



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018

Via electronic mail

Mr. John Kraft
Edgar County Watchdogs
XXXXXXXXXXXXXXXX
Paris, Illinois 61944
XXXXXXXXXXXXXXXX

Via electronic mail

Mr. Steven M. Richart
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
3030 Salt Creek Lane
Suite 202
Arlington Heights, Illinois 60005
srichart@hlerk.com

RE: FOIA Requests for Review – 2018 PAC 51340; 2018 PAC 51673

Dear Mr. Kraft and Mr. Richart:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). This office has consolidated two Requests for Review in this determination because they contain similar allegations and legal arguments. For the reasons that follow, the Public Access Bureau concludes that Jasper County Community Unit School District No. 1 (District) improperly redacted certain information responsive to Mr. John Kraft's December 26, 2017, and January 12, 2018, FOIA requests.

2018 PAC 51340

On January 12, 2018, Mr. Kraft submitted a FOIA request to the District seeking copies of documents showing all bank account numbers under the control of the District. On January 22, 2018, the District furnished copies of the first pages of seventeen bank account statements with the account number redacted from each statement pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(g), 7(1)(i), and 7(1)(o) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(c), (1)(g),

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 2

(1)(i), (1)(o) (West 2017 Supp.)). In support of its reliance on section 7(1)(a) of FOIA, the District referenced "the *Gramm-Leach-Bliley Act*, the *Personal Information Protection Act*, and the *Banking Act*."¹ On that same date, Mr. Kraft submitted this Request for Review contesting the redaction of the account numbers.

On January 30, 2018, this office sent a copy of the Request for Review to the District and asked it to provide this office with unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for the asserted exemptions. On February 15, 2018, the District provided this office with those records and a written response. Mr. Kraft replied on February 28, 2018. On March 21, 2018, the District furnished this office with a copy of its response letter and exhibits in the separate Request for Review submitted by Mr. Kraft addressed below, 2018 PAC 51673. Mr. Kraft submitted a supplemental reply on April 2, 2018. On June 22, 2018, this District furnished this office with an additional response addressing case law it had cited in support of its section 7(1)(g) argument.

2018 PAC 51673

On December 26, 2017, Mr. Kraft submitted a FOIA request to the District seeking electronic copies of the "receipts/invoices of all bills voted to be paid at the December 18, 2017 meeting."² On January 10, 2018, the District furnished paper copies of the bills with certain information redacted pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(g), 7(1)(i), 7(1)(o), and 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2017 Supp.)). Among the information redacted from the invoices were customer numbers and account numbers. On February 11, 2018, Mr. Kraft submitted a Request for Review challenging the District's redactions and the format in which it provided the responsive records.

On February 26, 2018, this office sent a copy of the Request for Review to the District and asked it to provide this office with unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for the asserted exemptions. This office also requested that the District address how it maintained the records responsive to Mr. Kraft's request and whether it is feasible for the District to provide the records electronically. On March 22, 2018, the District provided this office with the requested records and a written response. The District explained that it intended its response to this office in 2018 PAC 51673 to incorporate the legal arguments asserted in 2018 PAC 51340. Mr. Kraft replied on April 2, 2018, and June 22, 2018. On August 3, 2018, this office asked Mr. Kraft to clarify which redactions he was challenging. The same day, Mr. Kraft explained that he sought

¹Letter from Andrew D. Johnson, Superintendent of Schools, FOIA Officer, Jasper County Community Unit School District # 1, to John Kraft (January 22, 2018), at 1.

²E-mail from John Kraft to Andrew Johnson (December 26, 2017).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 3

to challenge only the redactions of the District's customer numbers and account numbers, including credit card and bank account numbers (collectively, "account numbers"), hotel invoices, and attorney invoices. On August 3, 2018, this office requested that the District provide the factual and legal bases for the redactions made to the responsive hotel and attorney invoices. On August 17, 2018, the District provided a supplemental response, arguing that it redacted District employees' private information from the hotel invoices pursuant to section 7(1)(b) and a student's name from the attorney invoices pursuant to sections 7(1)(a), 7(1)(c), and 7.5(r).³ The same day, this office forwarded the supplemental response to Mr. Kraft.

