACT

Redaction of Settlement Agreements:

Under Section 2.20 of FOIA, settlement agreements entered into by an intergovernmental risk management association or self-insurance pool on behalf of a public body are subject to disclosure. Section 7(1)(s) does not exempt from disclosure the amount of funds expended to settle a claim.

Mr. Paul Keller
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Dear Mr. Keller:

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 2009 Supp.)).

BACKGROUND

On September 21, 2007, Mr. James Brookman, a former employee of the City of Des Plaines (City), filed a lawsuit in the Circuit Court of Cook County against the City, its fire chief, human resources director, and village manager.¹ On July 17, 2009, James Kedrowski, another former City employee, filed a lawsuit against the City and its fire chief in the Circuit Court of Cook County.²

¹ *Brookman v. City of Des Plaines*, Docket No. 07 CH 26507 (Circuit Court, Cook County).

² *Kedrowski v. City of Des Plaines*, Docket No. 09 CH 24151 (Circuit Court, Cook County).

On April 9, 2010, the City reached a settlement with Mr. Kedrowski. On November 30, 2010, the City reached a settlement with Mr. Brookman. In each case, the court dismissed the lawsuit upon the execution of a written settlement agreement by the parties. Each settlement agreement provided for the payment of a specific sum of money to the respective plaintiff.

On January 26, 2011, Mr. Todd Wessell, editor and publisher of the *Journal and Topics Newspaper*, submitted a FOIA request to the City seeking copies of "all details pertaining to the recent settlement agreement involving former Des Plaines firefighter Jim Brookman"³ and the settlement agreement involving Mr. Kedrowski.

On February 7, 2011, Mr. Paul N. Keller of Ancel, Glink, Diamond, Bush, DiCanni & Krafthefer, P.C. (Ancel Glink), on behalf of the City and the Municipal Insurance Cooperative Association (MICA), a governmental risk self-insurance pool of which the City is a member, provided Mr. Wessell with a copy of the settlement agreements. However, Mr. Keller redacted from each agreement the specific dollar amount paid to the plaintiffs, citing as his basis Section 7(1)(s) of FOIA (5 ILCS 140/7(1)(s) (West 2009 Supp.)), which permits a public body to withhold from disclosure "[i]nsurance or self-insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications." The City's redaction of information contained in the requested documents constituted a denial, in part, of Mr. Wessell's request, thereby triggering the Public Access Counselor's authority to review whether the City's response complied with the requirements of FOIA. *See* 5 ILCS 140/9.5 (West 2009 Supp.).

On February 14, 2011, Esther Seitz of Donald M. Craven, P.C., on behalf of Mr. Wessell, submitted to the Public Access Counselor a Request for Review of the City's response.⁴ This office initiated further review of this matter on February 24, 2011.⁵ We requested from the City an unredacted copy of each settlement agreement. We also requested that the City provide a written explanation of its determination that Section 7(1)(s) permits it to redact the specific dollar amounts in settlement agreements, particularly in light of Section 2.20 of FOIA (5 ILCS 140/2.20

³ Letter from Todd Wessell, Editor & Publisher, *Journal and Topics Newspaper*, to Gloria Ludwig, City Clerk, City of Des Plaines (January 26, 2011).

⁴ Letter from Esther Seitz, Donald M. Craven, P.C., to Amalia Rioja, Acting Public Access Counselor, Office of the Attorney General (February 14, 2011). The request was received by the Public Access Counselor on February 15, 2011.

⁵ Letter from Matthew C. Rogina, Assistant Public Access Counselor, Office of the Attorney General, to Ellen K. Emery, Ancel Glink (February 24, 2011).

(West 2009 Supp.)), which provides that “[a]ll settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted[,]” and Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2009 Supp.)), which 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.”

On March 3, 2011, Ancel Glink submitted a response letter on behalf of the City, together with unredacted copies of the settlement agreements in Mr. Brookman’s and Mr. Kedroski’s cases.⁶ In the letter, the City argued that:

The documents at issue here are agreements in settlement of lawsuits filed against the City alleging injury. Des Plaines is a member of the Municipal Insurance Cooperative Association (MICA), a governmental self insurance pool. *See, Antiporek v. Village of Hillside*, 114 Ill. 2d 246, 499 N.E.2d 307 (1986); *Pritza v. Village of Lansing, et al.* -- Ill. App. 3d --, 940 N.E.2d 1164 (1st Dist. 11/24/10). Payment of the amounts specified in the settlement agreement was made by MICA, not by the City. Claims paid by MICA on behalf of Des Plaines are funded by pooled contributions of all members of MICA and are not funds of the City.

