

August 7, 2015

VIA E-MAIL

Mr. Robert Herguth
Better Government Association
Email: rherguth@bettergov.org

RE: 15-FOIA-135 Pagano Pension Payouts

Dear Mr. Herguth:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“**FOIA**”).

I. Background

On July 7, 2015, we received your request for documents sufficient to show how and why former Metra employee Phil Pagano's pension payouts (currently given to his survivor, Barbara Pagano) are increasing. Additionally, you requested a copy of any and all personnel files for Mr. Pagano, as well as any and all documents related to his pension payouts (“**Request**”). Your request is granted in part and denied in part.

We contacted you on July 20th regarding your July 16th discussion with Thomas Stuebner, whereby we asked if you would narrow the scope of your request to excerpted materials sufficient to show the pension calculations for Mr. Pagano. You responded that same day agreeing to narrow the scope of your request to the excerpted materials as noted.

II. Responsive Documents

In response to your request, Metra is providing you with the following documents:

- 1) Documents sufficient to show how and why former Metra employee Phil Pagano’s pension payouts are increasing;
 - GRS Actuarial Letters (2); and
 - Pagano Explanation 2014 - McGuireWoods letter dated 3-6-2014.

- 2) Any and all personnel files;
 - Application for Employment;
 - Assorted Acknowledgments;
 - Assorted Memos;
 - Assorted Personnel Action Notices (PANs);
 - Check Request;
 - Change of Address Form;
 - CTA Application for Employment;
 - CTA Pass Buyout Agreement;

- Employee Status Change (2);
 - Insurance Information;
 - Pagano Agreement;
 - Pagano Education-Employment History;
 - Pagano Résumé-RTA Info; and
 - Training and Development Request.
- 3) Any and all documents related to Phil Pagano’s pension payouts;
- 2007 RTA Pension Plan Revision; and
 - Pagano Deferred Compensation Agreement.

(“Responsive Documents”).

You may access the Responsive Documents via Metra’s file transfer protocol (“FTP”) site. Direct your browser to <https://ftp.metrarr.com/>. The user name is: **foia7** and the case sensitive password is: **cs4n1HYf**. Access to this FTP site will expire August 21, 2015. *If you require additional time to download these documents, please let us know prior to the expiration date.*

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Thomas Stuebner has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. The employee identification number, personal telephone numbers, home addresses, social security numbers, driver’s license number, and personal financial information of the parties mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Employee identification numbers,” “personal telephone numbers,” “home addresses,” “social security numbers,” “driver’s license numbers,” and “personal financial information” are specifically mentioned within the definition of “private information” found in Section 2(c-5) of FOIA.
2. Section 7(1)(a) of FOIA exempts “[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 5 ILCS 140/7(1)(a). Accordingly, per the Identity Protection Act, “[N]o person or State or local government agency may . . . [p]rint an individual’s social security number on any materials . . . through . . . electronic mail[.]” Additionally, Section 10(b)(1) prohibits the disclosure of a social security number, unless:
 - “(i) required to do so under State or federal law, rules, or regulations, or the collection, use, or disclosure of the social security number is otherwise necessary for the performance of that agency’s duties and responsibilities; (ii) the need and purpose for the social security number is documented before collection of the social security number; and (iii) the social security number collected is relevant to the documented need and purpose.” 5 ILCS 179/10(a)(4).

3. The dates of birth of the parties, as well as third-party names and medical information mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy...” Section 7(1)(c) goes on to say that, “ ‘Unwarranted invasion of personal privacy’ means 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.” It has been determined that the aforementioned data falls squarely within that definition and its redaction is appropriate under FOIA.

IV. Denial

The performance evaluations are being withheld in their entirety under Section 7(1)(a) of FOIA which allows public bodies to withhold: “Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” Section 11 of the Personnel Records Review Act (“**PRRA**”) expressly prohibits the disclosure of the performance evaluations, stating: “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.” 820 ILCS 40/11. Attorney Thomas Stuebner has determined that withholding these performance evaluations in their entirety is proper under the aforementioned exemptions. Additionally, a memorandum evaluating job performance and making salary recommendations is being withheld under this provision, as well as under Section 7(1)(f), which exempts from disclosure any “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated . . . [.]” 5 ILCS 140/7(1)(f).

Employment verifications and W-4 forms are being withheld in their entirety because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Personal financial information” is specifically mentioned within the definition of “private information” found in Section 2(c-5) of FOIA.

Documents containing equal employment opportunity information, emergency notification information, and medical information, are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy...” Section 7(1)(c) goes on to say that, “ ‘Unwarranted invasion of personal privacy’ means 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.” It has been determined that the aforementioned documents fall squarely within that definition and their exemption from release is appropriate under FOIA.

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor (“**PAC**”) of the Illinois Attorney General’s Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

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Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
FOIA@metrarr.com