



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 15, 2015

PUBLIC ACCESS OPINION 15-001
(Request for Review 2014 PAC 31609)

FREEDOM OF INFORMATION ACT:
Production of Records to the Public
Access Counselor; Disclosure of Records
of the State Board of Professional Engineers

Mr. Michael Holtz
1124 North State Street
Monticello, Illinois 61856

Mr. Mark Thompson
General Counsel
Division of Professional Regulation
Illinois Department of Financial and
Professional Regulation
100 West Randolph Street, Suite 9-300
Chicago, Illinois 60601

Dear Mr. Holtz and Mr. Thompson:

This is a binding opinion issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons discussed below, this office concludes that the Illinois Department of Financial and Professional Regulation (IDFPR) violated the requirements of FOIA by refusing to provide records to the Public Access Counselor for review and by failing to demonstrate by clear and convincing evidence that the records requested by Mr. Michael Holtz are exempt from disclosure.

BACKGROUND

On September 15, 2014, Mr. Holtz submitted a FOIA request to IDFPR seeking the following records in connection with complaint 2013-04269:

1. Please provide all correspondence, e-mails, documentation, findings, analysis, meeting minutes, and recommendations prepared by the Illinois Board of Professional Engineering regarding forwarding the complaint from the review and/or investigation stage to an IDFPR attorney and/or IDFPR consultant(s), including, but not limited to attorneys, engineers, accountants, or relevant professionals.
2. Please provide all documents, e-mails, correspondence, legal arguments, rebuttals received by the IDFPR from Foth and/or Mr. Michael Streff P.E.
3. Please provide all documents, e-mails, correspondence, complaints submitted to Foth and/or Michael Streff P.E. from the IDFPR and/or IDFPR consultants assigned to this complaint.
4. Please provide all documents, correspondence, e-mails, reports, evaluations, findings, analysis, recommendations by IDFPR, and/or Illinois Board of Professional Engineers, and/or IDFPR consultants, and/or board member(s), regarding "no provable violation of the act."
5. Please provide all portions of audio or video recording(s) and transcript(s) of any Illinois Board of Professional Engineering meeting(s), including remote conference(s) such as a teleconferencing, and other non-board meeting(s) or IDFPR meeting(s) where the complaint was discussed.
6. Please include the portion of meeting minutes of any and all meetings or conferences, including remote conferencing where this complaint was discussed.^[1]

On September 16, 2014, Mr. Mark Thompson, Deputy General Counsel for IDFPR, denied Mr. Holtz's request, stating that "[i]n the event the Department has received any complaint(s), conducted any investigation(s), or retained any materials responsive to your request, this information would be exempt from disclosure through FOIA under 5 ILCS

¹E-mail from Michael Holtz, to the Illinois Department of Financial and Professional Regulation (September 15, 2014).

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 3

140/7(1)(a), (b), (c), (d)(ii), (d)(iv), and (f)."² On October 3, 2014, the Public Access Bureau received Mr. Holtz's Request for Review of the denial of his FOIA request.³

On October 16, 2014, this office forwarded a copy of the Request for Review to IDFPR and asked it to provide copies of responsive records, as well as any additional factual information and legal arguments in support of its assertion that responsive records are exempt under sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv) and 7(1)(f) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(c), (1)(d)(ii), (1)(d)(iv), (1)(f) (West 2013 Supp.), as amended by Public Acts 98-695, effective July 3, 2014).⁴ This office received IDFPR's response on October 28, 2014.⁵ The response asserts that the records requested by Mr. Holtz are exempt under section 7(1)(a) of FOIA because disclosure would violate a licensee's procedural due process right to a "blemish-free" license, and because the Professional Engineering Practice Act of 1989 (Practice Act) (225 ILCS 325/1 *et seq.* (West 2012)) did not intend to authorize public access to records relating to license investigations.⁶ IDFPR also stated that Mr. Holtz could search for responsive minutes of State Board of Professional Engineers meetings on its website.⁷ IDFPR did not provide the Public Access Counselor with copies of any records it asserted to be exempt.⁸ On October 29, 2014, this office sent IDFPR a letter again requesting copies of all withheld records

²Letter from Mark Thompson, Deputy General Counsel, Illinois Department of Financial and Professional Regulation, to Michael Holtz (September 16, 2014).

