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May 3, 2013

Abstract **APPROVED**
for Publication



Mr. James S. Sinclair
Stobbs, Sinclair &
Carruthers, Ltd.
500 Bond Street
P.O. Box 336
Alton, Illinois 62002-0336

RE: FOIA Request for Review – 2012 PAC 18883

Dear  and Mr. Sinclair:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9/5(f) (West 2011 Supp.)) For the reasons that follow, the Public Access Bureau concludes that the Carroll Fire Protection District must provide additional records in response to a FOIA request by 

BACKGROUND

On February 24, 2012,  requested from the District:

[All] notes from meetings held between Richard Quick and Barney Bryson and any current or former member of the Carroll Fire Protection District between August 1, 2011 and December 31, 2011. This request includes all meetings open to the public for which the minutes are approved and all notes from conversations of two or members of the Board of [Trustees] conducting fire

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protection district business where notes were taken outside a regular or closed meeting.¹

On February 29, 2012, the District denied the request by indicating that minutes of closed meetings are confidential. In a supplemental response sent on March 6, 2012, the District explained "[t]he board reviewed the closed meeting minutes on February 16, 2012 and they are to remain closed to the public at this time."² On March 9, 2012, [REDACTED] submitted a Request for Review alleging that the District improperly denied his FOIA request. On March 19, 2012, this office forwarded a copy of the Request for Review to the District and asked it to explain the denial of [REDACTED] FOIA request and to respond to the allegations in his Request for Review. On March 30, 2012, the District responded by asserting that minutes of closed meetings that are still confidential pursuant to section 2.06(d) of the Open Meetings Act (OMA) (5 ILCS 120/2.06(d) (West 2010)) were properly withheld under section 7(1)(l) of FOIA (5 ILCS 140/7(1)(l) (West 2010)), which exempts "[m]inutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public[.]" The District also provided this office with copies of responsive documents asserted to be exempt from disclosure as well as records that were construed as outside the scope of the FOIA request.

On April 9, 2012, [REDACTED] replied to the District's response by asserting that the District's Board committed multiple OMA violations.

DETERMINATION

The central issue in this matter is whether the records identified by the District as responsive to Mr. Thuney's request are exempt from disclosure under section 7(1)(l) of FOIA. Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2010)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." In keeping with this presumption, exemptions from disclosure are to be narrowly construed. *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378 (1989).

Section 7(1)(l)

In its response, the District compiled a list of records that are responsive to Mr. [REDACTED] request:

¹FOIA request from [REDACTED] to the Carroll Fire Protection District (February 24, 2012).

²Letter from Richard Quick, Secretary, Board of Trustees, Carroll Fire Protection District, to [REDACTED] (March 6, 2012).

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Executive Summary (1 page)
Minutes of August 30, 2011 Closed Session (2 pages)
Minutes of September 6, 2011 Closed Session (4 pages)
Interview Notes of September 15, 2011 (3 pages)
Interview Notes of September 21, 2011 (3 pages)
Interview Notes of September 22, 2011 (3 pages)
Minutes of October 4, 2011 Closed Session (5 pages)
Minutes of October 12, 2011 Closed Session (2 pages)
Handwritten Notes of Interview with Dave Piper (8 pages)
Handwritten Notes of Interview with Steve Thuney (13 pages)³

The plain language of section 7(1)(l) exempts from disclosure the minutes of closed meetings until those minutes are made available to the public pursuant to section 2.06 of OMA. The District has confirmed for this office that the responsive minutes of closed meetings are still confidential and have not been made public by the Board. Accordingly, we conclude that the District has demonstrated that those minutes of closed meetings are exempt from disclosure under section 7(1)(l) of FOIA.

The District also contends that the interview notes and handwritten interview notes are confidential, and that disclosure would lead to the discovery of the individuals interviewed. However, the District did not provide a section 7 exemption for withholding those records. Further, a review of the notes indicates that only two board members conducted the interviews, which would not qualify as a closed meeting of the five-member Board because there was not a quorum. *See* 5 ILCS 120/1.02 (West 2010) (a meeting of a five-member public body requires a quorum of three members). Because the interview notes are not minutes of a closed meeting and because the Village has not identified and provided a factual basis for any other relevant FOIA exemption, we conclude that the District has not met its burden of demonstrating that those notes are exempt from disclosure under FOIA.

The District also asserted that an executive summary is not subject to disclosure under FOIA and is confidential. However, the District did not assert that any specific section 7 exemption applies to that record. This office has reviewed the executive summary and determined that it is not minutes of a closed meeting. Rather, it is a "summary prepared by Trustee Richard Quick after the investigation of complaints made to the Board and after

³Letter from James Sinclair, Stobbs, Sinclair & Carruthers, Ltd., to Sara Gallagher, Assistant Attorney General, Public Access Bureau (March 30, 2012).

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interviews with firefighters on the district's department."⁴ Accordingly, we conclude that the executive summary is not within the scope of section 7(1)(l) or any other FOIA exemption.

In addition to the records that the District identified as responsive to ██████████ request, it has also provided a list of records that were determined to be not responsive to his FOIA request. Specifically, the District identifies the "Minutes of Regular Board meeting of December 14, 2011" as a record that is not responsive to ██████████ request. A review of the December 14, 2011, minutes indicates that Mr. Richard Quick and Mr. Bryson were present at the meeting along with the other members of the Board. ██████████ FOIA request includes notes from "all meetings open to the public for which the minutes are approved."⁵ We construe ██████████ FOIA request to include approved minutes of the Board from August 1, 2011 through December 31, 2011. Therefore, we conclude that the approved open session minutes of the December 14, 2011, Board meeting are responsive to the FOIA request. Likewise, the approved open session minutes for the August 10, 2011, September 14, 2011, November 9, 2011, and December 2, 2011, Board meetings are also responsive to ██████████ request.⁶

Alleged OMA Violations

Mr. Thuney alleged numerous violations of OMA in his April 9, 2012, letter to this office. However, ██████████ allegations are outside of the scope of his Request for Review of the District's denial of his FOIA request. Further, this office's authority to review alleged violations of OMA is limited to alleged violations that occurred within 60 days of the submission of a Request for Review. 5 ILCS 120/3.5(a) (West 2010). In this instance, the most recent alleged violation occurred on October 12, 2011. Mr. Thuney did not bring the alleged violation to our attention until April 9, 2012. Thus, this office may not review ██████████ allegations that the District violated OMA.

CONCLUSION

In summary, the District has properly withheld minutes of closed meetings pursuant to section 7(1)(l), but has failed to meet its burden of demonstrating by clear and convincing evidence that the executive summary, interview notes, and handwritten notes of interviews are exempt from disclosure. Further, the District has incorrectly determined that the

⁴E-mail from James S. Sinclair, Stobbs, Sinclair & Carruthers, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (March 8, 2013).

⁵FOIA request from ██████████ to the Carroll Fire Protection District (February 24, 2012).

⁶To the extent that additional minutes for Board meetings conducted between August 1, 2011, and December 31, 2011, exist, those minutes are also responsive to ██████████ request.

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minutes of the approved open session minutes of the Board's approved minutes of the Board's August 10, 2011, September 14, 2011, November 9, 2011, and December 2, 2011, December 14, 2011, meetings are not responsive to [REDACTED] request. Accordingly, the District must disclose these records, subject only to permissible redactions under FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Should you have any questions, please contact me at (217) 782-9054. This correspondence shall serve to close this file.

Very truly yours,

[REDACTED]
MATTHEW S. HARTMAN
Assistant Attorney General
Public Access Bureau

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