The City contended that because MICA paid the settlements from the pooled contributions of all MICA members, and not from City funds, Section 2.5 of FOIA does not apply to the agreements. Further, although the City conceded that settlement agreements are subject to disclosure pursuant to Section 2.20 of FOIA, the City asserted that the specific dollar amount of each settlement may be redacted pursuant to Section 7(1)(s).

Ms. Seitz, on behalf of Mr. Wessell, responded to Mr. Keller’s letter on March 15, 2011.⁷ Ms. Seitz argued that the City’s position that Section 2.5 is inapplicable “subverts the intent of” FOIA. Ms. Seitz contended that the critical issue under Section 2.5 is whether the

⁶ Letter from Paul N. Keller, Ancel Glink, to Matthew C. Rogina, Assistant Public Access Counselor, Office of the Attorney General (March 3, 2011).

⁷ Letter from Esther Seitz, Donald M. Craven, P.C., to Matthew Rogina, Assistant Public Access Counselor, Office of the Attorney General (March 15, 2011).

funds involved are public funds, and that Section 2.5 is applicable and requires disclosure of the settlement amounts because "the amounts paid out under the settlement agreements are public funds; they were pooled from various municipalities, including the City."

The City responded to Ms. Seitz's letter on March 16, 2011, and argued that whether the settlement payments "constitute 'use of public funds' is not the issue in this matter." Instead, the City asserted, the exemption in Section 7(1)(s), which is "expressly incorporated" into Section 2.20, provides for the redaction of "claims, loss or risk management information" and "[t]he amount paid in settlement of a claim is clearly claims or loss information."

We agree with the City that, under these circumstances, the only issue that requires resolution is whether the settlement amounts are exempted from disclosure by Section 7(1)(s) of FOIA. We conclude that they are not.

ANALYSIS

Under Section 1.2 of FOIA (5 ILCS 140/1.2, (West 2009 Supp.)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection and copying." In keeping with this presumption, the exemptions to disclosure are to be narrowly construed. *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378 (1989). Section 1.2 further requires that "[a]ny 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."

The City does not dispute that the settlement agreements are subject to disclosure, but asserts that, under Section 2.20 of FOIA, it may redact the settlement amounts from the agreements pursuant to Section 7(1)(s) of FOIA, which exempts from disclosure:

Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

The City contends that the amounts of the settlements constitute "claims or loss information" which is therefore exempt from disclosure under the second sentence of Section 7(1)(s). The City, however, construes the scope of that exemption too broadly.

The City would interpret the phrase “claims, loss or risk management information” to mean “claims information,” “loss information” and “risk management information.” The phrase is equally susceptible of another interpretation, however. It may also be read as exempting “claims *management* information” and “loss *management* information,” as well as “risk management information.” “A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. * * * Where the language of a statute is ambiguous, it is appropriate to consider other sources to ascertain the legislature's intent.” *People v. Jameson*, 162 Ill. 2d 282, 288 (1994).⁸

Given the nature of the ambiguity present in the language of Section 7(1)(s), the court's analysis of similarly ambiguous statutory language in *People v. Qualls*, 365 Ill. App. 3d 1015, 1020 (2006), is *apropos*:

Here, the doctrine of *noscitur a sociis*-- “a word is known by the company it keeps” --is particularly applicable. Pursuant to this maxim, “[t]he meaning of questionable words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it.” The doctrine of *noscitur a sociis* is relied upon “to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words” and “to avoid the giving of unintended breadth to a legislative act.”

Initially, it is clear that Section 7(1)(s) is not intended to exempt from disclosure all information relating to intergovernmental risk management associations or self-insurance pools. Rather, Section 7(1)(s) protects from disclosure “*proprietary information and records related to the operation* of an intergovernmental risk management association or self-insurance pool” (emphasis added), the release of which could, for example, disclose sensitive business policies or result in an unfair advantage to persons dealing with the entity. The meaning of other terms used in Section 7(1)(s) relating to records must be interpreted consistently with this purpose.

