

September 23, 2015

VIA E-MAIL

Mr. Patrick Rehkamp
Better Government Association
Email: prehkamp@bettergov.org

RE: 15-FOIA-176 Info - [REDACTED]

Dear Mr. Rehkamp:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“FOIA”).

I. Background

On August 31, 2015, we received your request for Mr. [REDACTED] personnel file, including, but not limited to:

- Annual salaries, with dates of change;
- Titles and departments, with dates of change;
- [REDACTED] employee photo;
- Any and all disciplinary actions for [REDACTED], and reasons for same; and
- Any and all police reports on [REDACTED]

(“Request”).

II. Responsive Documents

In response to your Request, Metra is providing you with the following records from [REDACTED] personnel file:

- Acknowledgments;
- A spreadsheet and PDF document containing Mr. [REDACTED] wage history and changes, and a time/function code sheet;
- Application for Employment;
- Assignment Bulletins 3 & 40;
- Authorization for Pre-Employment Physical Examination;
- Background Examination Result;
- Certificate of Achievement;
- Customer & Station Service Employee Information;

- Employee Data;
- Employee Personal Record 11-8-2004 to 12-6-2011;
- Employee Status Change forms, containing job titles and departments;
- Medical File – Employee Information (employee photo);
- New Employee Safety Orientation Checklist;
- New Hire Orientation Checklist for Contract Employees;
- Orientation Checklist;
- Physical Examination Result;
- Three (3) police reports involving [REDACTED];
- Two (2) [REDACTED] letters to Human Resources;
- Typing Test Results; and
- Union New Employee Benefits Orientation Checklist

(“Responsive Documents”).

You may access the Responsive Documents via Metra’s file transfer protocol (“FTP”) site. Direct your browser to <https://ftp.metrarr.com/>. The user name is: [REDACTED] and the case sensitive password is: [REDACTED]. Access to this FTP site will expire October 6, 2015. *If you require additional time to download these documents, please let us know prior to the expiration date.*

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Thomas Stuebner has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. Employee identification numbers, driver’s license numbers, social security numbers, home addresses, personal telephone numbers, and medical information are exempt from disclosure under Section 7(1)(b) of FOIA which exempts certain “Private information.” 5 ILCS 140/7(1)(b). “Private Information” is defined as “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 e-mail addresses,” as well as home address, and personal license plates. 5 ILCS 140/2(c-5).
2. The date of birth, physical descriptions, third-party names, the results of background check status, and information concerning the equal employment opportunity (“EEO”) code assigned to the party mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would

- constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “ ‘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.” It has been determined that the aforementioned data falls squarely within that definition and their redaction is appropriate under FOIA.
3. The party’s medical information referenced in the Responsive Documents is also being redacted under Section 7(1)(c) which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “ ‘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.” 5 ILCS 140/7(1)(c). It has been determined that the aforementioned medical information falls squarely within these definitions and its redaction is appropriate under FOIA. See also 2011 PAC 12056 determination dated February 7, 2011 which approved the exemption of medical information.
 4. The Illinois Personnel Records Review Act, 820 ILCS 40/10(a), exempts “[l]etters of reference for that employee[.]” As such, the letter of reference contained within the Responsive Documents is exempt.
 5. The Illinois Personnel Records Review Act, 820 ILCS 40/10(b) exempts “[a]ny portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document.” As such, everything but the cumulative test score contained within the Responsive Documents is exempt.
 6. The Illinois Personnel Records Review Act, 820 ILCS 40/10(d) exempts “[i]nformation of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.” As such, the emergency contact information located on the Application for Employment and Employee Data Change forms contained within the Responsive Documents is exempt.
 7. Section 7(1)(a) of FOIA exempts “[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 5 ILCS 140/7(1)(a). Accordingly, the home addresses, dates of birth, driver’s license numbers, and physical description of the parties mentioned in the Responsive Documents are exempt from disclosure per the Driver’s Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, which prohibits individuals from knowingly obtaining or disclosing “personal information” from a motor vehicle record.
 8. Per the Identity Protection Act, “[N]o person or State or local government agency may . . . [p]rint an individual’s social security number on any materials . . . through . . . electronic

mail[.]” Additionally, Section 10(b)(1) prohibits the disclosure of a social security number, unless:

“(i) required to do so under State or federal law, rules, or regulations, or the collection, use, or disclosure of the social security number is otherwise necessary for the performance of that agency's duties and responsibilities; (ii) the need and purpose for the social security number is documented before collection of the social security number; and (iii) the social security number collected is relevant to the documented need and purpose.” 5 ILCS 179/10(a)(4).

IV. Denial

The following Responsive Documents are being withheld in their entirety:

1. Information regarding disciplinary action which is more than 4 years old. Section 7(a) of the FOIA allows public bodies to withhold, “Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 5 ILCS 140/7(a). Under Section 8 of the Personnel Record Review Act it states, “An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.” 820 ILCS 40/8.
2. Notes taken during the interview process containing recommendations and opinions expressed within the Responsive Documents are exempt per Section 7(1)(f) of FOIA which exempts from disclosure any “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated . . . [.]” 5 ILCS 140/7(1)(f).
3. Copies of a social security card, driver’s license, and W-4 form are exempt under Section 7(1)(b) of FOIA which exempts certain “Private information.” 5 ILCS 140/7(1)(b). “Private Information” is defined as “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 e-mail addresses,” as well as home address, and personal license plates. 5 ILCS 140/2(c-5).
4. A copy of birth certificate is also being withheld under Section 7(1)(c) which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “ ‘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.” 5 ILCS 140/7(1)(c).

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor (“PAC”) of the Illinois Attorney General’s Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
FOIA@metrarr.com