

July 25, 2023

Public Access Counselor Leah Bartelt
Illinois Attorney General's Office
500 S. Second St.
Springfield, IL 62701

RE: FOIA Request for Review – 2023 PAC 77329

Dear Ms. Bartelt:

I am writing to formally request a review of my correspondence with Chicago City Council staff concerning records I have sought under the Illinois Freedom of Information Act. I believe the Council Committee FOIA officer improperly withheld information on legislative meetings and lobbyists that the public has a right to know. As an academic researcher studying the development of fair workweek laws, I can attest that comparable information has been disclosed by peer cities such as San Francisco and Minneapolis, where it has proved to be of considerable public interest. These records concern the most expansive new working time regulations since the Fair Labor Standards Act of 1938.

I have appended to this letter (pp. 4–13) the full text of my requests for records and the substantive responses I received, which were processed through the MuckRock.com website.¹ Below I quote or paraphrase relevant passage from this correspondence, recapitulate the events leading to the denial of my request, and restate the reasons for my appeal, which was initially sent via email without the appended correspondence.

On April 27, 2023, I submitted the following request to the Chicago City Council Committee on Workforce Development:

All emails and attachments sent or received by the Committee Chairpersons, Members, or Staff during the period 1/1/2017–12/31/2021 that contain any of the following phrases: "fair workweek", "fair work week" or "fair scheduling". Since this period spans multiple terms of the Council, please be sure to include messages sent or received by the following email addresses: Ward10@cityofchicago.org, Ward40@cityofchicago.org, Ward44@cityofchicago.org, Ward45@cityofchicago.org, and Frank.Pucci@cityofchicago.org.

John Heroff, the outgoing Director of Policy and Legislative Affairs for the Committee, provided some responsive records from the tenure of Chairwoman Susan Sadlowski-Garza. I pointed out that these records were incomplete, since they did not include attachments or, as Mr. Heroff acknowledged, emails from the previous Chairman Patrick O'Connor. On May 11, I received a response from Margaret Dever, the Council Committee FOIA officer, informing me

¹ I left out pro forma responses such as extension notices. MuckRock maintains a public webpage with all communications and files related to my request: www.muckrock.com/foi/chicago-169/chicago-city-council-workforce-development-committee-fair-workweek-emails-145044.

that my initial request was unduly burdensome. This prompted me to submit an amended request.

On May 13, I narrowed the scope of my request (received Monday, May 15) to two years and five members of the Workforce Committee, specifically:

the period 1/1/2018–12/31/2019 and only the following email accounts: Susan.Sadlowski-Garza@cityofchicago.org, Patrick.OConnor@cityofchicago.org, Carlos.Ramirez-Rosa@cityofchicago.org, Tom.Tunney@cityofchicago.org, Ward45@cityofchicago.org. I would still like a copy, preferably in electronic format, of all emails and attachments sent or received by the Committee Chairpersons or select Members during the specified period that contain either of the phrases "fair workweek" or "fair scheduling."

On June 12, following several extensions, I received 54 responsive records accompanied by a letter from Ms. Dever that noted two partial denials of my amended request. I would like to appeal both denials, which cite different grounds for withholding records or redacting names from the records provided to me on June 12.

First, Ms. Dever denied my request for emails or attachments sent or received by Aldermen Tunney, Ramirez-Rosa, or Arena (Ward45@cityofchicago), "unless they were sent by or to the named chairs of the Committee on Workforce Development as listed in the request or the staff of the Committee on Workforce Development." This denial was made on the grounds that "Aldermen are not considered public bodies" and thus not subject to the Illinois FOIA law. Ms. Dever cites a ruling by the 1st District Appellate Court in *Quinn v. Stone*, 570 N.E. 676, 678 (1991), to support this denial. I find the notion that individual Aldermen are not "public bodies" absurd since the City Council and its various committees are wholly constituted of individual members. During the period in question, Aldermen Tunney, Ramirez-Rosa, and Arena were members of the Workforce Committee and I am requesting records of the testimony and lobbying activities addressed to them as members of this committee. Although I am not a lawyer, I read the decision in *Quinn v. Stone* as a procedural ruling—that FOIA lawsuits should be brought against the City Council or mayor—not an exemption of all records specific to an Alderman. Given that my request was directed to the Council Committee FOIA officer, I see no basis in the *Quinn v. Stone* decision for withholding records concerning the legislative activities of specific members of the Workforce Committee.

