

**MINUTES OF THE REGULAR MEETING OF THE COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF DEKALB
TUESDAY, June 28, 2022**

The Commissioners of the Housing Authority of the County of DeKalb met in regular session at the Housing Authority's Central Office, 310 N. 6th Street, DeKalb, IL at 2:30 PM on Tuesday, June 28, 2022.

The meeting was called to order by Chairperson Wahlstrom and upon roll call, those present and absent were as follows:

Commissioners Present

Herodote Hounsrou Adjegan
Ron Bemis
Deanna Cada
Ging Smith
Jerry Wahlstrom

Commissioners Absent

Others Present

Tim Horning, Attorney
Mitch Halgren, Interim Executive Director
Christine Sauter, CFO
Vivian Bright, Operations Director

There being a quorum present, the meeting duly convened.

Approval of the Agenda. Chairperson Wahlstrom asked for changes to the agenda. There being no changes to the agenda, Commissioner Adjegean made a Motion to approve the Agenda and Commissioner Bemis seconded the Motion. Upon roll call of the vote, the Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Ging Smith	None
Herodote Hounsrou Adjegan	
Ron Bemis	
Deanna Cada	
Jerry Wahlstrom	

All were in favor, none opposed. Motion then carried.

Approval of the Minutes. Chairperson Wahlstrom asked for changes to the meeting minutes presented for May 17, 2022 – Regular Meeting. There being no changes, Commissioner Bemis made a Motion to approve the meeting minutes. Commissioner Smith seconded the Motion. Upon roll call of the vote, the Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Deanna Cada	None
Ging Smith	
Herodote Hounsrou Adjegan	
Ron Bemis	
Jerry Wahlstrom	

All were in favor, none opposed. Motion then carried.

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Approval of the Minutes. Chairperson Wahlstrom asked for changes to the meeting minutes presented for May 24, 2022 – Special Meeting. There being no changes, Commissioner Cada made a Motion to approve the meeting minutes. Commissioner Smith seconded the Motion. Upon roll call of the vote, the Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Deanna Cada	None
Ging Smith	
Herodote Hounsrou Adjegan	
Ron Bemis	
Jerry Wahlstrom	

Approval of the Minutes. Chairperson Wahlstrom asked for changes to the meeting minutes presented for May 27, 2022 – Special Meeting. There being no changes, Commissioner Adjegan made a Motion to approve the meeting minutes. Commissioner Bemis seconded the Motion. Upon roll call of the vote, the Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Deanna Cada	None
Ging Smith	
Herodote Hounsrou Adjegan	
Ron Bemis	
Jerry Wahlstrom	

Public Comment. Three (3) members of the public were present. Derek Van Buer presented his critiques regarding HACD response to PAC’s June 8, 2022, non-binding decision. Mr. Van Buer provided a brief demonstration on how to mail confidential documents to PAC. Mark Charvat stated that HACD’s attorney is providing “crap bad” advice to the board. Mr. Charvat wanted an explanation as to why HACD has not complied with PAC’s non-binding decision. Mr. Charvat expressed that HACD is in contempt and has total disregard to PAC and the States Attorney General and HACD needs to comply. Mr. Charvat requested a copy of PAC’s June 8, 2022, non-binding decision be part of the minutes (attached). Lynn Fazekas shared her disapproval of the seating arrangement for the board meeting.

Financial Report, Bills & Payroll. The May YTD financials were reviewed and discussed. Staff updated the Commissioners on the following items: FY22 audit went well with the HCV program being the major federal program tested. The only item noted during the audit was a clerical error with the rent reasonableness SEMAP indicator submission. This will be noted as a finding in the audit and monitored by the auditors next year; First Midwest Bank awarded the agency \$10,000 to continue the HCV security deposit assistance program; The agency received a \$133K check for the Public Housing subsidy recapture lawsuit. The funds have been deposited to the Central Office checking account; The agency applied for HCV set-aside HAP funding due to high portability costs; and updated the Board on staffing noting that a search is in progress for a new case manager.

