



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 12, 2024

Via electronic mail
Mr. Chad Coit
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Via electronic mail
Ms. Lisa Steffey-Slade
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Via electronic mail
Ms. Christi Lagle
Clerk
Mahomet Township
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Mahomet, Illinois 61853
mtclerk@mahomettownship.org

RE: FOIA Request for Review – 2022 PAC 72822; 2022 PAC 73119

Dear Mr. Coit, Ms. Steffey-Slade, and Ms. Lagle:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). This office has consolidated the above-referenced Requests for Review because they involve the same public body and similar records.

2022 PAC 72822

On July 15, 2022, Mr. Chad Coit submitted a FOIA request to the Mahomet Township (Township) seeking all documents related to the Township's and Road District's legal expenditures from October 1, 2020, through September 1, 2021, including any monthly statements, itemized invoices, and other billing records. On July 25, 2022, the Township

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provided copies of responsive legal invoices but redacted the "Description of Service" and "Service Provided" entries contained in them pursuant to section 7(1)(m) of FOIA.¹

On July 28, 2022, this office received Mr. Coit's Request for Review challenging the redactions. On August 5, 2022, this office forwarded a copy of the Request for Review to the Township and asked it to provide unredacted copies of the records for this office's confidential review, together with a detailed explanation of the applicability of the asserted exemption. On August 10, 2022, this office received the requested materials, which included both a complete version of its written response for this office's confidential review and a redacted version for this office to forward to Mr. Coit.² On August 11, 2022, this office forwarded a copy of the Township's redacted response to Mr. Coit; he did not submit a reply.

2022 PAC 73119

On August 11, 2022, Ms. Steffey-Slade submitted a FOIA request to the Township seeking all documents related to legal expenditures that were approved by the Township's Board of Trustees on August 10, 2022, including any monthly statements, itemized invoices, and billing records. On August 18, 2022, the Township provided copies of responsive legal invoices but redacted parts of the service description entries pursuant to section 7(1)(m) of FOIA. On August 21, 2022, this office received Ms. Steffey-Slade's Request for Review challenging the redactions in the invoice from Sorling Moredock totaling \$3,050. On August 31, 2022, this office forwarded a copy of the Request for Review to the Township and asked it to provide an unredacted copy of the invoice at issue, together with a written response addressing the applicability of the asserted exemption. On September 6, 2022, this office received the requested materials, which included both a complete version of its written response for this office's confidential review and a redacted version for this office to forward to Ms. Steffey-Slade. On September 9, 2022, this office forwarded a copy of the Township's redacted response to Ms. Steffey-Slade; she replied on September 10, 2022. Ms. Steffey-Slade asserted that she sought disclosure of the information in the invoice for purposes of assessing whether there were any potential conflicts of interest involving an attorney from Sorling Moredock.

¹5 ILCS 140/7(1)(m) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021; 102-694, effective January 7, 2022, revised February 3, 2022; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

²See 5 ILCS 140/9.5(d) (West 2020) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

DETERMINATION

"All 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 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that redacts records "has the burden of proving by clear and convincing evidence" that the redacted information is exempt from disclosure. 5 ILCS 140/1.2 (West 2022). 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)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney
* * * representing the public body that would not be subject to
discovery in litigation, and materials prepared or compiled by or
for a public body in anticipation of a criminal, civil or
administrative proceeding upon the request of an attorney advising
the public body[.]

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *See People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1997). A party asserting that a confidential communication is protected by the attorney-client privilege typically must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2006).

In *Stukel*, 294 Ill. App. 3d at 203-04, the Illinois Supreme Court held that "information regarding a client's fees generally is not a 'confidential communication' between an attorney and client, and thus is not protected by the attorney client privilege. [Citations.] The payment of fees is merely incidental to the attorney-client relationship and typically does not involve the disclosure of confidential communications arising from the relationship." The Court, however, acknowledged that "[c]ertain types of billing records may contain explanations for legal fees and may indicate the type of work done or matters discussed between the attorney and client. As such, they *could* reveal the substance of confidential attorney-client discussions, and be subject to valid claims of attorney-client privilege or exemption under [FOIA]." (Emphasis added.) *Stukel*, 294 Ill. App. 3d at 201. Because the records at issue "made no reference to the pending litigation other than to name the payee law firm, and designate the amount and the date of each payment[.]" (*Stukel*, 294 Ill. App. 3d at 201), the Court did not further elaborate on the

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type of information that could be properly redacted from legal billing invoices.

In analyzing whether legal billing invoices were subject to disclosure pursuant to an administrative subpoena, a Federal appellate court held that billing statements containing the "identity of the client, the case name for which payment was made, the amount of the fee, and the general nature of the services performed" did not reveal privileged attorney-client communications because they did not reveal "specific research or litigation strategy which would be entitled to protection from disclosure." *Clarke v. American Commerce National Bank*, 974 F.2d 127, 130 (9th Cir. 1992). The court's ruling distinguished privileged material from general information concerning legal services:

Not all communications between attorney and client are privileged. Our decisions have recognized that the **identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.** [Citations.] However, correspondence, bills, ledgers, statements, and time records which also reveal the **motive** of the client in seeking representation, litigation strategy, or the **specific nature of the services provided, such as researching particular areas of law**, fall within the privilege. (Emphasis added.) *Clarke*, 974 F.2d at 130.

