



Legal Department • 102 N Neil St • Champaign IL 61820 • (217) 403-8765 • fax (217) 403-8755 legaldepartment@champaignil.gov

Frederick C. Stavins, City Attorney
Jennifer L. Bannon, Assistant City Attorney
Kathryn Cataldo, Assistant City Attorney
Thomas S. Yu, Assistant City Attorney

May 5, 2021

Sent by E-mail

Mr. Joshua Hart Burday - [REDACTED]
Loevy & Loevy
311 North Aberdeen, 3rd Floor
Chicago, IL 60607

Re: Hansen v. City of Champaign, 2021-CH-000018

Mr. Burday:

This letter is in response to the above-referenced lawsuit filed on March 31, 2021 and served on the City on April 8, 2021.

Mr. Hansen filed the following FOIA request on February 7, 2021:

“All human rights complaints submitted to the City of Champaign in 2020 and 2021.”

The City denied Mr. Hansen’s FOIA request in good faith based on the following exemptions:

- (1) 5 ILCS 140/7(1)(a) (“information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law”), and
- (2) 5 ILCS 140/7(1)(d)(iv) (“records in the possession of any public body created in the course of administrative enforcement proceedings . . . but only to the extent that disclosure would . . . unavoidably disclose the identity of . . . persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies”).¹

Mr. Hansen’s lawsuit claims that the City failed to perform an adequate search for records, and willfully and intentionally violated FOIA by denying his request.

¹ The City notes that Mr. Hansen no longer requests the names of Complainants (Complaint ¶ 22). Therefore, this basis for denial is not discussed in this letter and the attached materials have been redacted accordingly.

Contrary to Mr. Hansen's assertions, the City did not fail to perform an adequate search for records. The records are in the City's possession and easily located. Rather, the City's denial was based on a good faith interpretation of the law. As explained in the City's February 11, 2021 response to Mr. Hansen (a copy of which is attached as Exhibit A to the complaint), the Illinois Human Rights Act authorizes political subdivisions to create local commissions to further the purposes of the Act and enables local commissions to enact ordinances and rules to investigate allegations of discrimination. See 775 ILCS 5/7-108(A). The Human Relations Commission is an agency created by the City of Champaign pursuant to the Illinois Human Rights Act to enforce and investigate violations of the City's Human Rights Ordinance, located at Chapter 17 of the Champaign Municipal Code.

The Human Rights Ordinance sets forth procedures for the receipt and investigation of complaints of discrimination which mirror those in the Illinois Human Rights Act. See Champaign Municipal Code ("CMC") Sections 17-101 to 17-128 available online at: https://library.municode.com/il/champaign/codes/code_of_ordinances?nodeId=MUCO_C H17HURI ARTVIIINCO. The City explained in its response to Mr. Hansen that pursuant to the Human Rights Ordinance, information regarding cases was not open to the public through the complaint filing, investigation, and conciliation phases. See CMC Sec. 17-104(c), 17-104(e). If a case proceeds to a hearing, the hearing and information regarding the case become open to the public at that point. CMC Sec. 17-122. At the time of the City's response to Mr. Hansen, no human rights complaints had proceeded to a public hearing in 2020 or 2021.

In keeping with 775 ILCS 5/7-108(A), the City designed the human rights complaint investigation and hearing procedures in the City Code in a manner parallel to those in the Human Rights Act. The City's ordinance and procedures are intended to "promote the purposes of [the Illinois Human Rights Act] and to secure for all individuals within the jurisdiction of the political subdivision . . . freedom from unlawful discrimination."

The intent of the City's ordinance, and its confidentiality practices in receiving and processing human rights complaints, is and has always been to protect complainants' privacy and incentivize respondents to take action to willingly resolve discriminatory practices where such practices exist. Many times, complainants would not file a human rights complaint if they feared the complaint would be made public, resulting in possible retaliation by an employer, landlord, business owner, or the public. Further, publicizing human rights complaints prior to or in absence of a finding of discrimination against a respondent is detrimental to respondents who have in fact not committed violations of the City's Human Rights Ordinance.