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The bills and payroll were submitted to the Commissioners for approval of payment. Commissioner Adjegan moved that the bills and payroll be approved as submitted. Commissioner Bemis seconded the Motion. Upon roll call, the Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Ron Bemis	None
Ging Smith	
Herodote Hounsrou Adjegan	
Deanna Cada	
Jerry Wahlstrom	

All were in favor, none opposed. Motion then carried.

Report of the Secretary-Treasurer/Executive Director. *Legal.* Attorney Horning provided an update on current tenant evictions and court actions. Horning noted that he has consulted and assisted Interim ED Halgren and staff with recent FOIA's, Public Access Bureau [PAC] complaints and provided Commissioners an overview of the FOIA and PAC process. Staff continues to aggressively process applicants; however, it has been difficult to get responses and or paperwork back

Sunset View Apartments [Hinckley] - Fire. Results from the asbestos testing revealed asbestos only in the mastic for the flooring and does not require disposal at a certified disposal site. Staff waiting for EPA report to attach to application for demolition from the City of Hinckley. Approval process approximately 2-3 weeks. Targeting end of July 2022 for demolition to be completed. City of Hinckley does not have any time requirements for rebuild once structure is demolished. Rebuild must be completed within 1 year of issuance of building permit. Waiting on information from architect to produce good numbers for rebuilding.

Capital Projects. Primary focus continues to be on the Civic Water Pipe Replacement project. Progress has been made on the first floor – continues as valves and fittings arrive. Nearing completion of main feeders to the building stacks. Planning on starting the 1st 4 units the week of July 5.

TSP Air Condensing Unit: Held pre-bid meeting at TSP on June 22. Sealed bids are due July 6.

Mason Landscaping: Progress continues. Blacktop will be completed by June 24. Final landscaping and punch list will be addressed the week of June 27. Received bids for installation of entry pillars.

Radon Testing: HUD requirement has been completed at TSP, Lewis, and Garden. Awaiting test results. Due to water project, Civic will be schedule at a later date.

Dresser Court: Someone ran into the East end of building on May 29. Hit and Run. Repairs started Monday, June 20, 2022, after AHRMA's authorization. Repairs to water heater completed. Parts ordered for backflow valve. AC condensing unit and furnace has been disconnected so work can begin on the exterior wall. Currently working on interior and exterior wall. If all goes as planned, AC condensing unit and furnace will be reconnected June 24.

Reports of Committees. None

Resolutions: None

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New Business. Announcement of new Executive Director, David Siegel. Start date July 11, 2022. Announced the extension of sub-contractor, Mitch Halgren's interim ED contract to July 15, 2022.

Closed Session. Attorney advised no need for closed session.

Adjournment. There being no further business to come before the Commissioners, Chairperson Wahlstrom asked for a Motion to adjourn the regular meeting. Commissioner Bemis made a motion to adjourn. Commissioner Adjegan seconded the Motion. The Ayes and Nays were as follows:

<u>Ayes</u>	<u>Nays</u>
Herodote Hounsrou Adjegan	None
Deanna Cada	
Ron Bemis	
Ging Smith	
Jerry Wahlstrom	

All were in favor, none opposed. Motion then carried.

The meeting was adjourned at 3:08 PM until the regular meeting scheduled to take place, in person on Tuesday, July 19, 2022, at 2:30 PM at 310 N. 6th Street, DeKalb IL 60115.

CHAIRMAN

(SEAL)

ATTEST:

SECRETARY-TREASURER

CERTIFICATE

I, VIVIAN BRIGHT, the duly appointed, qualified and acting Secretary of the HOUSING AUTHORITY OF THE COUNTY OF DEKALB, ILLINOIS, and Keeper of the records thereof, do hereby certify that I have compared the annexed complete unapproved Minutes as recorded by me and retained in the Records of said Authority, and certify that it is a true, complete, and correct presentation of said Minutes, including attachments or exhibits made a part of these Minutes.

