



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 31, 2015

PUBLIC ACCESS OPINION 15-006
(Request for Review 2015 PAC 35427)

FREEDOM OF INFORMATION ACT:
Disclosure of Public Employees' Compensation

Mr. Rocky Morris
1306 South Pope Street
Benton, Illinois 62812

Mr. Derek S. Johnson, Sr.
Business Development Officer/FOIA Officer
Franklin Hospital
201 Bailey Lane
Benton, Illinois 62812

Dear Mr. Morris and Mr. Johnson:

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 2014)). For the reasons discussed below, this office concludes that Franklin Hospital District (District) violated the requirements of FOIA by denying, in part, Mr. Rocky Morris' May 11, 2015, request for copies of physician employment agreements.

BACKGROUND

Mr. Morris submitted a FOIA request to the District seeking "physician contracts, or employment agreements, for [five named] physicians[.] * * * Please provide all incentives and/or bonuses paid for public information."¹ On May 18, 2015, the District acknowledged

¹Letter from Rocky Morris to [Derek] Johnson, Freedom of Information Act Officer, Franklin Hospital (undated).

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receiving the FOIA request on May 11, 2015, and provided Mr. Morris with copies of the responsive "physician employment agreements with the private information and personal financial information redacted."² As its basis for redacting these portions of the contracts, as well as information concerning incentives and bonuses paid, the District cited sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2014)), which exempt from disclosure "private information", including personal financial information, and personal information the disclosure of which would constitute an unwarranted invasion of personal privacy, respectively.³ The District asserted that "[t]he compensation of the physicians who are employed by the Franklin Hospital District to provide medical services to patients is highly personal and confidential information to these physicians."⁴ The District also asserted, in the alternative, that the physician employment agreements are not public records because physicians do not have "public duties" and the physician employment agreements do not pertain to "the transaction of public business."⁵

On May 21, 2015, the Public Access Bureau received a Request for Review from Mr. Morris contesting the denial of the salary, bonus, and incentive pay information (referred to collectively hereafter as "compensation") that the District redacted from the records.⁶ On May 26, 2015, Mr. Morris completed his Request for Review by providing a copy of his FOIA request and a copy of the District's partial denial letter.⁷ On May 29, 2015, the Public Access Bureau sent a copy of the Request for Review to the District and asked it to provide an explanation of the basis for its assertion that the requested records are exempt from disclosure under sections 7(1)(b) and 7(1)(c) of FOIA.⁸ This office also requested that the District "provide a detailed

²Letter from Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital, to Rocky Morris (May 18, 2015), at 1.

³Letter from Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital, to Rocky Morris (May 18, 2015), at 1.

⁴Letter from Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital, to Rocky Morris (May 18, 2015), at 1.

⁵Letter from Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital, to Rocky Morris (May 18, 2015), at 2.

⁶E-mail from Rocky Morris to Public Access (May 21, 2015).

⁷E-mail from Rocky Morris to Public Access (May 26, 2015).

⁸Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, to Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital (May 29, 2015), at 1.

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explanation for [its] contention that records of compensation paid to physicians are not public records[.]"⁹ On June 9, 2015, the District furnished redacted and unredacted copies of the physician employment agreements and a written response which reiterated its assertion that physician compensation is exempt from disclosure pursuant to sections 7(1)(b) and 7(1)(c) of FOIA. The response also asserted that the physicians do not have "public duties" and that compensation information in the employment agreements is not a "public record" subject to FOIA because the "physicians' employment agreements do not pertain to public business, community interests, or 'the affairs of government[.]'"¹⁰ On June 12, 2015, the Public Access Bureau sent a copy of the District's response to Mr. Morris,¹¹ who submitted his letter of reply by e-mail on June 17, 2015.¹²

On July 20, 2015, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2014)).¹³

ANALYSIS

"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 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that: "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 2014)) are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

It is axiomatic that FOIA's requirements to allow inspection and copying apply only to public records. Although the District asserted two section 7 exemptions as its basis for withholding the requested records, it also argued in the alternative that the physician employment

⁹Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, to Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital (May 29, 2015), at 2.

¹⁰Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 2.

¹¹Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, to Rocky Morris (June 12, 2015).