DETERMINATION

Under FOIA, "[a]ll 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 2016); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that asserts that a record is exempt from disclosure "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(b)

Section 7(1)(b) 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 2016)) 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 a binding opinion (Ill. Att'y Gen. Pub. Acc. Op. No. 12-003, issued January 18, 2012), the Attorney General explained the following with respect to the meaning of "unique identifiers" for purposes of section 2(c-5) of FOIA:

³Mr. Kraft informed this office that he was not challenging the redaction of students' names, and therefore this office will not address the redaction of a student's name from the responsive attorney invoices. E-mail from John Kraft to Laura Harter (August 3, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 4

The examples of 'unique identifiers' cited in section 2(c-5) include information, such as a social security number, that is alone sufficient to identify *a particular individual*, as well as information which is both *unique to an individual* and of a type in which there is a significant personal privacy interest, such as medical or financial records. (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 12-003, at 7.

See also Ill. Att'y Gen. PAC Req. Rev. Ltr. 30238, issued April 15, 2015, at 7 ("a business' insurance policy number and claim number, a check number and check routing number for a check issued by a business [] * * * concern businesses rather than individuals and, therefore, do not constitute 'personal financial information' that is exempt from disclosure pursuant to section 7(1)(b) of FOIA.").

Likewise, the bank account numbers at issue in 2018 PAC 51340 are not "personal financial information" that is unique to an *individual*; rather, the account numbers belong to the District, which is a public body subject to the requirements of FOIA. Accordingly, this office concludes that the District's bank account numbers do not fall within the scope of section 7(1)(b) of FOIA.⁴

By contrast, the information redacted from the hotel invoices responsive to Mr. Kraft's December 26, 2017, FOIA request includes individual District employees' home addresses, credit card numbers, hotel membership program account numbers, and a personal e-mail address. Because section 2(c-5) specifically defines that information as "private information," this office concludes that those redactions do not violate FOIA.

Section 7(1)(c)

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as 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."

⁴The District did not assert in its response to Mr. Kraft's December 26, 2017, FOIA request that it redacted customer and account numbers pursuant to section 7(1)(b) of FOIA, but to the extent that the District's answer to this office in 2018 PAC 51673 incorporated all arguments asserted in 2018 PAC 51340, this office concludes that, for the reasons stated above, the District's customer and account numbers do not fall within the scope of section 7(1)(b) of FOIA.

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 5

In its letter denying Mr. Kraft's January 12, 2018, FOIA request in part, the District asserted that the "[d]isclosure of bank account numbers – even of a public agency – would be highly objectionable to a reasonable person, and the public agency's right to the privacy in this case outweighs any legitimate public interest in the information." However, the Public Access Bureau has consistently concluded that companies do not have personal privacy interests protected by section 7(1)(c) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 33143, issued November 19, 2015, at 2 (citing *FCC v. AT&T, Inc.*, 562 U.S. 397, 409-10, 131 S. Ct. 1177, 1185 (2011), in which the U.S. Supreme Court held that corporations do not have a privacy interest for purposes of the personal privacy exemption pertaining to law enforcement records in the Federal FOIA (5 U.S.C. §552(b)(7)(C) (2006))); Ill. Att'y Gen. PAC Pre-Auth. dl12330, issued February 17, 2010, at 2 ("[C]orporate entities do not have 'personal privacy' interests within the meaning of Section 7(1)(c)."). Consistent with those determinations, this office has held that a public body's bank account and routing numbers are not exempt from disclosure pursuant to section 7(1)(c) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 38616, issued February 15, 2017, at 4. The District's denial letter and response to the Request for Review has provided no basis to conclude otherwise. Accordingly, the Public Access Bureau concludes that the District improperly redacted its account numbers from the records furnished to Mr. Kraft under section 7(1)(c) of FOIA.⁵

Section 7(1)(g)

Section 7(1)(g) of FOIA exempts from disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are *furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm* to the person or business, and only insofar as the claim directly applies to the records requested. (Emphasis added.)