The City has been operating under the understanding that the Illinois Department of Human Rights keeps complaints (or "charges," as they are called by IDHR) and investigative materials confidential pending an investigation and throughout the conciliation or mediation phase, until a determination is made whether an allegation of discrimination is supported by substantial evidence. The City modeled its practices and its ordinance accordingly. For example, the Illinois Human Rights Act includes the following provisions:

775 ILCS 5/7A-102(B) “Notice and Response to Charge. The Department shall, within 10 days of the date on which the charge was filed, serve a copy of the charge on the respondent and provide all parties with a notice of the complainant's right to opt out of the investigation within 60 days as set forth in subsection (C-1). This period shall not be construed to be jurisdictional. The charging party and the respondent may each file a position statement and other materials with the Department regarding the charge of alleged discrimination within 60 days of receipt of the notice of the charge. **The position statements and other materials filed shall remain confidential unless otherwise agreed to by the party providing the information and shall not be served on or made available to the other party during pendency of a charge with the Department.**” (emphasis added)

775 ILCS 5/7A-102(B-1): “Mediation. The complainant and respondent may agree to voluntarily submit the charge to mediation without waiving any rights that are otherwise available to either party pursuant to this Act and without incurring any obligation to accept the result of the mediation process. **Nothing occurring in mediation shall be disclosed by the Department or admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.**” (emphasis added)

775 ILCS 5/7A-102(D)(1): “Report. Each charge investigated under subsection (C) shall be the subject of a report to the Director. **The report shall be a confidential document** subject to review by the Director, authorized Department employees, the parties, and, where indicated by this Act, members of the Commission or their designated hearing officers.” (emphasis added)

775 ILCS 5/7A-102(E)(4) “Conciliation. Nothing occurring at the conference shall be disclosed by the Department unless the complainant and respondent agree in writing that such disclosure be made.”

775 ILCS 5/2-107(c): “All communications received by the Department via the helpline or Internet communication shall remain confidential and shall be exempt from disclosure under the Freedom of Information Act.”

The above provisions, coupled with FOIA’s exemption for “information specifically prohibited from disclosure by federal or State law or **rules and regulations implementing federal or State law**” (emphasis added) formed the basis for the City’s good faith denial of Mr. Hansen’s request.

Upon receipt of the above lawsuit, the City conferred with the Illinois Department of Human Rights. Counsel for the IDHR confirmed that investigatory materials are treated as confidential pending an investigation into an allegation of discrimination, and materials created during the conciliation process are not released. However, the IDHR does release charges of discrimination as well as the status of charges when requested.

Accordingly, in alignment with the Illinois Department of Human Rights, the City is releasing human rights complaints filed with or on behalf of the City of Champaign in 2020 and 2021. Pursuant to 5 ILCS 140/7(1)(d)(iv), the complaints have been redacted to remove the names of complainants or others who provided information in connection with said complaints. In addition, personal addresses and phone numbers have been redacted under 5 ILCS 140/7(b). **The City wants to emphasize that the existence of a complaint does not indicate that a finding of discrimination has been made against a respondent.**

As explained in detail above, the City's decision to withhold human rights complaints from Mr. Hansen was not made in bad faith. Further, the City's decision to tender the requested documents renders this matter moot. Accordingly, the City requests that Mr. Hansen agree to dismiss his complaint prior to the City's deadline to file a responsive pleading, which is May 10; otherwise, the City will have to file a motion to dismiss for mootness. It is the City's hope that this matter may be resolved without incurring the additional time and expenses of further litigation.

If you wish to discuss this further, please feel free to contact me directly.

Very truly yours,

Jennifer Gover Bannon

Jennifer Gover Bannon
Assistant City Attorney

JGB/sjg
Enclosures

J:\LEG\WORD\FOIA\Litigation\Hansen, Christopher - 2021-CH-18\Letter - Burday, Joshua 5-5-21 Final.doc