¹²Letter from Rocky Morris, to Matthew Hartman, Asst. Attorney General, Public Access Bureau, Office of the Attorney General (June 16, 2015).

¹³Letter from Assistant Attorney General Matthew Hartman to Rocky Morris and Edwina Warner, Troutt, Popit & Warner, P.C. (July 20, 2015).

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agreements are not public records. This office will first address the District's argument that the physicians' compensation information is not a "public record."

Sections 2(c) and 2.5 of FOIA

Section 2(c) of FOIA (5 ILCS 140/2(c) (West 2014)) defines "[p]ublic records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

The District's response explains that it is "an Illinois Hospital District, [that] was created to provide health care to the residents of Franklin County, Illinois[.]"¹⁴ Hospital districts are units of local government under the Illinois Constitution (1975 Ill. Att'y Gen. Op. 59), and therefore are "public bodies" for purposes of FOIA.¹⁵ Although the District admits that its physicians are employees of a public body,¹⁶ it argues that the physicians do not perform "public duties." The District has provided no authority to support the argument that a physician employed by a public body does not perform public duties when treating patients, or that records reflecting the compensation of publicly employed physicians do not pertain to the transaction of public business. To the contrary, because the District is a public body whose purpose is to provide health care, it is logical to conclude that when providing care to residents of the District, physicians are performing public duties. Further, the employment agreements of physicians engaged to carry out the mission of the District clearly fit within the definition of documentary material prepared by, used by, and in the possession of the public body.

¹⁴Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 2.

¹⁵The District's employment agreements refer to the District as "an Illinois governmental municipality." Contract for the purpose of physician employment, Lawrence Hollander, M.D. – Franklin Hospital District (April 1, 2014), at 1.

¹⁶Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 2.

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Even if the District's contention that the physicians' duties do not "pertain to the transaction of public business" were correct, however, section 2.5 of FOIA (5 ILCS 140/2.5 (West 2014)) 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 article VIII, section 1(c) of the Illinois Constitution of 1970: "[R]ecords 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."

It is undisputed that the District's physicians are compensated for their services from District funds. Accordingly, under the plain language of section 2.5 of FOIA, records documenting the compensation of the physicians are records of a public body relating to its use of public funds and are therefore subject to inspection and copying under FOIA, unless otherwise exempted from disclosure.

Section 7(1)(b) of FOIA

The District has asserted that the amounts of physicians' compensation may be redacted from their employment agreements under section 7(1)(b), which 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 2014)) defines "private information" as:

[U]nique 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. (Emphasis added.)

In its response to the FOIA request, the District asserted that physicians' compensation information is "personal financial information" within the scope of the above definition,¹⁷ but did not provide additional details to support this argument. The amount of compensation earned by an individual, standing alone, unlike a bank account number, does not constitute a "unique identifier" that could be considered "private information" under this definition. Further, the compensation information relates to the District's use of public funds and

¹⁷Letter from Derek S. Johnson, Sr., Business Development Officer/FOIA Officer, Franklin Hospital, to Rocky Morris (May 18, 2015).

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therefore is expressly subject to disclosure pursuant to section 2.5 of FOIA. Accordingly, we conclude that the District has not sustained its burden of demonstrating by clear and convincing evidence that the physicians' compensation information is exempt from disclosure pursuant to section 7(1)(b) of FOIA.

The District also asserted that the residential addresses of the physicians listed in the employment agreements are exempt under section 7(1)(b).¹⁸ This office has reviewed the unredacted agreements and concludes that four of the five addresses contained in the agreements are home addresses that the District properly withheld under section 7(1)(b). However, the address listed for Dr. Lawrence Hollander is a post office box number. Because a post office box does not uniquely identify an individual or constitute a "home address," the District has not sustained its burden of demonstrating that the post office box number is exempt from disclosure pursuant to section 7(1)(b) of FOIA.

Section 7(1)(c) of FOIA

The District also asserted section 7(1)(c) of FOIA as a basis for withholding compensation information in the employment agreements. Section 7(1)(c) of FOIA exempts from inspection or copying:

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.* (Emphasis added.)

