



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 12, 2010

William McCaffrey
Director of Public Affairs
Chicago Department of Buildings
121 North LaSalle Street, Room 900
Chicago, Illinois 60602

RE: Pre-Authorization Request – 2010 PAC 5653

Dear Mr. McCaffrey:

We have received and reviewed the written notice from the Chicago Department of Buildings (City) of its intention to deny disclosure of certain records under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

Specifically, [REDACTED] submitted a FOIA request to the City on March 8, 2010 seeking copies of the following documents (as described by [REDACTED])

1. Copies of all original documents regarding every Plumbing supervisory bid, listing positions, requirements and dates from 1994 to the present;
2. Copies of all original documents of every applicants' submittal data for each bid, listing qualification and dates;
3. Copies of all original documents of every applicants' testing data for each bid;
4. Copies of all original documents of every applicants' interview, and/or oral questions by proctors with written questions and results;
5. Any Shakman monitor witnessed accounts of proctored procedures during any/all bids with names, dates and results;
6. Any Shakman monitor non-witnessed accounts of proctored procedures during and/all bids with names, dates and results including reasons why the monitor was excluded from any segment or process and by whom;
7. Copies of all correspondence regarding [REDACTED] at City of Chicago DOW/DWM;
8. Copies of all correspondence regarding [REDACTED] between Plumbers Local 130 of Chicago and the City of Chicago DOW/DWM;
9. Copies of correspondence from Local 130 regarding approval/denial of each applicant for each bid before and after appointments of personnel;

10. Copies of all correspondence between bid applicant's sponsors (i.e. Mayor's Office, Human Resources Board office, any Alderman's offices, Local 130) before, during and after every bid was awarded for each position; and
11. All correspondence and official records on how the bid person chosen was determined and by whom.

In its March 19, 2010 written notice to [REDACTED] and this Office, the City asserts that the following records may be withheld under Section 7(1)(c) of FOIA:

1. Copies of all original documents of every applicants' submittal data for each bid, listing qualification and dates;
2. Copies of all original documents of every applicants' testing data for each bid; and
3. Copies of all original documents of every applicants' interviews, and/or oral questions by proctors with written questions and results.

In the same notice to [REDACTED] the City asserts that the following records may be withheld under Section 7(1)(f) of FOIA:

1. Records relating to employee grievances and disciplinary cases; and
2. Hiring criteria rating forms.

The letter states that the City did provide [REDACTED] with documents responsive to Item 1, and that it was not in possession of documents responsive to Items 5 through 10. The City also asked [REDACTED] to narrow Item 11 pursuant to Section 3(g) of FOIA because of the burden the City would suffer in searching through e-mail records.

In addition to the letter, the City provided this Office with the following records it considers to be exempt from disclosure:

1. Personnel action reports;
2. Bid application forms;
3. Cover letters from applicants;
4. Resumes;
5. Degrees;
6. Professional certificates and licenses;
7. Transcripts;
8. Professional examinations;
9. Offer letters;
10. Memoranda regarding bid applications;
11. Letters denying employment;
12. Bid announcements;
13. Personnel action reports;
14. Assignment changes;
15. Requests for Hire;
16. Referral list and employment decision forms;
17. Hiring information summary;
18. Bid lists;
19. Interview lists;

20. Hiring criteria rating form;
21. Authorizations to release information;
22. Driver's licenses;
23. Test scores;
24. Certifications issued to the applicant by the City (Shakman Certification);
25. Departmental reference packet;
26. Job Description for Plumbing Inspector;
27. Punch detail history report, and
28. Employee evaluations.

Section 7(1)(c) of FOIA 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 disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c). The exemption defines "[u]nwarranted 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." *Id.* Furthermore, "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.*

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated", as long as the document is not cited or publicly identified by the head of the public body. 5 ILCS 140/7(1)(f).

Determinations

The City's request for approval of its decision to withhold information pursuant to Section 7(1)(c) is hereby approved in part and denied in part. The City's request for approval of its decision to withhold information pursuant to Section 7(1)(f) is approved. Because exemptions other than Section 7(1)(c) and Section 7(1)(f) do not require pre-authorization from this Office, we decline to make any determination with respect to the applicability of the Section 7(1)(n) exemption, or the assertion of Section 3(g) of FOIA. 5 ILCS 140/9.5(b).

With regard to the documents relating to the unsuccessful applicants, the City may withhold the following documents:

1. Cover letters from applicants;
2. Resumes;
3. Degrees;
4. Professional licenses and certificates;
5. Transcripts;
6. Letters denying employment;
7. Referral list and employment decision form;
8. Hiring information summary;
9. Bid list;
10. Interview lists;
11. Authorizations to release information; and

12. Final test scores.

It is the determination of this Office that the disclosure of the above information constitutes a highly unwarranted invasion of personal privacy and would be highly objectionable to a reasonable person. This Office relies on 2010 PAC 5602, a previously issued pre-authorization response letter and finds that the privacy interests of applicants who were not hired by the City outweigh the public's legitimate interest in knowing the names of the applicants and certain information relating to the applicant. In applying Section 7(1)(c), we note that disclosure of this information not only may adversely impact the applicant's ability to retain or secure employment, but may also hamper the City's ability to attract qualified candidates.

With regard to the documents relating to successful applicants, the City should disclose the following information:

1. Personnel action report;
2. Bid application forms;
3. Cover letters;
4. Resumes;
5. Academic Degrees;
6. Offer letters;
7. Departmental reference packet;
8. Letters of recommendation;
9. Assignment changes;
10. Memoranda regarding bid announcement;
11. Referral list and employment decision forms;
12. Hiring information summary;
13. Interview list naming the successful applicant but redacting the names of the unsuccessful applicant;
14. Authorizations to release information;
15. Professional licenses and certificates;
16. Certifications issued by the City (Shakman Certification);
17. Departmental Reference Packet;
18. Job description for Plumbing Inspector;
19. Punch detail history report;
20. Final test scores; and
21. Employee evaluations.

Section 7(1)(c) states that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c). People who accept public employment have a reasonable expectation that their qualifications will be subject to public scrutiny. The disclosure of the information listed above allows private citizens to gain insight into the employment decisions of public bodies and relates to the duties of the public employees. The disclosure of the above information can be said to bear on the public employee's duties. As a result, the subjects' right to privacy in these details does not outweigh the legitimate public interest in obtaining this information. The City may, however, withhold the transcripts of the successful applicants. Although academic transcripts may be considered in the course of determining qualifications for employment by a public body, they generally include detailed information on classes taken and grades received that has little or

no bearing on the employee's performance of his or her public duties, and which can properly be considered highly personal.


With regard to the hiring criteria rating form, the City's request to withhold the information pursuant to Section 7(1)(f) is approved. The document in question reflects internal notes and recommendations that were intended to aid the City in formulating final decisions on personnel matters. Additionally, there is no indication that this document has been publicly cited or identified by the head of the City.

Based on this analysis, the City should release the documents specified above and may withhold the remaining documents. If you have any questions, please call me at 312-814-5383. This letter shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

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Matthew Rogina
Assistant Public Access Counselor

cc: