



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 30, 2020

*Via electronic mail*

Mr. Christopher Hansen  
corruptcu@gmail.com

*Via electronic mail*

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City of Urbana  
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*Via electronic mail*

Mr. Curt Borman  
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RE: FOIA Requests for Review: 2019 PAC 60567; FOIA File No. 2019-598  
2020 PAC 62770; FOIA File No. 2020-187

Dear Mr. Hansen, Ms. Brooks, and Mr. Borman:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons that follow, the Public Access Bureau concludes that the City of Urbana (City) did not improperly withhold records it identified as responsive to Mr. Christopher Hansen's October 25, 2019, and April 2, 2020, FOIA requests. However, the City did not demonstrate that it conducted a reasonable search for records responsive to one part of the April 2, 2020, request.

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On October 25, 2019, Mr. Hansen submitted a FOIA request to the City, processed as FOIA 2019-598, seeking copies of all communications and documents related to: (1) complaints that he submitted on November 13, 2018, and November 26, 2018; (2) Landscape Recycling Center from November 9, 2018, to December 10, 2018; (3) a FOIA request that he submitted on December 30, 2018; and (4) a FOIA request that he submitted on August 8, 2019. On November 1, 2019, the City responded that items 1 and 2 were identical to two items previously sought in FOIA 2018-670. The City provided a copy of its response to that previous request and stated that it had redacted or withheld records pursuant to sections 7(1)(b), 7(1)(c), 7(1)(d)(iv), 7(1)(f), and 7(1)(m) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv), (1)(f), (1)(m) (West 2018), as amended by Public Act 101-455, effective August 23, 2019). With regard to items 3 and 4, the City asserted that it "withheld any responsive emails exchanged between employees or agents of the City of Urbana reflective of the give and take of the City's internal deliberative process" pursuant to section 7(1)(f).<sup>1</sup>

On November 18, 2019, this office received Mr. Hansen's complete Request for Review (2019 PAC 60567) contesting the withholding of any records responsive to FOIA 2019-598. He asserted that the City had only provided him with copies of his own communications with City staff. He contended that Todd Rent, the City's then-Human Resources Director who handled his FOIA requests, "[was] denying release of any of his own emails."<sup>2</sup>

On January 27, 2020, this office forwarded a copy of the Request for Review to the City and asked it to provide copies of the withheld records for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of the asserted exemptions to those records. This office also asked the City to provide copies of the City's response to FOIA request 2018-670 and any withheld records related to that request, along with a detailed explanation of the legal and factual basis for the asserted exemptions. On April 23, 2020, this office received the requested materials. On April 27, 2020, this office forwarded a copy of the City's response to Mr. Hansen; he replied on May 12, 2020. Mr. Hansen maintained that the City improperly denied records under sections 7(1)(m) and 7(1)(f). On July 2, 2020, this office received from the City additional records for our confidential review. On July 7, 2020, the City released to Mr. Hansen copies of two e-mails that it had withheld. Accordingly, this office's review is limited to the remaining withheld e-mails.

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<sup>1</sup>E-mail from Todd E. Rent, Sr., Human Resources Director, City of Urbana, to Mr. Hansen (November 1, 2019).

<sup>2</sup>E-mail from Christopher Hansen to Public Access Counselor [Sarah] Pratt (November 12, 2019).

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On April 2, 2020, Mr. Hansen submitted a separate request to the City, processed as 2020-187, seeking copies of all documents related to a redacted screenshot of a text message he had received as part of the City's response to FOIA 2018-670, an unredacted copy of that text message, and all text messages and emails "to and from whomever this phone belongs" for a specified time period.<sup>3</sup> That request further sought copies of all records regarding the processing of FOIA 2018-670. On April 29, 2020, the City responded to FOIA 2020-187 by asserting that it did not possess records related to the text message that had not already been furnished to Mr. Hansen or additional communications to and from the source of the text message. The City also declined to furnish an unredacted copy of the text message. Finally, the City furnished records concerning the processing of FOIA 2018-670 with redactions made pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.

On April 29, 2020, this office received a Request for Review from Mr. Hansen (2020 PAC 62770) alleging the City improperly responded to FOIA 2020-187. Specifically, Mr. Hansen contested the redaction of the phone number in the screenshot of the text message, alleged that the City must have some records relating to that text message and from the person to whom the phone belongs, and asserted that the City omitted documents related to the handling of FOIA 2018-670.

On May 11, 2020, this office forwarded a copy of the Request for Review to the City and asked it to provide a detailed description of its search for records related to the text message at issue, including identification of the specific recordkeeping systems that were searched and the employees and departments that were consulted in the search. This office also asked the City to provide an unredacted copy of the text message and the records related to the handling of FOIA 2018-670, and to explain the factual and legal bases for the applicability of sections 7(1)(b) and 7(1)(c) to the redactions made to those records. On May 27, 2020, this office received the requested materials. In that response, the City asserted that it only redacted records pursuant to sections 7(1)(b) and 7(1)(c), and did not withhold any records in their entirety under those sections. On June 1, 2020, this office forwarded a copy of the City's written response to Mr. Hansen. On June 10, 2020, Mr. Hansen sent an e-mail to the Public Access Bureau stating that he was preparing a reply and anticipated completing it that week. On July 2, 2020, an Assistant Attorney General in the Public Access Bureau e-mailed Mr. Hansen to ask whether he had completed his reply in this matter, but he did not respond to that e-mail. As of the date of this letter, Mr. Hansen has not replied to the City's response.

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<sup>3</sup>E-mail from Christopher Hansen to City Clerk (April 2, 2020).

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This office has consolidated 2019 PAC 60567 and 2020 PAC 62770 in this determination because both matters seek records pertaining to FOIA 2018-670 and the responsive records overlap.

### DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that redacts or withholds records "has the burden of proving by clear and convincing evidence" that the information is exempt from disclosure. 5 ILCS 140/1.2 (West 2018). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

### Withheld Records

Section 7(1)(f) 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, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." Section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "The government is entitled to withhold documents that reflect the agency's give-and-take leading up to its final decisions." *Chicago Tribune Co. v. Cook County Assessor's Office*, 2018 IL App (1st) 170455, ¶29, 109 N.E.3d 872, 880 (2018). However, "purely factual material" is not exempt from disclosure under section 7(1)(f) unless the factual material is "inextricably intertwined" with predecisional deliberative discussions. *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶36, 980 N.E.2d 733, 743 (2012) (quoting *Enviro Tech International, Inc. v. United States Environmental Protection Agency*, 371 F.3d 370, 374-75 (7th Cir. 2004)).

In response to 2019 PAC 60567, the City maintained that it properly withheld certain communications pursuant to sections 7(1)(f) and 7(1)(m). The City contended that the communications "involved discussions and recommendations about preliminary courses of action, such as how to investigate or respond to Mr. Hansen's complaint."<sup>4</sup> The City further

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<sup>4</sup>Letter from Michelle E. Brooks, City of Urbana, to Teresa Lim, Assistant Attorney General, Public Access Bureau (April 23, 2020), at 3.

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asserted that a portion of the communications were between City staff and their legal counsel. Additionally, the City asserted that none of the communications at issue had been published.

This office's review confirmed that the City withheld a limited set of records containing preliminary notes and deliberations related to the City's responses to Mr. Hansen's FOIA requests and complaints concerning Landscape Recycling Center. Those records reflect the formulation of action, as Mr. Rent and other City staff discussed how to address Mr. Hansen's concerns and prepared responses to his requests, including FOIA 2018-670. This office confirmed one e-mail exchange included consultations with the City's legal counsel. Although the records contain some factual information, that information is inextricably intertwined with the City's deliberations. There is no indication that the records were publicly cited and identified by the head of the City. Because the records are predecisional and deliberative in nature, the City did not violate FOIA by withholding them pursuant to section 7(1)(f).<sup>5 6</sup>

#### **Redacted Text Message and Related Records**

One of the records the City sent Mr. Hansen in response to FOIA Request 2018-670 was a screenshot of a text message exchange. The first message contained only a link. The response to that message, sent three days later, states "Good morning, I'm not familiar with this number. Would you mind indicating who this is?" The City redacted the telephone number of the sender of the first message.

In his April 2, 2020, FOIA request (FOIA 2020-187), Mr. Hansen asked the City to provide:

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<sup>5</sup>Because this determination concludes that responsive records are exempt from disclosure pursuant to section 7(1)(f), we decline to address the applicability of section 7(1)(m) of FOIA. Additionally, the City clarified that its citation of sections 7(1)(b) and 7(1)(c) in its response to the April 2, 2020, FOIA request related to the redactions made to the records provided to Mr. Hansen. As neither Request for Review seeks this office's review of those redactions, we decline to address whether the redactions were proper.

<sup>6</sup>Based on this office's review of the records provided for our confidential review, the City withheld certain communications related to FOIA 2018-670. Although the City indicated in its May 27, 2020, response that it did not withhold records responsive to the last part of Mr. Hansen's April 2, 2020, request, it appears that was an inadvertent error. The City clarified that Mr. Rent, who processed FOIA 2018-670, no longer works for the City and thus the City could not consult with him regarding the handling of that request and Mr. Hansen's other requests. However, the City performed a supplemental search of Mr. Rent's e-mails and provided records for this office's confidential review.

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[A]ny and all documents related to the text message on the last page [of the City's response to FOIA 2018-670]. This last page seems to come out of nowhere. Give sufficient documents to show whose phone this came from. Also, send the screenshot again without redacting the phone number. If the person who sent this has no identity, then they have no personal information that needs protecting. Or, send sufficient documents to identify this person.

Furthermore, I need all text messages and emails to and from whomever this phone belongs. We can restrain this portion of the request to the time frame: Nov 8 2018 to Dec 15 2018.<sup>[7]</sup>

In Request for Review 2020 PAC 62770, Mr. Hansen alleges that the City must possess records related to the handling of that text message and the correspondence related "to whomever this phone belongs," and that it improperly redacted the phone number from the text message.

With respect to the part of the request seeking "documents related to the text message," the City stated:

[T]he text message shown in the screenshot was a single communication that an unidentified person sent to an Urbana employee's mobile phone. A copy of the text message was reproduced directly from the phone. The phone number from which the text message originated does not belong to Urbana. As the screenshot shows, the Urbana employee who received the text message attempted to ascertain the identity of the sender by transmitting [a] reply to the message[.] However, the sender neither responded to this inquiry nor sent any additional text messages to the employee. Because the text message shown in the screenshot was sent from a phone number that does not belong to Urbana, Urbana's only records of the text message are contained within the mobile phone that received the message and the redacted and unredacted PDF files of the screenshot. Urbana did not locate additional records related to the screenshot in the employee's mobile phone for the reason that the sender did not

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<sup>7</sup>E-mail from Christopher Hansen to City Clerk (April 2, 2020).

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send any further text messages to that phone. Given that the text message was received on an employee's mobile phone without passing through Urbana's computer servers, Urbana did not search its recordkeeping systems for additional records related to the screenshot.<sup>[8]</sup>

During a July 10, 2020, telephone conversation with an Assistant Attorney General in the Public Access Bureau, the Assistant City Attorney further explained that the City Clerk, who responded to Mr. Hansen's April 2, 2020, FOIA request, believed that the text message was sent to an individual who was an employee at the time the City responded to FOIA 2018-670 on January 15, 2019, but who had left employment with the City by the time Mr. Hansen submitted his April 2, 2020, FOIA request. The City Clerk further stated that he believed the former employee printed the screenshot and provided the printed copy to the City to be furnished to Mr. Hansen in response to FOIA 2018-670, and the FOIA officer handling FOIA 2018-670 scanned the printed copy to create an electronic copy of the screenshot. Therefore, because the former employee printed the screenshot and provided the printed screenshot to the City without the screenshot passing through the City's computer servers, the City believed there would be no records related to the handling of the screenshot prior to it being provided to Mr. Hansen in response to FOIA 2018-670.

