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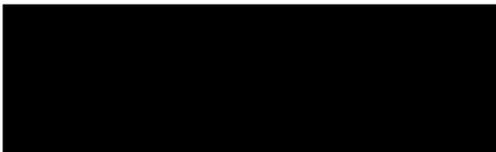
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Abstract **APPROVED**  
for Publication

Lisa Madigan  
ATTORNEY GENERAL

March 8, 2013



Ms. Angela M. Simington  
Chief FOIA Officer  
Village of Matteson  
4900 Village Commons  
Matteson, Illinois 60443

RE: FOIA Request for Review – 2012 PAC 18783

Dear [REDACTED] and Ms. Simington:

Pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2011 Supp.)), the Public Access Bureau has received a Request for Review of the response by the Village of Matteson to a FOIA request submitted by [REDACTED]. We have considered the Village's response to the allegations in the Request for Review; [REDACTED] did not reply.

On January 25, 2012, [REDACTED] requested copies of the results of his medical examination, psychological examination, polygraph examination, and background check in connection with his application for employment with the Village. On January 30, 2012, the Village denied the request pursuant to section 7(1)(q) of FOIA (5 ILCS 140/7(1)(q) (West 2011 Supp.)). On March 6, 2012, [REDACTED] submitted a Request for Review disputing the Village's denial of his FOIA request "because they are using these results as the reason that they denied me employment as a firefighter/paramedic with the village."<sup>1</sup>

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<sup>1</sup>E-mail from [REDACTED] to Public Access Bureau, Office of the Attorney General (March 6, 2012).

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On March 14, 2012, the Public Access Bureau forwarded a copy of the Request for Review to the Village and requested a written explanation for its assertion of section 7(1)(q) together with copies of the records in question. On March 26, 2012, the Village furnished those materials to this office and asserted in its written response that the records in question also are exempt from disclosure under 7.5(q) of FOIA (5 ILCS 140/7.5(q) 5 ILCS 140/7.5(q) (West 2011 Supp.)).

### DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2010); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2010).

#### Section 7(1)(q)

Section 7(1)(q) of FOIA exempts from disclosure "test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment." Section 7(1)(q) is intended to preserve the integrity of public bodies' hiring processes. *See Roulette v. Dep't of Central Mgmt. Servs.*, 141 Ill. App. 3d 394, 398-99 (1st Dist. 1986) (results and evaluator's notes of public employee applicant's psychological examination are exempt under section 7(1)(q) because an applicant could use insight from such records to frustrate the public body's testing process); *see also Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 768 (1st Dist. 2009) ("the results of the physical test for admission to the fire department fall squarely within the exemption of 'other examination data' used to determine the qualifications of an applicant for license or employment.") *Roulette* and *Kopchar* both also concluded that disclosure of test results and related examination data would be inconsistent with the legislative intent of FOIA<sup>2</sup> because the requesters sought the records for personal reasons that could disrupt the work of the public body rather than to further a public interest. *Kopchar*, 395 Ill. App. 3d at 769; *Roulette*, 141 Ill. App. 3d at 398.

Similarly, [REDACTED] is requesting the records in question for personal reasons concerning the denial of employment. This office also has previously determined that results of individual tests that are used to determine an applicant's overall qualifications for public employment constitute "other examination data" within the scope of section 7(1)(q). Ill. Att'y Gen. PAC Req. Rev. Ltr 6243, issued April 6, 2011; Ill. Att'y Gen. PAC Req. Rev. Ltr. 12786,

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<sup>2</sup>Section 1of FOIA (5 ILCS 140/1 (West 2011 Supp.)) provides that "this Act is not intended \* \* \* to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information."

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August 9, 2011). Accordingly, we conclude that the Village has sustained its burden of demonstrating that the results of the medical, psychological and polygraph tests sought by [REDACTED] are exempt from disclosure under section 7(1)(q) of FOIA.

The results of a background check, however, do not constitute "examination data" within the scope of section 7(1)(q). *Black's Law Dictionary* defines "examination" as a "test, such as a bar examination." *Black's Law Dictionary*, (9<sup>th</sup> ed. 2009). A background check assesses factual information concerning the applicant's personal history rather than his or her performance on an examination. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 18755, issued June 21, 2012. Because the background check results are not exempt from disclosure under section 7(1)(q), we will consider the Village's assertion that those records were properly withheld under section 7.5(q) of FOIA.

#### **Section 7.5(q) and the Personnel Record Review Act**

Section 7.5(q) of FOIA exempts "[i]nformation that is prohibited from being disclosed by the Personnel Records Review Act [PRRA]." Section 1(a) of PRRA (820 ILCS 40/1(a) (West 2010)) defines an employee as "a person currently employed or subject to recall after layoff or leave of absence with a right to return at a position with an employer or a former employee who has terminated service within the preceding year." The Village's response to the Public Access Bureau confirmed that [REDACTED] was denied employment by the Village. However, the Village notes that the *Kopchar* court concluded that section 10(b) of PRRA (820 ILCS 40/10(b) (West 2010)), which provides that employees have no right to inspect test records with the exception of the "cumulative test score for either a section of or the entire test document," also applies to unsuccessful job applicants such as [REDACTED] *Kopchar*, 395 Ill. App. 3d at 771.

Regardless, section 10(b) of PRRA solely restricts access to *test documents* and is not relevant to [REDACTED] request for the results of the background investigation. Nor has the Village identified any other provision of PRRA that restricts disclosure of the results of background checks. Accordingly, we conclude the Village has not sustained its burden of demonstrating by clear and convincing evidence that the results of [REDACTED] background check are exempt from disclosure under section 7.5(q).

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In accordance with the conclusions expressed in this letter, we request that the Village disclose the results of the background check to [REDACTED]. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter shall serve to close this matter.

Very truly yours,

[REDACTED]  
STEVE SILVERMAN  
Assistant Attorney General  
Public Access Bureau

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