



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 25, 2017

PUBLIC ACCESS OPINION 17-010
(Request for Review 2017 PAC 48071)

FREEDOM OF INFORMATION ACT:
Disclosure of Contractor's Employees'
Names in Certified Payroll Records

Mr. Richard J. Stewart
Construction Analyst
Indiana, Illinois, Iowa Foundation
for Fair Contracting
6170 Joliet Road, Suite 200
Countryside, Illinois 60525

Ms. Monica L. Rongere
Diversity Procurement Officer
City of Rockford, Legal Department
425 East State Street
Rockford, Illinois 61104

Dear Mr. Stewart and Ms. Rongere:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that the City of Rockford (City) violated the requirements of FOIA by improperly redacting employees' names from the certified payroll records provided in response to Mr. Richard J. Stewart's May 22, 2017, FOIA request.

BACKGROUND

On May 22, 2017, Mr. Stewart, on behalf of the Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC), submitted a FOIA request to the City seeking copies

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of "payroll records for project 516-PW-052, contractor T C I Concrete Inc."¹ In a letter dated May 23, 2017, and e-mailed to Mr. Stewart on May 25, 2017, the City responded that the request was "approved in its entirety[]" and provided Mr. Stewart with copies of the certified payroll records.² The City, however, redacted from the payroll records the contractor's employees' names, addresses, social security numbers, and driver's license numbers.

The General Assembly has specifically determined that certified payroll records submitted to a public body are public records that are subject to inspection and copying under section 2.10 of FOIA (5 ILCS 140/2.10 (West 2016)), which provides:

Certified payroll records submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of this Act; **except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure.** (Emphasis added.)

It is undisputed that the certified payroll records Mr. Stewart requested were submitted to the City pursuant to section 5(a)(2) of the Prevailing Wage Act (820 ILCS 130/5(a)(2) (West 2016)), and therefore are subject to the terms of section 2.10 of FOIA.

On May 26, 2017, Mr. Stewart submitted this Request for Review contesting the City's redaction of the names of the contractor's employees.³ On June 2, 2017, the Public Access Bureau sent a copy of the Request for Review to the City and asked it to provide a detailed written response to Mr. Stewart's allegation, including the factual and legal bases for the applicability of any exemption that the City relied upon to redact the names of the contractor's employees.⁴

¹Request For Public Records Official Request Form submitted by Richard Stewart to City of Rockford (May 22, 2017).

²Freedom of Information Response Letter from Kerry F. Partridge, Freedom of Information Officer, City of Rockford, to Richard Stewart (May 23, 2017), at 1.

³E-mail from Richard J. Stewart, III FFC, Construction Analyst, to Christopher Boggs (May 26, 2017).

⁴Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Monica L. Rongere, Diversity Procurement Officer, City of Rockford Legal Department (June 2, 2017).

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On June 5, 2017, the City responded by letter, which provided in pertinent part:

The City complied with the request by providing certified payrolls for the 516-PW-052 as required. Information on the certified payrolls included: race, gender, labor classifications, wage-rates and the number of hours each employee worked. All additional personal information was redacted by the City.

TCI Concrete Inc. is a government contractor; however, its employees are not government employees. Therefore, the personal information of its employees should be protected from public disclosure. Mr. Stewart's request as to whether prevailing wages have been paid on City contracts is warranted, but the exposure of a specific individual's salary is unnecessary. For these reasons, the City chose to withhold the release of personal data which was not needed to determine TCI Concrete's compliance with City contracts.⁵

On June 5, 2017, the Public Access Bureau forwarded a copy of the City's response to Mr. Stewart.⁶ In a June 6, 2017, telephone conversation with an Assistant Attorney General in the Public Access Bureau, Mr. Stewart stated that he did not wish to reply to the City's response but that he stood by his initial arguments.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). "All 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 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2016)) are to be narrowly

⁵Letter from Monica L. Rongere, Diversity Procurement Officer, City of Rockford Legal Department, to Assistant Attorney General Christopher Boggs, State of Illinois (June 5, 2017).

⁶Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Richard J. Stewart, III FFC, Construction Analyst (June 5, 2017).

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construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Sufficiency of FOIA Response

As a threshold matter, section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)) provides:

Each public body denying a request for public records *shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed*, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act. (Emphasis added.)

In its May 23, 2017, response to the FOIA request, the City stated that it was approving the request in its entirety. In addition to withholding the information expressly authorized for redaction by section 2.10, however, the City redacted the employees' names and driver's license numbers. In doing this, the City partially denied the FOIA request, although its response letter did not notify Mr. Stewart that it was denying the request in part and did not state the basis for the partial denial. By excluding notice of and the reason for the partial denial of information from its response to Mr. Stewart, the City violated the requirements of section 9(a) of FOIA.

Sections 2.10 and 7(1)(c) of FOIA

As noted above, the General Assembly has specifically provided that certified payroll records are subject to inspection and copying under section 2.10 of FOIA, provided that the contractors' employees' addresses, telephone numbers, and social security numbers are redacted prior to disclosure. Thus, the statute expressly authorized the City to redact the contractor's employees' addresses and social security numbers from the records. Further,

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because driver's license numbers are exempt as "private information"⁷ under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2016)), the City properly redacted them. The names of the contractor's employees, however, are not exempt from disclosure under either section 2.10 or section 7(1)(b).