The District has asserted that the disclosure of the amount of compensation provided would constitute an unwarranted invasion of personal privacy because the physicians "strongly object to disclosing their personal financial information to the public[.]"¹⁹ The District

¹⁸Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 1.

¹⁹Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 2.

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also stated that disclosure of physician compensation is not in the public's interest because it could "hinder the District's ability to attract and maintain such qualified physicians, who may easily choose to work for other health facilities [that] are not public bodies."²⁰

The District employs the physicians to provide medical services at a public hospital to residents of the District pursuant to their contracts with the District. Because the amount of compensation directly bears on the physicians' public duties as employees of the District, disclosure of this information is not an invasion of personal privacy under the plain language of section 7(1)(c).

This office is mindful of the District's understandable concerns with respect to attracting physicians for employment. However, 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. Ill. Att'y Gen. Pub. Acc. Op. No. 15-004, issued June 17, 2015, at 5. Thus, even assuming that disclosure of the compensation amounts in question could be considered an invasion of physicians' personal privacy, in view of the strong countervailing interest of the public in information concerning the use of public funds, the invasion of privacy would not be "unwarranted."

FINDINGS AND CONCLUSIONS

Having given due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On May 11, 2015, Mr. Rocky Morris submitted a FOIA request to the Franklin Hospital District seeking physician contracts or employment agreements, including incentives and bonuses paid, for five named physicians.
- 2) On May 18, 2015, the District provided copies of the pertinent contracts to Mr. Morris but denied the request in part by redacting the physicians' compensation information from the contracts citing sections 7(1)(b) and 7(1)(c) of FOIA, claiming that the information is highly personal and confidential. The District further asserted that because the physicians do not perform "public duties," the compensation records are not "public records" subject to disclosure under FOIA.
- 3) On May 26, 2015, the Public Access Counselor received a Request for Review from Mr. Morris disputing the partial denial of his FOIA request. The Request for Review was

²⁰Letter from Edwina Warner, Troutt, Popit & Warner, P.C., to Matthew Hartman, Asst. Attorney General, Public Access Bureau (June 9, 2015), at 3.

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timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).

4) On May 29, 2015, the Public Access Bureau forwarded a copy of Mr. Morris' Request for Review to the District and requested unredacted copies of the documents for our confidential review, as well as an explanation of the District's basis for asserting that the redacted information was exempt from disclosure.

5) On June 9, 2015, the District sent a written response to this office, which included a redacted and an unredacted copy of the employment agreements for each of the physicians.

6) On July 20, 2015, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA, to August 31, 2015. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2.5 of FOIA specifically provides that all records relating to the obligation, receipt, and use of public funds of units of State and local government are public records subject to inspection and copying by the public. The District is a unit of local government and therefore is a public body, as defined in FOIA. The District compensates the physicians in question from District funds. Therefore, the amount of compensation paid by the District to its physicians is subject to disclosure, unless otherwise exempted.

8) The amount of compensation paid by the District to its physicians does not constitute a "unique identifier" including "personal financial information," that is exempt from disclosure under section 7(1)(b) of FOIA. Therefore, the District may not properly withhold the amount of compensation paid to its physicians under that section. However, the District properly withheld residential addresses as private information under section 7(1)(b), with the exception of one post office box number, which is not a "home address."

9) In addition, the District failed to meet its burden of demonstrating that the compensation information is exempt from disclosure pursuant to section 7(1)(c) of FOIA. Because the records directly relate to the District's use of public funds, they are therefore expressly subject to disclosure pursuant to section 2.5 of FOIA and article VIII, section 1(c) of the Illinois Constitution of 1970. Moreover, because these records directly bear on the services the physicians perform for a public body, their disclosure would not be considered an unwarranted invasion of privacy under the plain language of the exemption.

Therefore, it is the opinion of the Attorney General that the District has improperly denied, in part, Mr. Morris' Freedom of Information Act request in violation of the requirements of the Act. Accordingly, the District is directed to take immediate and appropriate

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action to comply with this opinion by disclosing to Mr. Morris copies of the physicians' employment contracts containing the compensation information, as a well as the post office box address that was improperly redacted.

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 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in 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. Rocky Morris as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Very truly yours,

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By:


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