



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 2, 2014

PUBLIC ACCESS OPINION 14-016
(Request for Review 2014 PAC 30882)

FREEDOM OF INFORMATION ACT:
Disclosure of Terms of Lease Agreements
for the Rental of Public Property

Mr. Tim Novak
Reporter
Chicago Sun-Times
350 North Orleans Street
Chicago, Illinois 60654

Ms. Jeanette Swan
Freedom of Information Officer
Metropolitan Pier and Exposition Authority
301 East Cermak Road
Chicago, Illinois 60616

Dear Mr. Novak and Ms. Swan:

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 2012)). For the reasons discussed below, this office concludes that the Metropolitan Pier and Exposition Authority (MPEA) violated the requirements of FOIA by denying Mr. Tim Novak's request for copies of lease agreements, including the financial terms and square footage data for rental space for conventions and trade shows held at McCormick Place.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 2

BACKGROUND

On August 12, 2014, Mr. Novak, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to MPEA seeking:

copies of all leases the authority has signed since January 2011 regarding the rental of all space for conventions and trade shows at McCormick Place.

These leases should contain the cost per square foot, the amount of space leased to the convention and/or trade show, the dates of the shows, and the length of the contract.^[1]

On August 19, 2014, MPEA responded that "compliance with th[e] request would be unduly burdensome to [MPEA's] operations" pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)), asserting that "there are 243 license agreements responsive to your request which would require reproduction, along with manual redactions of all financial and square footage data."² MPEA asserted that such information is exempt from disclosure pursuant to section 7(1)(g) of FOIA (5 ILCS 140/7(1)(g) (West 2013 Supp.)), as amended by Public Act 98-695, effective July 3, 2014) by stating:

the financial and square footage information * * * is confidential and proprietary to our show management customers who negotiate space agreements with other venues, as well as McCormick Place. Public disclosure of this information by the MPEA would cause our customers competitive harm during negotiations with other venues. In addition, disclosure would put McCormick Place at a disadvantage when competing for conventions and trade shows.^[3]

¹E-mail from Tim Novak, *Chicago Sun-Times*, to Freedom of Information Officer, Metropolitan Pier and Exposition Authority (August 12, 2014).

²E-mail from Jeanette Swan, Freedom of Information Officer, Metropolitan Pier and Exposition Authority, to [Tim] Novak (August 19, 2014).

³E-mail from Jeanette Swan, Freedom of Information Officer, Metropolitan Pier and Exposition Authority, to [Tim] Novak (August 19, 2014).

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 3

MPEA offered Mr. Novak an opportunity to narrow his request to manageable proportions.⁴ He declined to do so and, on August 20, 2014, filed a Request for Review disputing the denial of his request:

These convention and trade shows have signed leases, sometimes multi-year deals, to occupy space in McCormick Place, a facility built, owned and operated by a government agency. The terms of those leases – the square feet leased to each convention/trade show along with the amount the government agency is charging per square foot – aren't trade secrets. These are contracts with a government agency, and those contracts should be available for review by taxpayers.^[5]

On August 25, 2014, the Public Access Bureau sent a copy of the Request for Review to MPEA and asked it to provide a detailed explanation of the legal and factual bases for its assertion of sections 3(g) and 7(1)(g) and a representative sample of the lease agreements for this office's confidential review.⁶ On September 16, 2014, MPEA furnished samples of the lease agreements and a written response which reiterated that compliance with the request would be unduly burdensome and that the financial and square footage information is exempt from disclosure pursuant to section 7(1)(g). The response also asserted that this information is exempt from disclosure pursuant to section 7(1)(i) of FOIA (5 ILCS 140/7(1)(i) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014).⁷ On September 17, 2014, the Public

⁴E-mail from Jeanette Swan, Freedom of Information Officer, Metropolitan Pier and Exposition Authority, to [Tim] Novak (August 19, 2014).

⁵E-mail from Tim Novak, Reporter, Chicago Sun-Times, to Public Access Counselor, Office of the Attorney General (August 20, 2014).

⁶Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, to Jeanette Swan, FOIA Officer, Metropolitan Pier and Exposition Authority (August 25, 2014).

⁷Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014).

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 4

Access Bureau sent a copy of MPEA's response to Mr. Novak,⁸ who submitted a reply on September 17, 2014.⁹ On October 10, 2014, 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 2012)).¹⁰

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act."

Section 7(1)(g) of FOIA

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.

⁸Letter from Steve Silverman, Assistant Attorney General, Public Access Bureau, to Timothy Novak, Reporter, *Chicago Sun-Times* (September 17, 2014).

⁹E-mail from Tim Novak, *Chicago Sun-Times*, to Steve Silverman, Public Access Counselor, Office of the Attorney General, State of Illinois (September 17, 2014).