In its response to this office, the City argued that it properly redacted "personal information" about the contractor's employees because they are not government employees. Based on its reference to "personal information," we assume the City redacted the employees' names pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2016)), which exempts from disclosure:

Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

By using the qualifying language "*clearly unwarranted invasion* of personal privacy," the General Assembly required a "stricter standard to claim exemption" which the public body possessing the records bears the burden of sustaining. (Emphasis in original.) *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

The City's response to this office did not explain why disclosure of the names of employees in the certified payroll records would be highly objectionable to a reasonable person, or demonstrate how the employees' right to privacy outweighs the public interest in disclosure.

⁷Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2016)) provides:

"Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

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Although names are unquestionably "personal information," (*see Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 411 (1997)), they are not highly personal or confidential. To the contrary, names are "basic identification," and as the Supreme Court concluded in *Lieber*, "[w]here the legislature intended to exempt a person's identity from disclosure, it [has done] so explicitly." *Lieber*, 176 Ill. 2d at 412.

Even assuming the names of employees in certified payroll records could be considered highly personal information, there is a compelling public interest in the disclosure of records related to the use of public funds that is reflected in FOIA. Specifically, certified payroll records document workers for contractors and subcontractors who participate in public works projects and, as a result, are paid with public funds. *See* 820 ILCS 130/5 (West 2016). Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2016)) 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.**" (Emphasis added.) *See also* Ill. Const. 1970, art. VIII, §1(c) ("Reports 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.") Accordingly, the Attorney General has previously concluded that "the public has a right to know the purposes for which public funds are expended, including the identity of those who receive the funds and the amount of funds received." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 15-006, issued August 31, 2015, at 7; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 15-004, issued June 17, 2015, at 5.

In this instance, assuming the employees' names could be considered highly personal information, the compelling public interest in disclosure of records related to the use of public funds reflected by section 2.5 of FOIA would outweigh the employees' right to privacy and require disclosure of their names. Accordingly, the City has not sustained its burden of demonstrating by clear and convincing evidence that disclosure of the names of the contractor's employees would constitute a "clearly unwarranted invasion of personal privacy" under section 7(1)(c) of FOIA, or that the names are otherwise exempt from disclosure.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On May 22, 2017, Mr. Richard J. Stewart, on behalf of the Indiana, Illinois, Iowa Foundation for Fair Contracting, submitted a FOIA request to the City seeking copies of "payroll records for project 516-PW-052, contractor T C I Concrete Inc."

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2) In its letter dated May 23, 2017, the City responded that the request was "approved in its entirety" and provided Mr. Stewart with certified payroll records. In the records it disclosed, however, the City redacted the contractor's employees' names, addresses, social security numbers, and driver's license numbers.

3) Section 2.10 of FOIA expressly provides that certified payroll records submitted to a public body under section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying, except that contractor's employees' addresses, telephone numbers, and social security numbers must be redacted before disclosure. Further, section 7(1)(b) of FOIA specifically allows redaction of the employees' driver's license numbers.

4) On May 26, 2017, Mr. Stewart submitted this Request for Review contesting the City's redaction of the names of the contractor's employees from the responsive certified payroll records. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

5) On June 2, 2017, the Public Access Bureau sent a copy of the Request for Review to the City and asked it to provide a detailed written response to Mr. Stewart's allegations, including the factual and legal bases for the applicability of any asserted exemptions.

6) On June 5, 2017, the City responded, asserting that the exposure of specific individuals' salaries is unnecessary and that the personal information of a government contractor's employees should be protected from public disclosure.

7) Because the City failed in its response to Mr. Stewart to notify him of the partial denial of his request or to provide a detailed factual basis for the exemption under which it redacted the records, its partial denial of the request did not satisfy the requirements of section 9(a) of FOIA.

8) In its response to this office, the City argued that the "personal information" of the employees should be protected from disclosure because they are not government employees. Based on the reference to "personal information," this office has construed the City's response as asserting that the information redacted from the records is exempt from disclosure pursuant to section 7(1)(c) of FOIA. The City's response did not, however, explain why disclosure of the names of employees in the certified payroll records would be highly objectionable to a reasonable person or demonstrate how the employees' rights to privacy outweigh the public interest in disclosure, as required under section 7(1)(c).

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9) Although names are unquestionably "personal information," they are not highly personal or confidential. Moreover, section 2.5 of FOIA requires the disclosure of records related to the use of public funds. As a result, the City has not met its burden of demonstrating how the disclosure of the names of employees paid by public funds would be highly objectionable to a reasonable person or that an employee's right to privacy outweighs the public interest in disclosure in these circumstances.

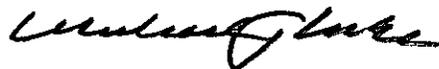
Therefore, it is the opinion of the Attorney General that the City's response to Mr. Stewart's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the City is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Stewart the names of the contractor's employees contained within the requested certified payroll records.

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 2016). 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. Richard J. Stewart as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 17-010) upon:

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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 Springfield, Illinois on July 25, 2017.


SARAH L. PRATT
Public Access Counselor

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