Second, Ms. Dever withheld the names of all external participants (besides City Council members and staff) in meetings of the Fair Workweek Working Group convened by former Committee Chairman O'Connor in 2018–19. These names were redacted from meeting notes, sign-in sheets, and invitation or follow-up emails provided to me on June 12. In her response letter, Ms. Dever notes only that "witness names were redacted pursuant to 5 ILCS 140/7(1)(c)." I objected to these redactions for several reasons, the most important of which is that participation in these meetings constitutes lobbying on a matter of public policy. This fact alone provides a warrant for disclosing the names of individuals engaged in this lobbying. On June 27, Ms. Dever dismissed my objections, asserting that "releasing the names together with the content of their discussion 'would constitute a clear unwarranted invasion of personal privacy.'"

I maintain that Ms. Dever has failed to meet the strict requirements for withholding information in accordance with 5 ILCS 140/7(1)(c). The "witnesses" whose names were redacted all participated, presumably voluntarily, in meetings of the Fair Workweek Working Group—meetings at which as many as five members of the Committee on Workforce Development, whose names were not redacted, were also present. The notes indicate that many if not most of the unnamed participants were spokespersons or employees of corporations, unions, trade associations, or advocacy organizations. The remarks recorded in these notes concern business operations and scheduling practices of the participants' respective industries or employers, their opinions regarding fair workweek legislation, and speculation about how this legislation might affect them. Disclosing their names in accordance with the Freedom of Information Act is no more an invasion of their personal privacy than the disclosure requirements of the Lobbyist Registration Act.

It is clear from the title of the Fair Workweek Working Group and the objectives set for it by Chairman O'Connor that participants in these meetings were asked to speak not about their personal lives, but their business or professional experience on a matter of public concern. The public has a right to know who testified and lobbied before the legislative body that passed the most expansive working time regulations since the Fair Labor Standards Act of 1938. My assessment of the public interest in this matter is informed by my expertise as a PhD researcher who specializes in labor standards and scheduling practices. I have requested these records as part of an academic study in which the National Science Foundation found sufficient intellectual merit and broader import to award me a competitive Postdoctoral Research Fellowship (#2203815).

Given the dubious privacy rights and compelling public interest at stake, I ask that you instruct Ms. Dever to disclose the names and titles of all participants in the Fair Workweek Working Group. The requested documents will be made available to the general public through MuckRock.com and the Qualitative Data Repository housed at Syracuse University. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Fugiel". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Peter J. Fugiel, PhD

APPENDED CORRESPONDENCE

1. Initial request

April 27, 2023

Dear Chairwoman Sadlowski Garza and Staffpersons of the Committee on Workforce Development,

Pursuant to the Illinois Freedom of Information Act, I hereby request the following records:

All emails and attachments sent or received by the Committee Chairpersons, Members, or Staff during the period 1/1/2017-12/31/2021 that contain any of the following phrases: "fair workweek", "fair work week" or "fair scheduling". Since this period spans multiple terms of the Council, please be sure to include messages sent or received by the following email addresses: Ward10@cityofchicago.org, Ward40@cityofchicago.org, Ward44@cityofchicago.org, Ward45@cityofchicago.org, and Frank.Pucci@cityofchicago.org.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Peter Fugiel

2. Partial response

Good Morning,

Below are the responsive records from the Committee on Workforce Development's email. I do want to note that I do not have access to any email records from before May of 2019. If you would like to request those you should reach out to FOIA@cityofchicago.org

Also, as a side note, with the recent election and new City Council starting the 15th of this month, I will also no longer be working for the Committee as of May 15th. If you have any requests I can help you with before then please let me know as soon as possible.

John M Heroff

Director of Policy and Legislative Affairs

Committee on Workforce Development

Alderdwoman Susan Sadlowski-Garza, 10th Ward

City of Chicago

3. Reiteration of initial request

May 8, 2023

This is a follow up to a previous request:

Good morning,

Thank you for providing emails from the most recent term and directing me to the FOIA office for earlier emails. Please note that I requested a copy of the attachments associated with these emails. I am particularly interested in attachments that are not available on the Legistar site, e.g. written testimony or letters from stakeholders seeking changes or clarifications of the Fair Workweek Ordinance.