I further certify that if the Minutes are subsequently corrected or amended, I shall forward promptly such correction or amendment and a copy of the attachments or exhibits made a part of these Minutes.

I further certify that the said Meeting was held on June 28, 2022, and roll call showed the following members to be present and absent:

Commissioners Present
Herodote Hounsrou Adjegan
Ron Bemis
Deanna Cada
Ging Smith
Jerry Wahlstrom

Commissioners Absent

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Authority
this June 30, 2022.

ACTING SECRETARY



Submitted by:
Mr. Charvat -
fact of record
6-28-2022
B

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 8, 2022

Via electronic mail
Mr. Mark Charvat
markcharvat@yahoo.com

Via electronic mail
Ms. Vivian L. Bright
Operations Director
FOIA Officer
DeKalb County Housing Authority
310 North 6th Street
DeKalb, Illinois 60115
vbright@dekcohousing.com

RE: FOIA Request for Review – 2021 PAC 69210

Dear Mr. Charvat and Ms. Bright:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the DeKalb County Housing Authority's (Housing Authority) response to Mr. Mark Charvat's December 22, 2021, FOIA request violated FOIA.

On that date, Mr. Charvat submitted a FOIA request to the Housing Authority seeking copies of the complete personnel files of three named employees. On December 30, 2021, the Housing Authority denied the request pursuant to sections 7(1)(b), 7(1)(c), and 7.5(q) of FOIA.¹ That same day, this office received Mr. Charvat's Request for Review contesting the denial. He contended that the requested files could be produced with appropriate redactions.

¹ 5 ILCS 140/7(1)(b), (1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021; 5 ILCS 140/7.5(q) (West 2020), as amended by Public Acts 102-036, effective June 25, 2021; 102-237, effective January 1, 2022; 102-292, effective January 1, 2022; 102-520, effective August 20, 2021; 102-559, effective August 20, 2021.

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On January 10, 2022, this office forwarded a copy of the Request for Review to the Housing Authority and asked it to provide copies of the withheld records, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On January 21, 2022, the Housing Authority submitted a written response but did not provide the requested records. On January 27, 2022, this office forwarded a copy of the Housing Authority's response to Mr. Charvat; he replied on February 3, 2022.

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 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Duty to Cooperate with the Public Access Counselor

As an initial matter, the Housing Authority asserted that it could not provide the records requested because the three named employees did not consent to the release of their personnel files. The procedures, however, for a public body to respond to the Public Access Counselor in connection with a Request for Review of the denial of a FOIA request are clear. Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2020)) unambiguously provides that "[w]ithin 7 business days after receipt of the request for review, **the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor.**" (Emphasis added.) The mandate under section 9.5(c) does not afford the Housing Authority discretion to disregard its statutory obligation to fully cooperate and provide any records requested; it does not provide any exceptions, even when a public employee claims a privacy interest in the records. The Housing Authority's refusal to provide copies of the records in question undermines the Public Access Counselor's duty to conduct the type of comprehensive review that the General Assembly deemed to be crucial when it enacted Public Act 96-542, effective January 1, 2010, which created the Office of the Public Access Counselor. Ill. Att'y Gen. PAC Req. Rev. Ltr. 24089, issued March 7, 2018, at 3 (House debate on Senate bill creating the Office of the Public Access Counselor "evinces the General Assembly's intention to vest the Public Access Counselor with complete authority to conduct confidential reviews of records."); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 12-007, issued April 2, 2012. Accordingly, the Housing Authority violated section 9.5(c) of FOIA.

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Because the Housing Authority refused to provide this office with the records in question for an *in camera* review, this office will analyze the assertion of sections 7(1)(b), 7(1)(c), and 7.5(q) based on the limited available information. Specifically, we will determine whether the response letter submitted by the Housing Authority provides clear and convincing evidence that the withheld personnel files are exempt from disclosure under the three asserted exemptions.

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA 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 2020)) 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. 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.