¹⁰Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, to Timothy Novak, Reporter, *Chicago Sun-Times*, and Jeanette Swan, FOIA Officer, Metropolitan Pier and Exposition Authority (October 10, 2014).

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 5

MPEA's written response to this office provided historical information concerning itself and the governance of McCormick Place. In 2011, MPEA contracted with a private management company, SMG, to operate McCormick Place and negotiate leases with trade show managers.¹¹ Although standard rates have been established for renting meeting rooms and exhibition halls, MPEA stated that the competitive nature of the convention market often requires SMG to "make concessions to persuade show managers to bring an event to Chicago, rather than taking it to convention centers in cities such as Orlando and Las Vegas."¹² MPEA provided an affidavit by Mr. David Causton, the Regional Vice President for SMG and General Manager of McCormick Place, who further explained:

Discounts on rent are provided for a variety of reasons, including the size and nature of the event, time of year the event plans to meet, and whether the agreement is for single or multiple years. Convention centers also try to attract price sensitive groups such as social, military, educational, religious and fraternal organizations, which tend to gravitate to off peak periods and therefore expect rental reductions. ***Because each agreement is the product of individual negotiations involving a variety of variables, each individual agreement is unique.*** (Emphasis added.) Affidavit of David Causton, ¶7.

According to Mr. Causton, disclosure of the financial terms of leases at one convention center "undermines the show organizer's ability to freely negotiate pricing with other centers" and enables "[o]ther shows that compete for space at McCormick Place * * * [to] use that information to undercut them, while other venues could use that information to increase the prices they otherwise would charge." Causton Aff. ¶10-11. In addition, he asserted that "other venues could use that information to take customers away from [McCormick Place] and other organizations could use such information to demand greater discounts." Causton Aff. ¶12.

¹¹Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014), at 2.

¹²Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014), at 2-3.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 6

As noted above, the section 7(1)(g) exemption is limited to "commercial or financial information **obtained from a person or business**" under certain conditions, if disclosure would cause competitive harm to that person or business. (Emphasis added.) Based on this clear language, section 7(1)(g) might, for example, be applicable to the disclosure of financial information obtained from a private entity by a public body acting in a regulatory or investigatory capacity. The leases in question, however, were signed by Mr. Causton on behalf of SMG in its capacity as MPEA's agent. The scope of section 7(1)(g) does not appear to encompass commercial or financial information relating to the public body's own business transactions.

In support of its assertion that the lease terms are exempt from disclosure pursuant to section 7(1)(g) of FOIA, MPEA cited *Orbitz, LLC, v. Indiana Department of State Revenue*, 997 N.E.2d 98, 101-02 (Ind. Tax 2013), in which a tax court held that pricing information in an online travel agency's contracts furnished for audit purposes were trade secrets that could provide a competitive advantage to other companies by enabling them to negotiate better rates with hotels. MPEA also cited *McDonnell Douglas Corp. v. National Aeronautic and Space Administration*, 180 F.3d 303 (D.C. Cir. 1999). There, it was "undisputed that the total price of the contract may be made public[.]" but a federal appeals court agreed with a contractor's assertion that disclosure of its line item pricing information for satellite launch vehicle services "would permit its commercial customers to bargain down * * * its prices more effectively, and it would help its domestic and international competitors to underbid it[.]" *McDonnell Douglas Corp.*, 180 F.3d at 306, 336. In both *Orbitz* and *McDonnell Douglas Corp.*, the financial information at issue was furnished by a third party corporation to the public body either pursuant to a regulatory activity or as part of the third party's effort to provide services to the public body. Here, however, the financial information was created by the public body itself through its negotiations with third parties. Thus, both *Orbitz* and *McDonnell Douglas Corp.* are inapposite.

Moreover, other federal courts have held that the financial terms of government contracts do not fall under the exemption for trade secrets in the federal FOIA (Exemption 4) (5 U.S.C. § 552(b)(4) (West 2012)).¹³ See e.g., *Racal-Milgo Government Systems, Inc., v. Small Business Administration*, 559 F. Supp. 4, 6 (D.D.C. 1981) ("Adequate information enables the public to evaluate the wisdom and efficiency of federal programs and expenditures. * * * That

¹³Exemption 4 permits the withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential[.]" Federal courts' interpretations of the exemption for trade secrets in the federal FOIA are instructive in construing section 7(1)(g). See *Roulette v. Department of Central Management Services*, 141 Ill. App. 3d 394, 400 (1st Dist. 1986).

