



Newsletters

Informing Illinois Newsletter - April 2018

April 17, 2018

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Cook County Judge Rules Navy Pier, Inc. Records are Subject to FOIA

Judge Thomas R. Allen granted a motion for summary judgment filed by the Better Government Association (BGA) that found a broad range of documents held by the private entity Navy Pier, Inc. (NPI) are subject to FOIA because NPI performs a "governmental function."

Background

In 2014, the BGA requested records from the Metropolitan Pier & Exposition Authority (MPEA) and NPI under FOIA Section 7(2). FOIA Section 7(2) states:

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this act, shall be considered a public record of the public body, for purposes of this Act.

Both entities denied the FOIA request. Following the denial, the BGA filed suit to compel the entities to comply with the request. In November 2017, the BGA filed a motion for summary judgment against MPEA, arguing that it must release the NPI records because NPI was contracted to perform a governmental function on behalf of MPEA. The MPEA argued that operating Navy Pier is not a governmental function.

The Ruling

Judge Allen granted the BGA's motion for summary judgment. The judge's ruling found that NPI performed a governmental function and the documents in question directly related to that governmental function. In his ruling, Judge Allen stated that, "Navy Pier is operating and one day it is wearing a government hat and one day it's not. That's exactly what this section of FOIA is dealing with."

The ruling will require MPEA to disclose a list of NPI employees, NPI contracts, lease agreements, budgets, audits, minutes of board meetings, employment contracts, settlement agreements, emails of top NPI officials, expense reimbursements, conflict of interest disclosures, NPI policies and procedures,

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Service Areas

Government



and documents related to an NPI IRS disclosure.

Impact

The court's ruling could have broad implications on privatization of governmental duties. Under the court's broad decision, the records of any private entity that has a contract with a unit of local government could be subject to FOIA. The court has not yet ruled on whether NPI is directly subject to FOIA.

The case is *Better Government Association v. Metropolitan Pier & Exposition Authority; Navy Pier, Inc.*, 2014 CH 10364.

Illinois Appellate Court Issues Significant Ruling Interpreting Changes to School Code Regarding Boundary Change Petitions

The Appellate Court of Illinois, Second District, recently announced a significant school law decision regarding school district detachment and annexation petitions.

In a case of first impression interpreting 2016 amendments made to Section 7-6 of the School Code, the decision in *Charles Shephard et al v. Regional Board of School Trustees of De Kalb County et al*, 2018 IL App (2nd) 170407, held that regional school boards or regional boards of school trustees must first determine if there would be a significant direct educational benefit to the petitioners' children if the petition were granted before considering other factors, such as the community-of-interest and whole-child factors.

Read the full [School Law Alert](#) for more information on the ruling.

2018 Binding PAC Opinions

No. 18-004

A FOIA request was submitted to the City of Elgin for "[t]he last revised redevelopment cost budget submitted by Capstone Development Group regarding the Tower Building in Elgin that was mentioned in the city council weekly report dated Nov. 3." The request was denied pursuant to section 7(a)(g) of FOIA claiming the budget was confidential as this section of the Act exempts from disclosure "trade secrets and commercial or financial information obtained from a person or business where the information was furnished under the claim the information was confidential and disclosure of such would cause competitive harm to the person or business." Section 7(1)(g) was substantially amended in 2010. The prior version excluded from disclosure records, trade secrets or financial information that were merely "obtained" from a person or business. The amendment specifically required that such records be furnished under a claim that they are "proprietary, privileged or confidential." The City did not provide any evidence that the disclosure would result in competitive harm, or that Capstone made an express claim of confidentiality at the time it gave the City the Budget. Hence, the City failed to meet its burden in demonstrating that the records were exempt from disclosure and the City was directed to take immediate action and comply with the PAC opinion and disclose a copy of the budget record she requested.

No. 18-005

A FOIA request was received by the City of Nashville seeking a "[c]omplete copy of wages and salaries paid to your employees listed by names and titles during 2016 and 2017." The City denied the request citing section 7(1)(c) of FOIA which exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The PAC found that the City did not demonstrate that the disclosure of this information would constitute a clear unwarranted invasion of personal privacy under the Act. The identity of city employees and the amount of their wages and salaries directly bears on the performance of their public duties. There is a significant public interest in the amount of public funds paid to individual public employees. Any privacy interest that an employee may have in this information is outweighed by the public's legitimate interest in knowing how public funds are spent. The city was directed to take immediate action and provide the requested information.