



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 20, 2011

Mr. David J. Silverman
Mahoney, Silverman & Cross, LLC
822 Infantry Drive
Joliet, IL 60435

Re: FOIA Pre-authorization request – 2010 PAC 8737

Dear Mr. Silverman:

We have received and reviewed the written notice from the Village of Channahon of its intention to deny disclosure of certain information under section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2010)). Specifically, on June 16, 2010, Mr. John O'Bryan requested various records, including all submissions to the Village by Inspired Development, LLC, and Minority Development, LLC, which identify potential retailers that may relocate to the Village, as well as the Village's response to those submissions. The Village requested pre-authorization to withhold all records responsive to that portion of the request.

Inspired Development subsequently filed a complaint for declaratory and injunctive relief in Will County Circuit Court. *See Inspired Development, LLC, v City of Kankakee*, Docket No. 10-CH-5123 (Circuit Court, Will County). That complaint, which named the Village, the City of Kankakee, and the Office of the Illinois Attorney General as defendants, sought a court order to enjoin the Village from providing the Office of the Public Access Counselor (PAC) or anyone else with the records in question. We stayed our review of this matter pending resolution of that complaint. On April 6, 2011, the Circuit Court of Will County dismissed the complaint and cancelled the next scheduled court date. The dismissal order stated that the "Court does not believe that the claims brought in this Complaint are properly ripe for adjudication." As a result of that order, we requested that that the Village provide copies of the records in question for our review.¹ The Village responded that our request for the records was "premature" because it was unclear whether the dismissal order applied to the Village, which did

¹ Letter from Steve Silverman, Assistant Public Access Counselor, Office of the Attorney General, to Jamie Bowden, FOIA Officer, Village of Channahon (April 6, 2011).

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not join in the motion to dismiss.² We extended our stay pending the Will County Circuit Court's resolution of the Village's motion for clarification and the plaintiffs' motion to reconsider.

On June 21, 2011, the Will County Circuit Court ruled that the dismissal order applies to the Village and denied the plaintiffs' motion to reconsider. However, the court permitted the plaintiffs time to file an amended complaint and permitted the Village time to file a counter claim for declaratory judgment. On June 24, 2011, you indicated in a telephone conversation with this office that the Village will seek a declaratory judgment that the Village is not required to disclose the records in question. You indicated that the Village remains unwilling to turn over the records to PAC unless the court finds that the records must be disclosed.

DETERMINATION

The Village's use of the section 7(1)(f) exemption to withhold the records in question is **denied**. Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2010)), the Village carries the burden of demonstrating by clear and convincing evidence that these records are exempt from disclosure pursuant to section 7(1)(f). Sections 9.5(b) and (c) of FOIA (5 ILCS 140/9.5(b), (c) (West 2010)) obligate the Village to provide the records in question for our review. The Village's refusal to provide copies of the records for our review precludes the Village from sustaining its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f). With the issuance of this determination denying the Village's request to withhold records pursuant to section 7(1)(f), the time for the Village's response to Mr. O'Bryan's FOIA request is no longer tolled.

This letter does not constitute a binding opinion under section 9.5 of FOIA. If you have any questions, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

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² Letter from David Silverman, Attorney for the Village of Channahon, to Steve Silverman, Assistant Public Access Counselor, Office of the Attorney General (April 18, 2011).

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cc: Mr. John O'Bryan
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