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 7

the supplier and the Government intended the price information to remain confidential is not determinative."). Indeed, "cases in which the courts have not required disclosure of information relating to government contractors typically involved requests not for prices but for more sensitive data, such as audits of private concessions in national parks, [citation], profit margins and inventory balances,[citation], and appraised values for customs duties assessment of imported parts[.]" *Center for Public Integrity v. Department of Energy*, 191 F. Supp. 2d 187, 195 (D.D.C. 1982); *see also Pacific Architects and Engineers, Inc., v. United States Department of State*, 906 F.2d 1345 (9th Cir. 1990) (affirming U.S. State Department's determination that the hourly amounts for services charged by a government contractor were not exempt from disclosure under Exemption 4 because they were based on multiple, fluctuating variables); *Trifid Corp. v. National Imagery and Mapping Agency*, 10 F. Supp. 2d 1087, 1099 (E.D. Mo.1998) (contractor's conclusory and generalized assertions failed to demonstrate that disclosure of pricing information in its government contract would cause competitive harm).

The information redacted from the lease agreements consists of the amounts of square feet leased and amounts of rental fees and payments due. As the general manager of McCormick Place stated in his affidavit, each lease agreement is the unique product of negotiations based on numerous variables. MPEA has not demonstrated, by clear and convincing evidence, how disclosure of the financial terms and square footage data in any particular lease would cause substantial competitive harm to MPEA or its leaseholders in negotiating other types of leases under different circumstances. Thus, even if the information in the lease agreements fell within the scope of section 7(1)(g), MPEA's response and supporting affidavit largely consist of generalized and conclusory assertions that are insufficient to demonstrate that disclosure of this information could cause competitive harm to any person or business.

Further, article VIII, section 1(c) of the Illinois Constitution of 1970 provides that "[r]eports and records 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." Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)) correspondingly 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." The requested information clearly relates to the receipt of public funds. Therefore, even assuming, for the sake of argument, that the redacted financial information and square footage data in those agreements constituted trade secrets or commercial or financial information furnished under a claim of confidentiality for purposes of section 7(1)(g) of FOIA, the more

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 8

specific disclosure requirements of the Illinois Constitution and section 2.5 of FOIA would prevail:

When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern. [Citation.] We will also presume that the legislature intended the more recent provision to control. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 346 (2008).

Section 2.5 of FOIA was enacted by Public Act 96-542, effective January 1, 2010. The original version of FOIA, enacted by Public Act 83-1013, effective July 1, 1984, contained an exemption substantively similar to section 7(1)(g) for "[t]rade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm." Ill. Rev. Stat. 1985, ch. 116, par. 207(g). Section 2.5 of FOIA is, therefore, the later expression of the General Assembly's intent. Further, the more recently enacted terms of section 2.5 relate to a single category of records, those concerning the obligation, receipt and use of public funds, whereas "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" could include a number of categories of information. *See generally* Ill. Att'y Gen. Pub. Acc. Op. No. 14-005, issued June 30, 2014, at 8 (concluding that article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA required disclosure of the financial terms of a private management company's contract to operate the Illinois Lottery which were redacted under section 7(1)(g) of FOIA: "Simply put, entities that contract to perform services for a governmental agency do not enjoy the same ability to withhold information that they do with respect to their private contracts."). Accordingly, this office concludes that MPEA has not sustained its burden of demonstrating that the financial terms of the lease agreements and the square footage data are exempt from disclosure pursuant to section 7(1)(g) of FOIA.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 9

Section 7(1)(i) of FOIA

In response to this office, MPEA also argued that the financial terms of the lease agreements and the square footage data are exempt from disclosure pursuant to section 7(1)(i) of FOIA, which applies to "[v]aluable 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." MPEA contends that "disclosure of agreed-to pricing formulas for individual McCormick Place events could enable competitors to obtain an undeserved windfall."¹⁴

Although the phrase "valuable formulae" is not defined in FOIA, when read in context with the rest of the exemption for "computer geographic systems, designs, drawings and research data", it is clear that the General Assembly intended "valuable formulae" to mean something technical in nature, similar to "computer geographic systems" or "research data." There is no reason to conclude that "valuable formulae" would encompass basic lease agreement information such as the rental amounts or the number of square feet leased. Further, as discussed above, this information directly relates to MPEA's receipt of public funds and therefore is expressly subject to disclosure pursuant to article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA. Accordingly, MPEA has not sustained its burden of demonstrating that the financial terms of the lease agreements and the square footage data are exempt from disclosure pursuant to section 7(1)(i) of FOIA.