³E-mail from Mike Holtz, to Sarah Pratt, Public Access Bureau, Office of the Attorney General (October 3, 2014).

⁴Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Mark Thompson, Illinois Department of Financial and Professional Regulation (October 16, 2014).

⁵Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014).

⁶Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 2-3.

⁷Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 4.

⁸Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014).

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 4

for our confidential review.⁹ IDFPR did not respond. Also on October 29, 2014, this office forwarded IDFPR's response letter to Mr. Holtz and offered him an opportunity to reply.¹⁰ Mr. Holtz's reply was received on November 3, 2014.¹¹ In his reply, Mr. Holtz rebuts Mr. Thompson's explanation and provides a copy of several documents in his possession related to the underlying file.

On December 1, 2014, this office properly extended the time to issue a binding opinion by 30 business days, to January 15, 2014, pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2012)).¹²

ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2012). FOIA requires 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." 5 ILCS 140/3(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Sections 9 and 9.5 of FOIA

As a threshold matter, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014) requires a public body that denies a FOIA request to do so "in writing as provided in Section 9 of this Act." Section 9(a) of FOIA (5 ILCS 140/9(a) (West 2012)) provides that "[e]ach public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for

⁹Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation (October 29, 2014).

¹⁰Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Michael Holtz (October 29, 2014).

¹¹E-mail from Mike Holtz to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 3, 2014).

¹²Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Michael Holtz and Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation (December 1, 2014).

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 5

the denial, including a *detailed factual basis for the application of any exemption claimed*, and the names and titles or positions of each person responsible for the denial." (Emphasis added.) Section 9(b) of FOIA (5 ILCS 140/9(b) (West 2012)) further provides:

When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the *specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.*" (Emphasis added.)

IDFPR's notice of denial of Mr. Holtz's FOIA request merely identified and recited the statutory language for each of the asserted exemptions. IDFPR failed to provide Mr. Holtz with a detailed factual basis, a citation to supporting legal authority, or any other explanation for the applicability of the noted exemptions. Accordingly, IDFPR's notice of denial of Mr. Holtz's request failed to comply with the requirements of sections 9(a) and 9(b) of FOIA.

Further, this office has previously determined that IDFPR's refusal to provide copies of records requested by the Public Access Counselor for confidential review violates FOIA. *See* Ill. Att'y Gen. Pub. Acc. Op. No 12-007, issued April 2, 2012, at 7. Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014) expressly states that "[w]ithin 7 business days after receipt of the request for review, [a] public body *shall* provide copies of records requested and *shall* otherwise fully cooperate with the Public Access Counselor." (Emphasis added.) This requirement is clearly and unambiguously stated. By refusing to provide copies of the records requested, IDFPR has significantly hampered this office's ability to conduct a full review of this matter. On this basis alone, the Attorney General could conclude that IDFPR failed to sustain its burden of demonstrating by clear and convincing evidence that any responsive records are exempt from disclosure. However, because of potential third party interests in disclosure of the records, this office will consider the applicability of the asserted exemptions to the extent possible based on IDFPR's responses to the FOIA request and to the Public Access Bureau.

Section 7(1)(a) of FOIA

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Illinois Appellate Court has interpreted this exemption narrowly:

[O]ur legislature has authorized exemptions to the FOIA's expansive disclosure policy when a given disclosure is not just prohibited "by federal or State law or rules and regulations adopted

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 6

under federal or State law" but *specifically* so prohibited. 5 ILCS 140/7(1)(a) (West 2006). When interpreting a statute, this court cannot disregard explicit statutory language. [Citation.] Therefore, this court is duty-bound to apply the actual words of the statute enacted by our legislature. Thus, an 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, 815-16 (2008).

IDFPR asserts that the records requested by Mr. Holtz are exempt from disclosure under section 7(1)(a) because the licensee has a procedural due process right to a license "free of blemishes" and because the General Assembly did not intend for the public to access records of IDFPR investigations conducted pursuant to the Practice Act. We will address IDFPR's procedural due process argument before turning to its assertion that the Practice Act prohibits disclosure of investigatory records.