Because the Housing Authority did not provide copies of the personnel files for an *in camera* review, this office cannot confirm that the records contain "private information" as defined in section 2(c-5). If the documents in the files contain some "private information" within the meaning of section 7(1)(b), the Housing Authority may redact that information but must disclose any remaining non-exempt information. *See* 5 ILCS 140/7(1) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 ("When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt.").

Section 7(1)(c) of FOIA

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, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as:

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[T]he 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

A public body's assertion that the release of information would constitute a clearly unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

The Housing Authority argued that compliance with Mr. Charvat's request would "require[] the release of the complete personnel records as stated by Mr. Charvat in his FOIA request."² In particular, it contended that the request "has not stated specific information from the personnel files as relating to the public duties" and that disclosure of the files would not contribute to "the public understanding of the operations or activities of the government."³ The Housing Authority acknowledged that personnel files are not *per se* exempt, but it maintained that "the documents in a personnel file are exempt from disclosure for personal privacy reasons."⁴ In support of its contention, the Housing Authority cited several cases: (1) *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, 994 N.E.2d 705 (2013), (2) *Copley Press, Inc. v. Board of Educ. for Peoria Sch. Dist. No. 150*, 359 Ill. App. 3d 321, 834 N.E.2d 558 (3rd Dist. 2005), and (3) *Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396 (2009).

In *State Journal-Register*, a newspaper sought various records related to the conduct of three coaches of the women's softball team. *State Journal-Register*, 2013 IL App (4th) 120881, ¶4, 994 N.E.2d at 709. The Appellate Court held that certain documents

²Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [2].

³Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [2-3].

⁴Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [3].

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maintained in the coaches' personnel files were exempt from disclosure pursuant to section 7(1)(c):

In this case, the information sought by the Journal includes documents reflecting the coaches' compensation for accrued vacation and sick time, employee status, and other related documents. The Journal interprets [*Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396 (2009)] too broadly, inferring any document within a personnel file can be subject to disclosure as bearing on the "public duties" of the employees. A closer reading of *Stern* shows the case was limited to the disclosure of employment contracts, as those contracts set forth the duties of public employees and the compensation paid from public funds. We find the present case more analogous to [*Copley Press, Inc. v. Board of Educ. for Peoria Sch. Dist. No. 150*, 359 Ill. App. 3d 321 (3d Dist. 2005)]. We fail to see how the coaches' election for the disbursement of accrued vacation, sick leave, and related documents have any bearing on their alleged misdeeds or public duties. Instead, we conclude this information is of a highly personal nature, contained appropriately in a personnel file, and exempt from disclosure. *State Journal-Register*, 2013 IL App (4th) 120881, ¶41, 994 N.E.2d at 716.

In *Copley*, the court held that the requested performance evaluations and letter explaining the reasons for a superintendent's dismissal were the types of documents expected to be found in a personnel file and thus *per se* exempt under the then-existing exemption for records in a "personnel file." *Copley*, 359 Ill. App. 3d at 324-25, 834 N.E.2d at 561-62 (interpreting 5 ILCS 140/7(1)(b)(ii) (West 2002)). Notably, FOIA was amended in 2010 to strike the "personnel file" subsection of the personal privacy exemption. See Public Act 96-542, effective January 1, 2010.

The court in *Stern* similarly analyzed the applicability of the then-existing exemption for records in a "personnel file" to a requested employment contract. *Stern*, 233 Ill. 2d at 404. In that case, the court held that the employment contract for a superintendent was not exempt from disclosure under that exemption because the contract contained information bearing on the superintendent's public duties and concerned the expenditure of public funds. *Stern*, 233 Ill. 2d at 412-13. The court found that such information was expressly subject to disclosure under other provisions of FOIA. *Stern*, 233 Ill. 2d at 413.