FOIA provides that "all records in the custody or possession of a public body" are presumed to be open to inspection or copying. 5 ILCS 140/1.2 (West 2018). When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998); *see also Steinberg v. U.S. Department of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) ("The question [whether a public body's search was sufficient] is not whether other responsive records may exist, but whether the search itself was adequate."). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

Based on the information provided, the City did not search for "documents related to the text message" because the sender of the text message did not identify him or herself and because the City Clerk did not believe that that the employee who received the text message electronically transmitted the screenshot of the texts to the City. However, to the extent that the employee who received the text message generated e-mails or other records about the message,

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<sup>8</sup>Letter from Curt Borman, Assistant City Attorney, City of Urbana, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General at 1-2 (May 27, 2020).

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those e-mails and records would be responsive to the request, which sought any "documents related to" the message. Although the employee who received the text message no longer works for the City, the City could have searched the former employee's e-mails for correspondence discussing the text message. The City explained why it believed a search for records from the sender of the text message and for records transmitting the screenshot would be futile, but Mr. Hansen's request is broader than that. Based on the information provided, the City had enough information to conduct a targeted search of the e-mail correspondence of the former employee who might possess responsive records, if any such records existed. Because the City did not demonstrate it searched for those records, this office concludes that its search did not comply with FOIA. As a remedy, this office asks that the City conduct a supplemental search for records in the former employee's records for any documents discussing the anonymous text message, and to either disclose any records that are located to Mr. Hansen or furnish a notice of denial that complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2018)).

With respect to the part of the request seeking "all text messages and emails to and from whomever this phone belongs," Mr. Hansen's Request for Review asserted that he believes that responsive records must exist. In its response to this office, the City stated that it interpreted this part of the request in the context of the sentences preceding it, which requested that the City unredact the phone number of the sender of the first message and "send sufficient documents to identify this person."<sup>9</sup> "Therefore, Urbana construed the request for 'all text messages and emails to and from whomever this phone belongs' as asking for electronic communications sent to or received from the phone with the redacted phone number."<sup>10</sup> Because the City determined that the phone used to send the message was not a City-provided phone and the only correspondence the City received from the sender of the text message was the text message itself, the City concluded it did not have additional records from the unidentified sender of the text message.

Mr. Hansen's request, which identified the correspondent in the records he seeks as "whomever this phone belongs," is vaguely worded—it is unclear if he is referring to the phone that sent the message or the phone that provided the screenshot. "A request to inspect or copy must reasonably identify a public record[.]" *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427, ¶33, 8 N.E.3d 11, 19 (2014). A FOIA request "reasonably describes records if 'the agency is able to determine precisely what records are being requested.'" *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996) (quoting *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982)).

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<sup>9</sup>E-mail from Christopher Hansen to City Clerk (April 2, 2020).

<sup>10</sup>Letter from Curt Borman, Assistant City Attorney, City of Urbana, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General at 1-2 (May 27, 2020).



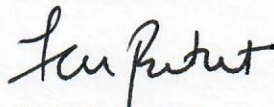
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Public bodies are not required to search beyond the four corners of a FOIA request, nor are they required to divine the requester's intent. *Manna v. U.S. Dep't of Justice*, 106 F. Supp. 3d 16, 19 (D.D.C. 2015). Mr. Hansen did not clarify to this office whether the City properly interpreted his request. In the first part of the request, Mr. Hansen is clearly seeking information that would identify the sender of the text, *i.e.*, the phone that sent the text. Therefore, it was not unreasonable for the City to interpret the second part of the request in the context of the first. Based on this interpretation, this office has no basis to conclude that the City withheld any records responsive to this portion of Mr. Hansen's request.

Finally, Mr. Hansen argues that the City improperly redacted the phone number on the text message. Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2018)) defines "private information" as including "home or personal telephone numbers[.]" This office reviewed an unredacted copy of the screenshot; the City redacted a telephone number from the message. The City stated that the phone number was not associated with a phone provided by the City. This office conducted an internet search for the number and the results of that search gave no indication that the redacted telephone number is associated with a business or a government office. Accordingly, the City did not improperly determine that the number is either a home or personal telephone number and did not improperly redact it pursuant to section 7(1)(b).

The Public Access Counselor has determined that resolution of these matters do not require the issuance of a binding opinion. This letter shall serve to close these matters. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



LEAH BARTELT  
Deputy Public Access Counselor  
Public Access Bureau

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