For a record to be exempt from disclosure under section 7(1)(g):

⁵The District did not assert in its response to Mr. Kraft's December 26, 2017, FOIA request that it redacted customer and account numbers pursuant to section 7(1)(c) of FOIA, but to the extent that the District's answer to this office in 2018 PAC 51673 incorporated all arguments asserted in 2018 PAC 51340, this office concludes that, for the reasons stated above, the District's customer and account numbers do not fall within the scope of section 7(1)(c) of FOIA.

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 6

[T]he document must contain (1) a trade secret, commercial, or financial information, (2) that was obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are either (a) proprietary, (b) privileged, or (c) confidential, and (3) that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business. (Emphasis in original.) *Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶27, 78 N.E.3d 446, 455 (2017).

As discussed in *Janssen*, section 7(1)(g) was substantively amended by the General Assembly in 2010.⁶ Before 2010, section 7(1)(g) of FOIA exempted from disclosure "[t]rade secrets and commercial or financial information *obtained from a person or business* where the trade secrets or information are proprietary, privileged or confidential, *or* where disclosure of the trade secrets or information *may* cause competitive harm." (Emphasis added.) 5 ILCS 140/7(1)(g) (West 2008). Thus, the previous version of section 7(1)(g) applied to records containing trade secrets or commercial or financial information that were merely "obtained" from a person or business. In contrast, the current version of section 7(1)(g) specifically requires that such records be "furnished under a claim that they are proprietary, privileged, or confidential." The addition of this requirement demonstrates that the General Assembly intended "to limit the scope of the 7(1)(g) exemption to records expressly claimed to fall under one or more of those three categories at the time that the records are provided to the public body." Ill. Att'y Gen. Pub. Acc. Op. No. 18-004, issued March 6, 2018, at 5.

Additionally, the *Janssen* court clarified that a public body must demonstrate that disclosing documents would cause competitive harm in order for the documents to be withheld under section 7(1)(g). *Janssen, Inc.*, 2017 IL App (1st) 150870, ¶29, 78 N.E.3d at 456. To do so, the public body must "show by specific factual or evidentiary material that: (1) the person or entity from which information was obtained actually faces competition; and (2) substantial harm to a competitive position would likely result from disclosure of the information in the agency's records." *Cooper v. Dep't of the Lottery*, 266 Ill. App. 3d 1007, 1013 (1st Dist. 1994) (quoting *Calhoun v. Lyng*, 864 F.2d 34, 36 (5th Cir. 1988)).

In its response to this office in 2018 PAC 51340, the District argues:

Here, the District's back account numbers are obtained from banks.

⁶See Public Act 96-542, effective January 1, 2010.

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 7

Banks uniformly provide such information with the claim that such information should be kept confidential. Should the District's bank account or credit card numbers be used for theft, both the bank and the District would suffer harm. Thus 7(1)(g) applies on its face.^[7]
(Footnote omitted.)

The District's response discussed *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19 (D.D.C. 2000), a decision by a federal district court that held that bank account numbers could be withheld under the federal counterpart to section 7(1)(g);⁸ the District's supplemental response in 2018 PAC 51340 discussed the United States Department of Justice's Office of Information Policy guidance for interpreting federal FOIA.⁹ The District's response also discussed the three-part test outlined by the *Judicial Watch* court, and argued that its bank account numbers met that test because they are financial information obtained from banks which were given to the District confidentially because "the disclosure would likely cause substantial harm to both the District's and the bank's positions as the accounts could be hacked using this information, and the bank would suffer loss."¹⁰ The District also argued that the disclosure of its customer and account numbers would expose it and its taxpayers to abuse and fraud.