Section 3(g) of FOIA

Section 3(g) of FOIA provides that "[r]equests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information." MPEA's response to the Public Access Bureau stated that the 243 responsive lease agreements span 3,500 pages, and contended that compliance with Mr. Novak's request would require MPEA "to review each of [the lease agreements] individually to redact all of the pricing information, including square

¹⁴Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014), at 3.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 10

footage and rate information. That process would have been unduly burdensome because of the effort required to produce copies and then manually redact each of the documents."¹⁵

MPEA contends that the burden of redacting the records outweighs the public interest in disclosure. However, as discussed above, the financial terms and square footage data that MPEA asserts it must redact from the lease agreements are not exempt from disclosure under section 7(1)(g) or section 7(1)(i) of FOIA. Because we conclude that MPEA may not properly redact financial terms and square footage data from the contracts, MPEA has not demonstrated that compliance with the request would be unduly burdensome.

MPEA further asserted that the burden of retrieving 243 agreements and copying 3,500 pages would have been unduly burdensome even if redactions were unnecessary, although it would have permitted Mr. Novak an opportunity to inspect the records.¹⁶ Mr. Novak's reply to MPEA's response clarified that rather than seeking 3,500 pages of copies, he is "only seeking to review the contracts, specifically to review the data the authority is attempting to withhold from the public, arguing that such information is a trade secret."¹⁷ With that clarification, MPEA has not met its burden of showing that gathering those records for review would be unduly burdensome.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 12, 2014, Mr. Tim Novak, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Metropolitan Pier and Exposition Authority seeking copies of all leases it entered into since January 2011 concerning the rental of space for conventions and trade shows at McCormick Place.

¹⁵Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014), at 4.

¹⁶Letter from Michele Odorizzi, Mayer Brown LLP, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (September 16, 2014), at 4.

¹⁷E-mail from Tim Novak, *Chicago Sun-Times*, to Steve Silverman [Assistant Bureau Chief, Public Access Bureau], Office of the Attorney General, State of Illinois (September 17, 2014).

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 11

2) On August 19, 2014, MPEA denied that request citing section 3(g) of FOIA. MPEA's response asserted that the burden of compiling the lease agreements and manually redacting the financial terms and square footage data pursuant to section 7(1)(g) of FOIA would outweigh the public interest in disclosure.

3) On August 20, 2014, the Public Access Bureau received Mr. Novak's Request for Review of the denial of his request. This Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).

4) On August 25, 2014, the Public Access Bureau sent a copy of the Request for Review to MPEA and asked it to provide a detailed explanation of the legal and factual bases for the assertion of sections 3(g) and 7(1)(g) together with a representative sample of the lease agreements for this office's confidential review.

5) On September 16, 2014, MPEA furnished samples of the lease agreements and a written response which also asserted that the financial terms of the lease agreements and the square footage data are exempt from disclosure pursuant to section 7(1)(i) of FOIA.

6) On October 10, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA, to December 2, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) In 2011, MPEA contracted with a private management company, SMG, to operate McCormick Place and negotiate leases with trade show managers.

8) SMG entered into the lease agreements in its capacity as MPEA's Agent. As a result, the redacted information in MPEA's lease agreements does not constitute "commercial or financial information obtained from a person or business" by MPEA. The scope of section 7(1)(g) does not encompass the financial terms of a public body's own transactions.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 12

9) Further, even if MPEA had obtained the lease agreements from a person or business, because MPEA provided only generalized and conclusory assertions that disclosure of the financial terms of the lease agreements and square footage data would cause competitive harm, it has not sustained its burden of demonstrating by clear and convincing evidence that such information is exempt from disclosure under section 7(1)(g) of FOIA.

10) In addition, the financial terms of the lease agreements and the amount of square feet leased directly relate to the receipt of public funds and, therefore, are expressly subject to disclosure pursuant to article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA.

11) Because the financial terms of the lease agreements and square footage data do not constitute "[v]aluable 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[.]" MPEA has not sustained its burden of demonstrating that such information is exempt from disclosure pursuant to section 7(1)(i) of FOIA.

12) MPEA's assertion of section 3(g) is based on the burden of reviewing and redacting financial terms and square footage data from the 243 responsive lease agreements. Because that information is not exempt from disclosure pursuant to sections 7(1)(g) or 7(1)(i) of FOIA, such redactions are impermissible and therefore would not impose a burden on MPEA. Additionally, in response to MPEA's assertion that retrieving and copying the lease agreements would be unduly burdensome even without the need for redactions, Mr. Novak clarified that he is seeking to review the agreements, not obtain copies. Accordingly, MPEA has not demonstrated that compliance with the request would be unduly burdensome.


Therefore, it is the opinion of the Attorney General that MPEA has improperly denied Mr. Novak's Freedom of Information Act request in violation of the requirements of the Act. Accordingly, MPEA is directed to take immediate action to comply with this opinion by providing Mr. Novak with an opportunity to review the financial terms and square footage data of the lease agreements.

Mr. Tim Novak
Ms. Jeanette Swan
December 2, 2014
Page 13

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 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with 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. Tim Novak as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Sincerely,

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