



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 31, 2011

[REDACTED]  
Deputy Clerk/FOIA Officer  
Village of Palatine  
200 East Wood Street  
Palatine, Illinois 60067-5339

[REDACTED]

RE: FOIA Request for Review – 2011 PAC 13240

Dear [REDACTED] and [REDACTED]:

We have completed our review of the Request for Review submitted by [REDACTED] pursuant to section 9.5 of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5 (West 2010)).

On February 17, 2011, [REDACTED] submitted a FOIA request to the Village of Palatine for "all Village employee accrued sick time and vacation time balances as of 12/31/2009, in electronic form." On February 25, 2011, the Village denied this request, asserting that the requested information is "private information" exempted from disclosure by section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2010)). The Village also asserted that the requested information was exempt under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2010)), which exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Village asserted that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended in various sections of Titles 18, 26, 29, and 42 of the United States Code)) specifically prohibits disclosure of the requested information. [REDACTED] sought our review of this denial.

August 31, 2011

Page 2

## DETERMINATION

All public records in the possession or custody of a public body are presumed to be open to inspection or copying. When a public body denies a FOIA request, the public body has the burden of proving by clear and convincing evidence that the withheld records are exempt from disclosure. 5 ILCS 140/1.2 (West 2010).

### Sick Time Balances

Section 7(1)(b) exempts from inspection and copying "[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 2010)) defines "private information" to include:

[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.

The Village did not specify its basis for claiming that sick time balances are "private information." The only two parts of the definition of "private information" that could arguably apply are "medical records" and "personal financial information," because sick time balances indicate compensation owed to public employees.

Sick time balances are not "medical records" pursuant to this definition because they do not reveal any specific medical condition or treatment. We also conclude that sick time balances are not "personal financial information." Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2010)) 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 language of section 2.5 of FOIA is derived from and implements article VIII, section 1(c) of the Illinois Constitution of 1970, which provides:

Reports 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.

Sick time and other employee benefits are a component of the compensation payable to employees of public bodies. Therefore, sick time balances clearly fall within section

August 31, 2011

Page 3

2.5's provisions. An interpretation of the phrase "personal financial information" in section 2(c-5) of FOIA that would permit a public body to withhold records relating to its financial obligations to its employees would conflict with both article VIII, section 1(c) of the Constitution and section 2.5 of FOIA. For these reasons, we conclude that the Village has not sustained its burden of demonstrating that the sick time balances are exempt under section 7(1)(b) of FOIA.

The Village also asserts that the sick time balances are exempt under section 7(1)(a) of FOIA because HIPAA specifically prohibits disclosure of this information. HIPAA's privacy rule specifically prohibits a "covered entity" from releasing "protected health information." 45 C.F.R. § 164.502(a) (2011). "Protected health information" means "individually identifiable health information," except that individually identifiable health information in "[e]mployment records held by a covered entity in its role as employer" are excluded from the definition of "protected health information." 45 CFR § 160.103 (2011).

We need not determine whether the Village is a "covered entity" because HIPAA does not prohibit disclosure of the information in this instance. The sick time balances are clearly found in employment records held by the Village in its role as an employer. Therefore, HIPAA does not prohibit disclosure of these sick time balances. We conclude that the Village has failed to demonstrate that the sick time balances are exempt under section 7(1)(a) of FOIA.

#### **Vacation Time Balances**

In its May 17, 2011, response to our request for additional information, the Village asserted that disclosure of vacation time balances would reveal "private financial information." For the reasons discussed above, vacation time balances are a component of employee compensation and do not constitute "personal financial information" under section 7(1)(b). The Village has not specified any other part of the definition of "private information" it asserts applies. Therefore, we find that the Village has not sustained its burden of demonstrating that vacation time balances are exempt under section 7(1)(b).

The Village also argues that records of vacation time balances are not "public records." Section 2(c) of FOIA (5 ILCS 140/2(c-5) (West 2010)) defines "public records" as all records "pertaining to the transaction of public business, \* \* \*, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." The compensation of public employees, including vacation time, clearly pertains to the transaction of public business. The Village provided no explanation for its assertion that these records were not "public records." We conclude that records containing the vacation time balances of public employees are public records subject to disclosure under FOIA.

[REDACTED]  
August 31, 2011

Page 4

Finally, the Village argues that disclosure of vacation time balances "could lead to" disclosure of other information that would be prohibited by HIPAA and the Family Medical Leave Act of 1993 (FMLA) (Pub. L. No. 103-3, 107 Stat. 6, codified as amended in various sections of Titles 5 and 29 of the United States Code). The Village has provided us with no specific explanation of how disclosure of vacation time balances could lead to disclosure of any other information. Without more, the vague assertion that an improper disclosure of other information could occur in the future cannot serve as a basis to withhold the requested information.

For the reasons discussed above, the Village must release records containing the requested sick time balances and vacation time balances of individual Village employees to [REDACTED]. If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

[REDACTED]

Assistant Attorney General  
Public Access Bureau

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