However, Exemption 4 to federal FOIA is inapposite. Exemption 4 exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential," whereas section 7(1)(g) of Illinois FOIA exempts trade secrets and commercial or financial information only "where * * * disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business." As explained in *Janssen*, the plain language of section 7(1)(g) requires a showing that disclosure of the records at issue would cause competitive harm. *Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, at ¶29 (finding that "Janssen does not meet the threshold requirements of section 7(1)(g) so as to exempt its documents from disclosure" because it "has failed to assert both in the trial court and on appeal why the disclosure" would cause it competitive harm). Because Exemption 4 does not

⁷Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 15, 2018), at 3.

⁸5 U.S.C. 552(b)(4) (West 2000) (exempting from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential").

⁹U.S. Department of Justice, Office of Information Policy, Exemption 2 After the Supreme Court's Ruling in *Milner v. Department of Navy*, <https://www.justice.gov/oip/blog/foia-guidance-7> (last visited June 22, 2018).

¹⁰Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 15, 2018), at 4.

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 8

contain a similar requirement, case law and guidance interpreting that provision do not provide persuasive authority for interpreting section 7(1)(g).

Turning to the language of section 7(1)(g), the Attorney General has previously rejected the redaction, pursuant to section 7(1)(g), of certain financial terms from a contract between a municipality and a private company relating to a concert held in a venue owned by the municipality. Ill. Att'y Gen. Pub. Acc. Op. No. 15-002, issued January 23, 2015. In that matter, the Attorney General concluded that "the financial terms were not 'obtained from a person or business' as section 7(1)(g) plainly requires, but rather were negotiated between the parties." Similarly, in this matter, the District's customer and account numbers were not "obtained" from its vendors and banks as that term is used in section 7(1)(g), but instead were provided to the District in the context of the District's engagement of those entities to provide banking and other services to the District. As the Attorney General has previously held, "[t]he scope of section 7(1)(g) does not appear to encompass commercial or financial information relating to the public body's own business transactions." Ill. Att'y Gen. Pub. Acc. Op. No. 14-016, issued December 2, 2014.

Moreover, the District has not met its burden of demonstrating that disclosure of the account numbers "would cause *competitive harm*," which, as discussed above, is a necessary requirement of section 7(1)(g) of FOIA. The District's responses argue that it could become the victim of theft or hacking if its account numbers were available to the public, which would result in harm. However, section 7(1)(g) does not attempt to mitigate the possibility of generalized financial harms; its narrow focus relates to *competitive harm*, meaning harm to an entity's "competitive position." *Cooper*, 266 Ill. App. 3d at 1013. Accordingly, this office concludes that the District has not sustained its burden of demonstrating by clear and convincing evidence that its account numbers fall within the scope of section 7(1)(g).

Section 7(1)(a)

Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation *specifically prohibited* from disclosure by federal or State law or rules and regulations implementing federal or State law." (Emphasis added.) "[A]n exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated-that is, such a proposed disclosure must be *specifically prohibited*." (Emphasis in original.) *Better Government Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 816 (4th Dist. 2008).

In its denial letter regarding Mr. Kraft's January 12, 2018, FOIA request, the District generally cited to two Illinois statutes and one federal statute that relate to the information of banking customers. This office requested that the District further explain its reliance on these statutes to withhold account numbers, and expressly requested that the District

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 9

"identify the specific sections of the three cited laws that 'specifically prohibit[]' the District from disclosing the requested account numbers."¹¹

In its response to this office in 2018 PAC 51340, the District asserted that the Personal Information Protection Act, (815 ILCS 530/1 *et seq.* (West 2016)), "provides protection from the disclosure of bank account numbers and requires notification of unauthorized disclosures[]" of bank account numbers of corporations and entities such as the District, and "sets forth several requirements when sensitive personal information is released and may cause potential harm; clearly contemplating that personal information is prohibited from release to the general public."¹² The District's response does not, however, identify any section of the Personal Information Protection Act that specifically prohibits or imposes liability on the District from disclosing its own bank account numbers.¹³

The District next cites the federal Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.* (2018)), noting that it "prohibits the disclosure of bank account numbers by financial institutions."¹⁴ The District's response acknowledges that the FOIA request was not submitted to a financial institution, but nevertheless argues that the bank statements are "from financial institutions," that financial institutions have an obligation to respect the privacy and protect the security and confidentiality of customer information, and that the District is a banking customer.¹⁵ The District's response does not identify any section of the Gramm-Leach-Bliley Act that requires banking customers such as the District to maintain the confidentiality of their own account numbers.

