



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

December 4, 2024

*Via electronic mail*

Mr. Michael F. Henry  
michaelfhenry@live.com

*Via electronic mail*

Mr. Anne Skrodzki  
Klein, Thorpe and Jenkins  
15100 South Ravinia Drive, Suite 10  
Orland Park, Illinois 60562  
Amskrodzki@ktjlaw.com

RE: FOIA Request for Review – 2024 PAC 82484

Dear Mr. Henry and Mr. Skrodzki:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons that follow, the Public Access Bureau concludes that the Village of Orland Park (Village) improperly responded to Mr. Michael F. Henry's July 20, 2024, FOIA request.

On that date, Mr. Henry submitted a three-point FOIA request to the Village seeking (1) all e-mails to and from the auditors for 2022 and 2023, (2) all of the records given to the auditors and (3) copies of the agreements with the auditors. On August 6, 2024, the Village responded and provided Mr. Henry with the agreements responsive to the third part of the request and informed him that the first part was voluminous under section 2(h) (5 ILCS 140/2(h) (West 2023 Supp.)). The Village denied the records responsive to the second part of the request pursuant to section 7(1)(m) of FOIA (5 ILCS 140/7(1)(m) (West 2023 Supp.)), as amended by Public Act 103-605, effective July 1, 2024). On that same date, Mr. Henry submitted the above-referenced Request for Review asserting that the Village had not filed audits required by State

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law and that "[t]he taxpayers have a right to all records given to the auditor[.]"<sup>1</sup>

On August 23, 2024, this office forwarded a copy of the Request for Review to the Village and requested unredacted copies of the records responsive to the second part of the request, together with a detailed explanation of the legal and factual bases for the applicability of the section 7(1)(m) exemption.<sup>2</sup> On August 30, 2024 the Village responded and provided this office with a representative sample of the withheld documents and a written response.<sup>3</sup> On September 3, 2024, this office forwarded a copy the Village's response to Mr. Henry; he replied on that same date by narrowing his request to certain records such as copies of contracts for services by vendors that were provided to auditors and various records related to the provision and costs of legal services.

## DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

### Section 7(1)(m) of FOIA

Section 7(1)(m) of FOIA exempts from disclosure:

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

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<sup>1</sup>E-mail from Michael Henry to Public Access [Bureau, Office of the Attorney General] (August 6, 2024).

<sup>2</sup>Because the Village treated the first part of the request as voluminous rather than denying it and because Mr. Henry did not dispute that the request qualified as a voluminous request under section 2(h) of FOIA, this office did not review that part of Village's response. *See* 5 ILCS 140/9.5(a) (West 2023 Supp.) (authorizing the Public Access Counselor to review denials of FOIA requests; 5 ILCS 140/9.5(b-5) (West 2023 Supp.) (authorizing Public Access Counselor to review whether request is voluminous).

<sup>3</sup>In its response, the Village notes that over 10,000 pages of responsive records were transferred to the auditor for the 2022 and 2023 audits. The representative sample furnished to this office consist of external documents such as balance sheets, trial balance accounts and bank statements.

advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

In its response to this office, the Village states that the records at issue are "internal materials provided to the auditors in order to produce the delayed 2022 and 2023 audits (neither of which have been completed)" which "are definitionally included in the 7(1)(m) exemption[.]"<sup>4</sup> This response also notes that its documents were received by the Village's auditor, Sikich, LLP. In a supplemental response sent to this office on September 11, 2024, the Village asserted that the records concern "an internal, Village conducted and controlled audit."<sup>5</sup>

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 56. Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16.

Black's Law Dictionary defines an "internal audit" is defined as "[a]n audit performed by an organization's personnel to ensure that internal procedures, operations, and accounting practices are in proper order." (Emphasis added.) Black's Law Dictionary (10th ed. 2014), available at Westlaw BLACKS. Based on the plain language of that term, the Public Access Bureau has previously determined that audits prepared by external entities do not constitute "materials prepared or compiled with respect to internal audits of public bodies" within the meaning of section 7(1)(m). See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 44377, issued February 1, 2017, at 10 (audit report created by private accounting firm for public body not exempt under section 7(1)(m)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 17844, issued April 11, 2012, at 3 ("Although th[e] portion of the audit report [at issue] may pertain to 'internal control,' that does not mean that it is an internal audit."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 14434, issued September 6, 2011, at 2 (distinguishing an internal audit as one prepared by a public body's personnel from an independent audit, which is prepared by an outside source).

Despite the Village's assertion that the records in question relate to internal audits, the Village hired an external auditor. The recently-completed Annual Comprehensive Financial Report for 2022 posted on the State Comptroller's website includes a letter from the Village's

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<sup>4</sup>Letter from Anne M. Skrodzki, Village Attorney to Mr. Matthew Rogina, Public Access Bureau, Office of the Illinois Attorney General (August 30, 2024).

<sup>5</sup>E-mail from Anne M. Skrodzki, Klein, Thorpe & Jenkins, to Matthew Rogina (September 11, 2024).

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Finance Director stating that "Sikich CPA LLC, a firm of independent certified public accountants[ ]" performed an "independent audit[.]"<sup>6</sup> The "Independent Auditor's Report" prepared by the external auditor notes that "[w]e are required to be independent of the Village and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit."<sup>7</sup> Such an audit is not an "internal audit" under the plain language of the definition of that term. Accordingly, this office concludes that the Village has not sustained its burden of demonstrating that the records are exempt from disclosure pursuant to section 7(1)(m) of FOIA.

In accordance with the conclusions expressed above, this office requests that the Village provide Mr. Henry with the specific records that he identified in his reply. If any discrete information is redacted, the Village should provide a partial notice of denial in accordance with section 9 of FOIA (5 ILCS 140/9 (West 2022)). The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at Matthew.Rogina@ilag.gov or (312) 814-3180.

Very truly yours,

*Matthew Rogina*

MATTHEW C. ROGINA  
Senior Assistant Attorney General  
Public Access Bureau

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<sup>6</sup>Letter from Christopher Frankenfield, Finance Director, Orland Park, to the Honorable Keith Pekau, Members of the Village Board, and Citizens of the Village of Orland Park, Illinois (November 4, 2024), at i.

<sup>7</sup>Independent Auditor's Report submitted by Sikich CPA LLC, to The Honorbale President and Members of the Board of Trustees (November 4, 2024), at 1.