IDFPR asserts that section 7(1)(a) is applicable because a licensee possesses certain procedural due process rights. According to IDFPR, the "[r]elease of any information concerning Division [of Professional Regulation] investigations that did not result in the filing of official charges against a licensee" would violate the licensee's right to procedural due process under the U.S. Constitution as articulated by the Seventh Circuit Court of Appeals in *Fleury v. Clayton*, 847 F.2d 1229, 1232-33 (7th Cir. 1988).¹³

In *Fleury*, a case concerning a State agency's censure of an Illinois physician, the Seventh Circuit held that because the State medical licensing statute creates a property interest in a "blemish-free" license, the due process clause of the United States Constitution mandates "some kind of hearing" before a physician may be censured. *Fleury*, 847 F.2d at 1232-33. In *Abcarian v. McDonald*, 617 F.3d 931, 942 (7th Cir. 2010), however, the 7th Circuit clarified that "the language in *Fleury* means only that an Illinois physician has a property interest in a medical license free from formal disciplinary sanction without due process. * * * In other words, *the relevant 'blemishes' are actual formal disciplinary sanctions[.]*" (Emphasis added.)

¹³Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 2.

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 7

The Attorney General previously rejected IDFPR's assertion of section 7(1)(a) based on the Seventh Circuit's decision in *Fleury*, concluding, as we do here, that:

Abcarian makes clear that the interest in a "blemish-free license" articulated in *Fleury* is limited to an interest in a license that is free of formal discipline imposed without due process. *Abcarian*, 617 F.3d at 942. Nonetheless, IDFPR argues that if the Division of Professional Regulation "were to disclose information about claims of complaints made against specific licenses that did not result in the filing of official charges, the Division would be creating blemishes on these licensees' records."¹⁷ *Fleury* does not support this argument. The Seventh Circuit in *Fleury* did not hold or imply that by complying with FOIA, the professional licensing agency would violate the procedural due process rights of a licensee. Accordingly, we conclude that IDFPR has failed to sustain its burden of demonstrating that the records in question are exempt pursuant to section 7(1)(a) of FOIA because the law specifically prohibits their disclosure. Ill. Att'y Gen. Pub. Acc. Op. No 12-007, issued April 2, 2012, at 9.

Next, IDFPR appears to contend that section 5(d) of the Practice Act (225 ILCS 325/5(d) (West 2012)) prohibits the public disclosure of investigatory records. Section 5(d), however, merely states that IDFPR has the authority "[t]o conduct investigations and hearings regarding violations of this Act and take disciplinary or other actions as provided in this Act as a result of the proceedings." IDFPR cites the Illinois Appellate Court's decision in *Kibort v. Westrom*, 371 Ill. App. 3d 247 (2nd Dist. 2007) for the proposition that section 5(d) of the Practice Act need not expressly prohibit the disclosure of records in order for section 7(1)(a) of FOIA to apply.

In *Kibort*, a case involving a FOIA request for election ballots and election materials, the court concluded that while the Election Code did not specifically state that disclosure of ballots was prohibited, the Code "unambiguously prohibited" disclosure by explicitly directing election officials to seal the ballots and election materials in a specific manner that would be inconsistent with allowing the public to access the records under FOIA. *Kibort*, 371 Ill. App. 3d at 252-253. Among other things, the Election Code required election judges to return ballots in a sealed container to the election authority (10 ILCS 5/17-20 (West 2004)), and provided that the tally sheet and certificate of results "shall be carefully enveloped and sealed up by the judges of election[.]" 10 ILCS 5/17-22 (West 2004). The court construed the language of section 7(1)(a) "to mean that records are exempt from disclosure under the [Freedom of] Information Act in instances where the *plain language* contained in a State or

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 8

federal statute reveals that public access to records was not intended." (Emphasis added.) *Kibort*, 371 Ill. App. 3d at 256. However, the *Kibort* court further stated that it "do[es] not dispute that the exception contained in section 7(1)(a) of the [Freedom of] Information Act *does not apply in instances where a State or federal statute is ambiguous or silent in regard to the disclosure of public records[.]*" *Kibort*, 371 Ill. App. 3d at 256. (Emphasis added.)