Finally, the District cites generally to the Illinois Banking Act (205 ILCS 5/1 *et seq.* (West 2016)). The District argues:

¹¹Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, to Andrew D. Johnson, Superintendent of Schools and FOIA Officer, Jasper County Community Unit School District # 1 (January 30, 2018), at 2.

¹²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 15, 2018), at 4.

¹³Notably, section 5 of the Personal Information Privacy Act, 815 ILCS 530/5 (West 2016), excludes from the definition of "personal information" "publically available information that is lawfully made available to the general public from federal, State, or local government records."

¹⁴Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 4 (February 15, 2018).

¹⁵Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 4 (February 15, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 10

As with the *Gramm-Leach-Bliley Act*, these are financial records originating with the bank and, therefore, should not be disclosed to the general public without redactions. Since a bank would be prohibited from releasing bank account numbers of the District for security purposes, it logically follows that the District should also not release that information, either.^{16]}

The District's response to this office references the Illinois Banking Act in its entirety, and our review of that law indicates that its provisions regulate the conduct of banks, not of banking customers. The District identified no provision in this law that would prohibit a banking customer from disclosing its own account numbers.

In summary, the District argues that "[t]hese statutes clearly demonstrate a consistent and clear public policy that requires the safekeeping of bank account numbers, whether they be of individuals or school districts."¹⁷ However, as discussed above, each of the laws cited by the District regulate the conduct of banks and financial institutions. The District has not demonstrated that it is among the institutions regulated by any of these statutes. The plain language of section 7(1)(a) permits redaction of information only when disclosure is "specifically prohibited" by a state or federal law or regulation—the District has not identified a state or federal law or regulation that prohibits a banking customer from disclosing information about its own bank accounts. Accordingly, this office concludes that the District has not sustained its burden of demonstrating by clear and convincing evidence that its bank account numbers are exempt from disclosure pursuant to section 7(1)(a).¹⁸

¹⁶Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 5 (February 15, 2018).

¹⁷Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 5 (February 15, 2018).

¹⁸The District did not assert in its response to Mr. Kraft's December 26, 2017, FOIA request that it redacted customer and account numbers pursuant to section 7(1)(a) of FOIA, but to the extent that the District's answer to this office in 2018 PAC 51673 incorporated all arguments asserted in 2018 PAC 51340, this office concludes that, for the reasons stated above, the District's customer and account numbers do not fall within the scope of section 7(1)(a) of FOIA. The District asserted that the federal identification numbers of private entities were exempt pursuant to section 7(1)(a) of FOIA, but Mr. Kraft is not challenging the redaction of those numbers. See E-mail from John Kraft to Laura Harter (August 3, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 11

Section 7(1)(i)

Section 7(1)(i) of FOIA permits a public body to withhold:

Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

The District argues that its bank account numbers are "valuable formulae" because an account number is a "series of numbers associated to express data and identify a particular bank account. The formula is valuable because the account number is the key to accessing the account and the money in that account, which could result in grave consequences for a public body and taxpayers if disclosed to the public."¹⁹ Regarding the District's billing account numbers for employee financial services and customer identification numbers for specific services or goods, the District argues that "[a]nyone with this information can easily call the vendor and use the formula to gain valuable information about the accounts, including personal information regarding the District's employees, or use the formula to make additional purchases for their personal benefit at the community's expense."²⁰

In construing statutes such as FOIA, the primary goal is to ascertain and effectuate the intent of the General Assembly. *See Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). "[W]hen a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *Board of Trustees of Southern Illinois Univ. v. Illinois Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994). In other words, the listed terms are examples of what the General Assembly intended the statute to cover. *See Duffy v. Illinois Dep't of Human Rights*, 354 Ill. App. 3d 236, 239 (4th Dist. 2004).