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In this matter, the Housing Authority's contention that the personnel files are exempt in whole under section 7(1)(c) "for personal privacy reasons"⁵ is vague. At the time of the *State Journal-Register* opinion, the placement of records in a personnel file was not dispositive as to whether they were exempt from disclosure under section 7(1)(c). The court stated that "[t]hough information contained within a personnel file is generally exempt from disclosure for personal privacy reasons, **'information that bears on the public duties of public employees and officials' is not exempt under the personal privacy exemption.**" *State Journal-Register*, 2013 IL App (4th) 120881, ¶38, 994 N.E.2d at 715. (Emphasis added.) The court further stated: "To allow an exemption for every document a public body placed within a 'personnel file' would allow a public body to subvert the purposes of FOIA." *State Journal-Register*, 2013 IL App (4th) 120881, ¶38, 994 N.E.2d at 715.

The Housing Authority failed to provide this office with copies of the personnel files or describe in meaningful detail the contents of those files, and it is not apparent to this office that all documents in those files are exempt. The fact that some of the documents in the files may fall within the scope of an exemption does not provide a basis to withhold the files in their entirety. The *Copley* court identified various records that could be reasonably expected to be maintained in an individual's personnel file⁶ and that bear directly on a public employee's public duties, such as a resume or application, an employment contract, and payroll information. A public employee's resume and employment application, for instance, detail that individual's education, training, and experience to serve in a position. Because those qualifications bear on the individual's ability to perform his or her public duties satisfactorily, those records are not exempt in whole under section 7(1)(c). See Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014 (resume and job application of public employee not exempt in whole under section 7(1)(c)). Further, employment contracts and salary information maintained in a personnel file reflect the spending of public funds and thus are expressly subject to disclosure under section 2.5 of FOIA. 5 ILCS 140/2.5 (West 2020) ("All 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."); see also *Stern*, 233 Ill. 2d at 412-13 (employment contracts not exempt under FOIA because they bear on a public employee's public duties and concern the expenditure of public funds). Accordingly, the Housing Authority has not shown by clear and convincing evidence that the records are exempt in whole pursuant to section 7(1)(c).

The Housing Authority also asserted in its response to this office that it denied the request because the three named employees did not consent to the release of "personal

⁵Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [3].

⁶*Copley*, 359 Ill. App. 3d at 324, 834 N.E.2d at 561.

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information as contained in their personnel files."⁷ The Housing Authority argued that the Illinois Supreme Court in *Mancini Law Group, P.C. v. Schaumburg Police Department*, 2021 IL 126675, held that "an Illinois public body does not have the ability to waive an individual's interest in his or her personal information that is contained in a document subject to a FOIA request."⁸

The Housing Authority's reliance on *Mancini* is misplaced because that case did not address whether records were highly personal and therefore exempt pursuant to section 7(1)(c), but rather, whether a public body waived its ability to withhold records based on a previous disclosure. The matter of a waiver is not relevant here because there is no claim that the Housing Authority previously disclosed unredacted copies of the requested records. In *Mancini*, the defendant police department furnished accident reports to the plaintiff requester, with driver's license numbers, personal telephone numbers, home addresses, and license plate numbers redacted pursuant to section 7(1)(b) and dates of birth and insurance policy account numbers redacted pursuant to section 7(1)(c). *Mancini Law Group, P.C. v. Schaumburg Police Department*, 2021 IL 126675, ¶3. The plaintiff argued that the defendant was precluded from redacting the reports because it provided the same records, unredacted, to LexisNexis. *Mancini*, 2021 IL 126675, ¶17. In analyzing preclusion, the court examined *Sherman v. United States Department of the Army*, 244 F.3d 357 (5th Cir. 2001), which addressed a similar claim. *Mancini*, 2021 IL 126675, ¶42. In *Sherman*, the Fifth Circuit considered whether the United States Army waived the ability to redact social security numbers (SSNs) of service personnel from award orders pursuant to Exemption 6 of the Federal FOIA when it disclosed that information to the public in other records. *Sherman*, 244 F.3d at 360. The Fifth Circuit concluded there was no waiver, holding that "only the individual whose informational privacy interests are protected by exemption 6 can effect a waiver of those privacy interests when they are threatened by a [] FOIA request." *Sherman*, 244 F.3d at 363-64. The Fifth Circuit further concluded that the "invasion of the informational privacy interest of individual soldiers in disclosure of their SSNs would clearly be unwarranted in the absence of any public interest in those SSNs" and thus that the SSNs were exempt under Exemption 6. *Sherman*, 244 F.3d at 366-67. Adopting the reasoning in *Sherman*, the court concluded "that an Illinois public body does not have the ability to waive an individual's interest in his or her personal or private information that is contained in a document subject to a FOIA request." *Mancini*, 2021 IL 126675, ¶48. Thus, it held that the police department was not precluded from withholding information from the traffic accident reports pursuant to sections 7(1)(b) and 7(1)(c) of FOIA

