



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 17, 2011

Via Electronic Mail

Mr. Kyong Lee
Deputy General Counsel
Illinois Department of Health Care and Family Services
Kyong.Lee@illinois.gov

RE: FOIA Pre-Authorization Request - 2011 PAC 16039

Dear Mr. Lee:

We have received the written notice from the Illinois Department of Health Care and Family Services (HFS) of its intention to deny disclosure of certain information pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c) (West 2010).

On July 19, 2011, Mr. Craig Lawrence, on behalf of United Risk International, submitted a FOIA request to the Illinois Executive Ethics Commission (EEC) seeking the name of one of the persons who evaluated bids for procurement related to Fraud Prevention Investigation (HFS 2010-15-004), as well as the entire proposal from Fact Finder's Group (FFG), the successful bidder. By way of background, the EEC had possession of documents relating to the procurement in question because Mr. Lawrence filed a protest of the procurement process in which he was an unsuccessful bidder. The EEC responded to Mr. Lawrence by email on July 27, 2011, that it would forward FFG's proposal once its FOIA officer had reviewed the proposal for possible exemptions. The EEC also apparently forwarded the FOIA request to HFS or requested HFS to provide them with the name of Evaluator #4, as requested by Mr. Lawrence. On August 5, 2011, HFS submitted to the Public Access Bureau a written notice of its intention to assert section 7(1)(c) to withhold the identity of the evaluator.

Section 7(1)(c) of FOIA exempts from inspection or 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" 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

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interest in obtaining the information," but further provides 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.*" (Emphasis added.)

DETERMINATION


HFS's assertion of section 7(1)(c) to withhold the identity of the evaluator is **denied**. In its written notice, HFS explains that "revealing the identity of any evaluators in a procurement process sets a chilling effect on [the] employees' willingness and ability to evaluate the bids without undue pressure of fear or (possible) retribution by unsuccessful bidders."

The Illinois Supreme Court has held that reference to an identity alone *does not* constitute "personal information" under FOIA. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill.2d 401, 412 (1997). Other than its assertion that Mr. Lawrence's company did not win the bid and that it subsequently may "independently investigate" the evaluator, HFS has offered no explanation of its claim that the evaluator's name alone is highly personal or that the disclosure of the evaluator's name would be objectionable to a reasonable person.

Because the evaluator is performing what is clearly a public function, the proviso in section 7(1)(c) -- stating that information relating to an individual's public duties is *not* exempt from disclosure -- is applicable here. The public has a legitimate interest in the disclosure of the identity of individuals who play a significant role in bid selections. Therefore, HFS has not met its initial burden and this information cannot be withheld under section 7(1)(c).

If you have any questions, you may 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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Via Electronic Mail
cc: Mr. Craig Lawrence
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