¹⁹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 5 (February 15, 2018).

²⁰Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Laura Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 4 (March 21, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 12

"Although the phrase 'valuable formulae' is not defined in FOIA, when read in context with the rest of the exemption * * * it is clear that the General Assembly intended 'valuable formulae' to mean something technical in nature, similar to 'computer geographic systems' or 'research data.'" Ill. Att'y Gen. Pub. Acc. Op. No. 14-016, issued December 2, 2014, at 5. The term "formula" is defined as "[a] general fact, rule, or principle expressed in usually mathematical symbols,"²¹ a "mathematical relationship or rule expressed in symbols" and "[a] method or procedure for achieving something[.]"²² The District offers its own dictionary definition of formula to be a "group of symbols (such as letters and numbers) associated to express facts or data (such as the number and kinds of teeth in the jaw) concisely."²³

The Public Access Bureau has previously held that information on wire transfers, including bank account numbers, is not "valuable formulae," as that phrase is used in section 7(1)(i) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 21642, issued November 19, 2012, at 4. Although the District argues that account and customer numbers are formulae, the numbers do not meet the definition of that term because they are not technical and merely represent specified accounts rather than rules, relationships, or methods for expressing or identifying any particular accounts. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39923, issued April 19, 2016 (housing authority utility voucher schedules are not valuable formulae because they set forth allowance dollar amounts rather than the rule or process by which such dollar amounts were calculated). Accordingly, the District did not sustain its burden of demonstrating by clear and convincing evidence that its customer and account numbers are exempt from disclosure pursuant to section 7(1)(i) of FOIA.

Section 7(1)(o)

Section 7(1)(o) exempts from disclosure:

Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides,

²¹*See Formula*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/formula> (last visited June 20, 2018).

²²*See Formula*, Oxford Dictionaries, <https://en.oxforddictionaries.com/definition/formula> (last visited June 20, 2018).

²³Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 5 (February 15, 2018) (citing Merriam-Webster Online, Definition of Formula, definition 3(c)).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 13

documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

The District argues that its account numbers fall within the scope of section 7(1)(o) because it applies to:

[I]nformation regarding the performance of executive duties that are associated with automated data processing operations, like billing to a specific bank account, and if that information is disclosed, it would compromise the security of the bank account. Here, the District's bank account numbers are associated with automated data processing operations by the bank regarding the District's payments and deposits, and the security of this system would be jeopardized by disclosure of the bank account number.^[24]

The District also asserts that the other account numbers are exempt pursuant to section 7(1)(o) because the numbers are necessary for performing executive duties. It argues that releasing the information would jeopardize the District's accounts and risk the security of employees' financial information.

The items listed in section 7(1)(o) as exempt materials relating to automated data processing operations, such as software, operating protocols, and "documentation pertaining to all logical and physical design of computerized systems," are clearly distinguishable from bank and other account numbers. An account number is one of the data elements maintained within a bank or other entity's automated data processing operations; it is not "administrative or technical information" associated with those operations themselves.

The Public Access Bureau has previously determined that information on wire transfers, including bank account numbers, is not "administrative or technical information associated with automated data processing operations," as that phrase is used in section 7(1)(o) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 21642, issued November 19, 2012, at 4. The District's responses to this office provide no basis to depart from this prior determination. Accordingly, the District did not sustain its burden of demonstrating by clear and convincing

²⁴Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 5-6 (February 15, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 14

evidence that its bank and other account numbers are exempt from disclosure pursuant to section 7(1)(o) of FOIA.

Section 6(a)

Section 3(b) of FOIA (5 ILCS 140/3(b) (West 2016)) provides:

Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

Additionally, section 6(a) of FOIA (5 ILCS 140/6(a) (West 2016)) provides:

When a person requests a copy of a record *maintained in an electronic format*, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. (Emphasis added.)