⁷Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [2].

⁸Letter from Timothy F. Horning, Meyer and Horning, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 21, 2022), at [2].

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despite having provided LexisNexis unredacted copies of the traffic accident reports. *Mancini*, 2021 IL 126675, ¶57.

Notably, in *Mancini*, "the circuit court already held that the Department carried its burden proving, by clear and convincing evidence, that the information at issue is exempt under sections 7(1)(b) and 7(1)(c)." *Mancini*, 2021 IL 126675, ¶50.⁹ Here, even if there was an alleged waiver, the Housing Authority has not shown by clear and convincing evidence that the records at issue are exempt in whole pursuant to sections 7(1)(b) or 7(1)(c). The exemption does not require a public body to withhold all records that contain personal information. Rather, the plain language of section 7(1)(c) permits a public body to withhold records only if "the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

Personnel Records Review Act

Section 7.5(q) of FOIA exempts from disclosure "[i]nformation prohibited from being disclosed by the Personnel Records Review Act [PRRA]." Section 11 of PRRA (820 ILCS 40/11 (West 2020)) provides: "This Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited."

The Public Access Bureau has previously analyzed the legislative history of section 11 of PRRA and determined that the provision is intended to protect the confidentiality of "periodic comprehensive performance evaluations that are used to enhance the performance of employees by highlighting their strengths and weaknesses." Ill. Att'y Gen. PAC Rev. Ltr. 46171, issued December 15, 2017, at 3 (records reflecting periodic evaluations of officers' performance and performance improvement plans exempt under section 7.5(q)).

The Housing Authority cited section 11 of PRRA, but it did not provide this office with any records to support its assertion that it withheld documents reflecting periodic performance evaluations. Moreover, the Housing Authority did not illustrate that the personnel files contain only performance evaluations. Accordingly, the Housing Authority has not demonstrated by clear and convincing evidence that the personnel files are exempt from disclosure in whole pursuant to section 7.5(q).

In accordance with the conclusions expressed in this determination, this office requests that the Housing Authority provide to Mr. Charvat copies of the personnel files of the three named employees. The Housing Authority may redact information that meets the

⁹The plaintiff did not appeal that determination, and the Supreme Court found no reason to disturb the lower court's order. *Mancini*, 2021 IL 126675, ¶50.

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definition of "private information" pursuant to section 7(1)(b) of FOIA. The Housing Authority may also redact highly personal information pursuant to section 7(1)(c), but it must disclose information that bears on the public duties of the named employees, as explained above. The Housing Authority may also withhold records reflecting periodic performance evaluations pursuant to section 7.5(q). In addition, section 8 of PRRA prohibits disclosure of "disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old." That provision is limited to records reflecting the imposition of discipline; it does not encompass records such as complaints and investigative reports that led to the disciplinary action that was imposed. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53704, issued March 13, 2019, at 5.

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
Assistant Attorney General
Public Access Bureau

69210 f 95c improper 71b improper 71c improper 75q improper co

cc: *Via electronic mail*
Mr. Timothy F. Horning
Attorney for DeKalb County Housing Authority
Meyer and Horning P.C.
3400 North Rockton Avenue
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