According to IDFPR, the Practice Act "evidences a clear intent that disclosure of investigative records is not intended and would run counter to the purpose of the statutory direction given to the Division to investigate violations of the Act and enforce its provisions."¹⁴ However, section 5(d) of the Practice Act is silent in regard to the disclosure of IDFPR investigatory records, and IDFPR has not cited any provision of the Practice Act demonstrating a "clear" legislative intent to restrict public access to investigatory records that would be analogous to the language mandating the sealing of ballots and election materials at issue in *Kibort*. Notably, certain other statutes governing IDFPR investigations do contain provisions that specifically prohibit disclosure of investigatory records, subject only to limited exceptions. *See e.g.*, 225 ILCS 60/36 (West 2012) ("All information gathered by the Department during its investigation including * * * the investigative file shall be kept for the confidential use of the Secretary [of IDFPR]"); 225 ILCS 75/19.2a (West 2013 Supp.) ("All information collected by the Department in the course of an examination or investigation of a licensee * * * including, but not limited to, any complaint against a licensee filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed"); 225 ILCS 450/30.8 (West 2013 Supp.) ("All information collected by the Department in the course of an examination or investigation of a licensee, registrant, or applicant, including, but not limited to, any complaint against a licensee or registrant filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed"). Accordingly, had the General Assembly intended to prohibit the disclosure of records related to investigations under the Practice Act, it must be assumed that it would have done so expressly. It did not. Therefore, this office concludes that IDFPR has failed to demonstrate that the records at issue are specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law, and it has improperly withheld records of its investigation relating to complaint 2013-04269 pursuant to section 7(1)(a) of FOIA.

¹⁴Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 3.

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 9

Sections 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv) and 7(1)(f) of FOIA

Section 7(1)(b) of FOIA 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." "Private information" is defined in section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012), as amended by Public Act 98-806, effective January 1, 2015) 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.

Section 7(1)(c) of FOIA exempts from inspection and copying "[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." The exemption defines "unwarranted invasion of person 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."

Section 7(1)(d)(ii) of FOIA exempts from inspection and copying records created in the course of administrative enforcement proceedings, but only to the extent that release would "interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request." Similarly, section 7(1)(d)(iv) of FOIA exempts from disclosure records in connection with administrative enforcement proceedings to the extent that disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]"

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (2003).

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 10

IDFPR asserts that the records requested by Mr. Holtz are exempt under sections 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), and 7(1)(f) of FOIA, but has failed to provide any legal or factual basis from which this office may conclude that any of those exemptions is applicable to these records. As noted above, IDFPR has also failed to provide this office with copies of responsive records, despite two written requests therefor. Additionally, IDFPR has not offered any specific facts or legal arguments to support the applicability of the asserted exemptions. Instead, IDFPR has proffered only conclusory statements such as: "[s]ection 7(1)(f) is very descriptive of the documents that are in an investigative file[;]" and section 7(1)(d)(ii) exempts records relating to closed investigations because they "may be reopened if additional information is received by the Division or if the Division receives additional complaints that may show a pattern of inappropriate conduct."¹⁵

Because IDFPR has failed to provide copies of responsive records for this office's examination and because its assertion of sections 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), and 7(1)(f) is unsupported by facts or evidence, the Attorney General concludes that IDFPR has failed to sustain its burden of proving by clear and convincing evidence that any of the records at issue are exempt from disclosure pursuant to sections 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), or 7(1)(f) of FOIA.

Reasonable Search

In addition to records relating to IDFPR's investigation of complaint 2013-04269, Mr. Holtz requested minutes of any meetings of the State Board of Professional Engineers¹⁶ in which that complaint was discussed. In response, IDFPR stated that "[m]eeting minutes [of the State Board of Professional Engineers] are posted on the Department's website at www.idfpr.com and are available to Mr. Holtz for his review." IDFPR further asserted that "FOIA does not require an agency to conduct research projects."¹⁷

¹⁵Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 3.