Mr. Kraft contends that the District should have provided him with electronic copies of the records responsive to his December 26, 2017, FOIA request. The District explained that it maintains the responsive records in hardcopy and therefore was not required to scan in the records and provide them electronically. Mr. Kraft counters that the District had to scan in the records to make redactions and therefore, the records are maintained electronically and it should have provided him with those electronic copies.

Under the plain language of section 6(a), if the District maintained the responsive invoices in an electronic format at the time of the FOIA request, it was required to provide them to Mr. Kraft electronically, if feasible. However, because the District did not maintain the records in an electronic format, it was not required to provide those records electronically. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28697, issued April 18, 2014, at 2 ("The plain language of section 6(a) requires a public body to provide records in electronic format *if* the public body maintains those records in electronic format. This office has previously determined that section 6(a) does not require a public body to furnish in electronic format records maintained solely in paper format, even if the public body has the resources to reproduce those records in PDF.") (Emphasis in original.). The fact that the District chose to create electronic copies after receiving

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 15

Mr. Kraft's FOIA request to facilitate its redactions does not impose a requirement on it to provide those records electronically. Accordingly, this office finds that the District was not required to provide Mr. Kraft with electronic copies of the responsive invoice records.

Conclusion

Separate from its arguments with respect to the specific FOIA provisions cited in its denial letters, the District's response to this office in 2018 PAC 51340 argues that its account numbers must be exempt from FOIA because "in construing a statute, the courts presume the legislature did not intend absurd results."²⁵ The District continues:

In this case, requiring the release of a public body's bank account numbers would not further the purposes of FOIA and, in fact, would unduly burden the public body by exposing it to victimization by those with nefarious purposes. * * * Common sense dictates that individuals and organizations should not publish their bank account numbers and credit card numbers for security reasons. * * * By no means did the Illinois legislature intend FOIA to be an avenue through which hackers and thieves could steal money from public bodies and banks, which would be inevitable result of bank account numbers and credit card numbers of a public body were non-exempt.^[26]

To emphasize its concerns that disclosure of its bank account numbers would impose a risk of financial harm, the District furnished this office a letter from its accountant, who opined that the public release of bank account numbers would create a risk of theft and fraud.²⁷ In reply, Mr. Kraft asserts that without access to the District's bank account numbers, "it would be impossible for citizens to audit the [D]istrict's finances."²⁸

²⁵Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 2 (February 15, 2018).

²⁶Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 2 (February 15, 2018).

²⁷Letter from Ryan Hawkins, CPA, Kemper CPA Group, LLP, to Laura Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 21, 2018), attached as Exhibit F to E-mail from Mary Karagiannis, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Laura Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 21, 2018).

²⁸E-mail from John Kraft to Leah Bartelt (February 28, 2018).

Mr. John Kraft
Mr. Steven M. Richart
October 25, 2018
Page 16

The District's concerns with the security of its accounts are well taken. However, none of the exemptions cited by the District in its denial letters encompass a public body's customer or account numbers, and the District's disclosure of its own customer and account numbers is not prohibited by any of the state or federal statutes it cited. Although the District (and possibly many other public bodies) may believe that following the plain language of the statute creates a risk that public bodies will become the victims of financial harm, it is not an "absurd result" to interpret the language of the statute as written. In fact, it is a cardinal rule of statutory interpretation that a court may not "depart from the plain meaning of the statutory language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *Estate of Alford v. Shelton*, 2017 IL 121199, ¶ 36, 89 N.E.3d 391, 400 (2017). As such, the District's argument that FOIA *should* include an exemption allowing a public body to withhold its customer and account numbers, or other sensitive financial information, is best directed to the General Assembly.

In accordance with the conclusions expressed in this determination, this office requests that the District provide Mr. Kraft with the customer and account numbers that it redacted from the responsive bank statements, receipts, and invoices. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me at the Chicago address on the first page of this letter.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

51340 51673 f consol 6a proper 71a improper 71b proper improper 71c improper 71g improper
71i improper 71o improper sd