Accordingly, under the doctrine of *noscitur a sociis*, the associated term “management” modifies and qualifies the terms “claims,” “loss,” and “risk.” In the insurance context, the term “claim” refers generally to “[a] formal request for payment related to an event

⁸ In Public Access Opinion No. 10-004, issued December 29, 2010, this office concluded that the language of Section 2.20 is unambiguous to the extent that settlement agreements entered into by a public body or on its behalf are “public records subject to inspection and copying by the public.” Opinion No. 10-004 did not, however, address the provisions of Section 7(1)(s).

or situation that is covered under an in-force insurance policy." The term "loss" means "[t]he dollar amount associated with a claim." The term "risk" refers to "uncertainty of a financial loss."⁹ In the general business sense, "management" is "[t]he organization and coordination of the activities of an enterprise in accordance with certain policies and in achievement of defined objectives."¹⁰

Therefore, what Section 7(1)(s) exempts from disclosure is proprietary information regarding the policies, procedures, and practices that an intergovernmental risk management association or self-insurance pool adopts to manage its claims, loss, and risk exposure. It does not exempt from disclosure discreet information relating to an individual claim or loss, including the amount of funds that are allocated to settle a claim.

Indeed, taken to its extreme, the interpretation advocated by the City could completely subsume Section 2.20. If "claims information" may be withheld from disclosure, then it could be argued, for example, that the recitation of the allegations and the operative facts set out in a settlement agreement are exempt. It is clear that the General Assembly intended for the public to have meaningful access to settlement agreements entered into by or on behalf of public bodies. If a public body could redact from a settlement agreement all information regarding the nature of a claim and the amount paid to settle it, then production of the redacted document would provide little or no insight into the conduct of government.

The City has not alleged that it does not have in its possession copies of the settlement agreements that Mr. Wessel requested. To the contrary, it appears that Mr. Keller, the City's representative, does possess copies of the requested documents. These documents are clearly "settlement agreements entered into by or on behalf of [the City and] are public records subject to inspection and copying by the public[.]" Because the City possesses copies of the settlement agreements which it is obligated under Section 2.20 to furnish to Mr. Wessel, it is not necessary to address the applicability of Section 2.5 of FOIA to these documents in order to resolve this request, because the source of the funds used to pay the claims has no bearing on the City's duty to produce the documents.

⁹ National Association of Insurance Commissioners, "Glossary of Insurance Terms," available at: http://www.naic.org/consumer_glossary.htm.

¹⁰ BusinessDictionary.com, available at: <http://www.businessdictionary.com/definition/management.html>.

FINDINGS AND CONCLUSIONS

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

1) On January 26, 2011, Mr. Todd Wessell submitted a Freedom of Information Act request to the City of Des Plaines seeking copies of "all details pertaining to the recent settlement agreement involving Des Plaines firefighter Jim Brookman" and the settlement agreement involving former employee James Kedrowski.

2) On February 7, 2011, Mr. Paul Keller, on behalf of the City and the Municipal Insurance Cooperative Association, a governmental risk self-insurance pool of which the City is a member, provided Mr. Wessell with copies of the settlement agreements. However, Mr. Keller redacted from each agreement the specific dollar amount paid to the plaintiffs.

3) The City, as a matter of law, partially denied Mr. Wessell's FOIA request by redacting information from the copies of the settlement agreements.

4) On February 14, 2011, Esther Seitz, Don M. Craven, P.C., on behalf of Mr. Wessell, submitted to the Public Access Counselor a Request for Review of the City's February 7, 2011, response.

5) The Request for Review was timely filed and otherwise complies with the requirements of Section 9.5 of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the records at issue.

6) The settlement agreements requested by Mr. Wessell are public records that the City is required to produce to Mr. Wessell for inspection and copying pursuant to Section 2.20 of FOIA, subject only to permissible redactions under Section 7 of the Act.

7) The City has not met its burden of proving by clear and convincing evidence that it may withhold from disclosure the specific dollar amounts paid to Mr. Brookman and Mr. Kedrowski as part of the settlement of the cases in question. To the contrary, the Attorney General finds that Section 7(1)(s) exempts from disclosure only proprietary information regarding the policies, procedures, and practices that an intergovernmental risk management association or self-insurance pool adopts to manage its claims, loss, and risk exposure. It does not exempt from disclosure discreet information relating to an individual claim or loss, including the amount of funds that are allocated to settle a claim.

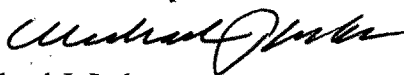
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In conclusion, it is the opinion of the Attorney General that the City has, in violation of the requirements of the Freedom of Information Act, improperly denied Mr. Wessell's request for access to and/or a copy of the settlement agreements. Accordingly, the City is directed to take immediate and appropriate action to comply with this opinion by furnishing unredacted copies of the settlement agreements to Mr. Wessell.

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 2008). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Todd Wessell as defendants. See 5 ILCS 140/11.5 (West 2009 Supp.).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
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