¹⁶The State Board of Professional Engineers is an advisory body of IDFPR. *See* Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 4.

¹⁷Letter from Mark Thompson, General Counsel, Division of Professional Regulation, Illinois Department of Financial and Professional Regulation, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 23, 2014), at 4.

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 11

Section 3(a) of FOIA, however, requires each public body to make available for inspection or copying all public records in its custody or under its control unless the records are exempt under section 7 of FOIA (5 ILCS 140/7 (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). In order to determine whether responsive records exist, FOIA requires a public body to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). IDFPR concedes that it did not conduct a search to determine whether there are meeting minutes responsive to Mr. Holtz's request, although it acknowledged that such minutes are maintained on IDFPR's website. Accordingly, this office concludes that IDFPR violated section 3(a) of FOIA by failing to conduct a reasonable search for records responsive to Mr. Holtz's request.

FINDINGS AND CONCLUSIONS

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

- 1) On September 15, 2014, Mr. Michael Holtz submitted a FOIA request to the Illinois Department of Financial and Professional Regulation seeking records relating to its investigation of complaint number 2013-04269.
- 2) On September 16, 2014, IDFPR denied Mr. Holtz's request, citing as its basis sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), and 7(1)(f) of FOIA.
- 3) On October 3, 2014, the Public Access Bureau received Mr. Holtz's Request for Review of the denial of his FOIA request in which he alleged that IDFPR's investigation of the complaint had been concluded.
- 4) On October 16, 2014, the Public Access Bureau sent a copy of the Request for Review to IDFPR and asked it to provide copies of responsive records for this office's confidential review, as well as a detailed explanation of the legal and factual bases for its assertion that the records at issue are exempt from disclosure under sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), and 7(1)(f) of FOIA.
- 5) By letter dated October 23, 2014, and received by this office on October 28, 2014, IDFPR asserted that the responsive records are exempt from disclosure in their entirety pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), and 7(1)(f) of FOIA. IDFPR provided its legal analysis for withholding the records pursuant to section 7(1)(a). IDFPR did not provide, however, a legal analysis related to the other exemptions, nor did it provide copies of the withheld records for confidential review by the Public Access Bureau, as requested.

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 12

6) On October 29, 2014, this office sent IDFPR a second letter requesting copies of all responsive records for confidential review. IDFPR did not respond.

7) On December 1, 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 January 15, 2015. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) IDFPR's failure to include in its written notice of denial a detailed factual basis or any other explanation for the applicability of the asserted exemptions violated sections 9(a) and 9(b) of FOIA.

9) Because IDFPR did not provide the Public Access Bureau with copies of the responsive records for its review, IDFPR violated its obligation under section 9.5(c) of FOIA to do so.

10) Further, IDFPR asserted that because disclosure of the records would violate a licensee's procedural due process rights, their disclosure is prohibited by the Professional Engineering Practice Act of 1989 and thus by section 7(1)(a) of FOIA. IDFPR, however, did not meet its burden of demonstrating that any provision of the Practice Act prohibits the disclosure of investigatory records. Accordingly, section 7(1)(a) is not applicable.

11) IDFPR also failed to demonstrate by clear and convincing evidence that the records at issue are exempt from disclosure pursuant to sections 7(1)(b), 7(1)(c), 7(1)(d)(ii), 7(1)(d)(iv), or 7(1)(f) of FOIA.

12) Further, IDFPR failed to conduct a reasonable search for minutes of meetings of the State Board of Professional Engineers responsive to Mr. Holtz's request, thereby violating section 3(a) of FOIA.

For the reasons stated above, it is the opinion of the Attorney General that IDFPR improperly denied Mr. Holtz's Freedom of Information Act request in violation of the requirements of the FOIA. Accordingly, the IDFPR is directed to take immediate action to comply with this binding opinion by providing Mr. Holtz with all requested records, subject only to the redaction of "private information" as defined in section 2(c-5) of FOIA, if any is contained in the records.


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

Mr. Michael Holtz
Mr. Mark Thompson
January 15, 2015
Page 13

complaint for administrative review in 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. Michael Holtz as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General