See also Hampton Police Ass'n, Inc. v. Town of Hampton, 162 N.H. 7, 15, 20 A.3d 994, 1001 (N.H. 2011) ("Courts generally agree that billing statements that provide only general descriptions of the nature of the services performed and do not reveal the subject of confidential communications with any specificity are *not* privileged." (Emphasis in original.)); *U.S. v. Naegele*, 468 F. Supp. 2d 165, 171 (D.D.C. 2007) (billing statements that "are general and do not reveal any litigation strategy or other specifics of the representation or any confidential client communications[] * * * are not protected by the attorney-client privilege."). **To be privileged, billing invoices must "include detailed entries which advise, analyze or discuss privileged communications."** (Emphasis in original.) *Tipton v. Barton*, 747 S.W.2d 325, 332 (Mo. Ct. App. 1988).

In its redacted response to 2022 PAC 72822, the Township contended that the "Description of Service" and "Service Provided" portions of the invoices contained privileged attorney-client communications. Specifically, the Township asserted that the descriptions provide "a brief summary of work performed, identifying research performed, communications with clients and on behalf of clients, topics discussed and other descriptions of confidential

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attorney client matters."³ The Township likewise contended that the redacted information in the invoice at issue in 2022 PAC 73119 consisted of privileged attorney-client information. In the confidential portion of its responses to the two matters, the Township explained in further detail the nature of legal work or services that were performed.

This office has reviewed the Township's complete responses and compared the unredacted versions of the invoices with the versions provided to Mr. Coit and Ms. Steffey-Slade. With respect to the invoices at issue in 2022 PAC 72822, this office's review confirmed that many of the entries describe specific topics or issues that were discussed, particular areas of law that were researched, and other specific legal tasks that were completed. Nonetheless, a number of the entries contain generic descriptions of the purpose of a communication or service. For instance, some entries indicate that certain documents were reviewed pertaining to a general topic but do not reveal specifics about the particular issues or strategies that were considered with regard to those topics. **The Township did not illustrate that these entries would reveal substantive details of the Township's confidential communications with its counsel. Similarly, the Township did not illustrate how some of the entries concerning counsel's communications with the opposing party or court on behalf of the Township would reveal confidential communications.** Additionally, certain entries listed at the end of some of the invoices pertain to administrative expenses rather than any specific legal services or work performed. Because only the discrete portions of legal billing invoices describing the particular topics of confidential discussions or the specific nature of the services performed may be properly redacted, this office concludes that **the Township did not demonstrate by clear and convincing evidence that all of the description entries in the invoices are exempt from disclosure pursuant to section 7(1)(m) of FOIA.**

With respect to the invoice at issue in 2022 PAC 73119, this office's review confirmed that two of the entries reveal detailed descriptions of tasks performed and particular subjects that were discussed, but the remaining redacted entries summarize the nature of services or work performed and topics of discussion in only broad, general terms. **The Township did not show how disclosure of these entries would reveal any legal strategies, particular research performed, or the substance of any confidential communications between the Township and its counsel.** *See* Ill. Att'y Gen. Pub. Acc. Op. No. 12-005, issued March 12, 2012 (binding opinion concluding that while detailed descriptions of work performed may be redacted from legal billing invoices pursuant to section 7(1)(m), generic descriptions do not fall within scope of the exemption); Ill. Att'y Gen. Pub. Acc. Op. No. 14-002, issued April 15, 2014 (same). **Accordingly, the Township has not sustained its burden of demonstrating that all of the redacted information falls within the scope of section 7(1)(m) of FOIA.**

³Letter from Steven D. Mahrt, Ancel Glink, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 8, 2022), at 1.

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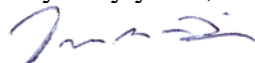
With respect to 2022 PAC 72822, this office requests that the Township disclose new copies of the invoices to Mr. Coit, disclosing the entries under "Disbursements Advanced" in the Meyer Capel invoices and entries under "Additional Costs" in the Jacksack Law Office invoices. This office also requests that the Township disclose the entries that describe the nature of the work performed in only broad, general terms. Examples include:

- Meyer Capel Invoice 334862 – 1/04/21, 1/05/21 entries
- Meyer Capel Invoice 336480 – 2/08/21, 2/10/21, 2/25/21 entries
- Meyer Capel Invoice 338167 – 3/05/21, 3/26/21 entries
- Jacksack Law Office Invoice, dated 1/28/21 – second 12/28/20 entry, the first two 1/04/21 entries, first two 1/08/21 entries
- Jacksack Law Office Invoice, dated April 15, 2021 – 1/28/21, 02/02/21, 02/04/21, 02/15/21, 03/05/21 entries

With respect to 2022 PAC 73319, this office requests that the Township disclose a new copy of the invoice to Ms. Steffey-Slade with the entries unredacted, except for the redacted portions of the 6/21/22 and 6/22/22 entries, which are exempt from disclosure pursuant to section 7(1)(m).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Supervising Attorney
Public Access Bureau

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