In August 2019, I requested a copy of all written testimony submitted to the Committee or Chairwoman, but I'm not sure I received all the responsive records. At the beginning of the June 10, 2019 Committee meeting, the Chairwoman mentioned receiving testimony from the following organizations: Action Now, AFSCME, Arise Chicago, Center for Law and Social Policy, Center for Popular Democracy, Chicago Foundation for Women, Chicago Workers Collaborative, Fair Workweek Initiative, Fight for \$15, Illinois Action for Children, Jobs with Justice, National Employment Law Project, National Women's Law Center, Raise the Floor Alliance, Restaurant Opportunity Center, SEIU, Sierra Club, Swedish Covenant Hospital, and Women Employed. Yet I don't see any record of testimony from these organizations in what Mr. Pucci shared with me previously or what you provided last week.

I understand that the end of the term is fast approaching. Still I would appreciate if you could take a second look for records responsive to my request, specifically testimony from any of the organizations listed above.

Thank you for your assistance,

Peter Fugiel
Postdoctoral Research Fellow
Rutgers School of Management and Labor Relations

4. "Unduly burdensome" response

Dear Peter Fugiel;

Below is a response to your Freedom of Information Act ("FOIA") request received by Ward10@cityofchicago.org on April 27, 2023, and timely extended requesting:

April 27, 2023

Dear Chairwoman Sadlowski Garza and Staffpersons of the Committee on Workforce Development,

Pursuant to the Illinois Freedom of Information Act, I hereby request the following records: All emails and attachments sent or received by the Committee Chairpersons, Members, or Staff during the period 1/1/2017–12/31/2021 that contain any of the following phrases: "fair workweek", "fair work week" or "fair scheduling". Since this period spans multiple terms of the Council, please be sure to include messages sent or received by the following email addresses: Ward10@cityofchicago.org, Ward40@cityofchicago.org, Ward44@cityofchicago.org, Ward45@cityofchicago.org, and Frank.Pucci@cityofchicago.org.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,
Peter Fugiel

In response to your request, the Council Committee FOIA requested the City of Chicago Department of Assets, Information, and Services to conduct the following search for all emails and attachments sent or received during the timeframe of January 1, 2017 through December 31, 2021, with the terms "fair workweek," "fair work week," and "fair scheduling" by:

Committee Email Addresses:

CommitteeonWorkforceDevelopment@cityofchicago.org and
CommitteeonWorkforceDevelopmentandAudit@cityofchicago.org

Chairpersons:

Susan.Sadlowski-Garza@cityofchicago.org
Patrick.OConnor@cityofchicago.org

Current Committee Members:

Jason.Ervin@cityofchicago.org
Anothy.Beale@cityofchicago.org
Nicole.Lee@cityofchicago.org
Marty.Quinn@cityofchicago.org
Raymond.Lopez@cityofchicago.org
Derrick.Curtis@cityofchicago.org
Howard.Brookins@cityofchicago.org

Michael.Rodriguez@cityofchicago.org
Walter.Burnett@cityofchicago.org
Christopher.Taliaferro@cityofchicago.org
Carlos.Ramirez-Rosa@cityofchicago.org
Gilbert.Villegas@cityofchicago.org
Emma.Mitts@cityofchicago.org
Nicholas.Sposato@cityofchicago.org
Brendan.Reilly@cityofchicago.org
Tom.Tunney@cityofchicago.org

Former Committee Members:

Roberto.Maldonado@cityofchicago.org
Sophia.King@cityofchicago.org
Edward.Burke@cityofchicago.org
Silvana.Tabares@cityofchicago.org
Michael.Zalewski@cityofchicago.org
Daniel.Solis@cityofchicago.org
Carrie.Austin@cityofchicago.org
Margaret.Laurino@cityofchicago.org
Michele.Smith@cityofchicago.org
Debra.Silverstein@cityofchicago.org

Ward Email Addresses:

Ward10@cityofchicago.org
Ward40@cityofchicago.org
Ward44@cityofchicago.org
Ward45@cityofchicago.org

Committee Staff Emails:

Frank.Pucci@cityofchicago.org

The FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. The search conducted resulted in two thousand six hundred and seven (2,607) potentially responsive records. The request as written is unduly burdensome due to the time it is estimated to take to review the potentially responsive records. A review was conducted in which it took one hour to review twenty-eight (28) of the records produced, which at the rate of twenty-eight (28) pages per hour, it is estimated that it would take at least ninety-three (93) hours to complete the review, which does not include the time to apply redactions.

However, if you would like to narrow the request by timeframe and or by the current committee members and former committee members, please contact us or if you need assistance narrowing the request, we would be happy to assist you. If you agree to narrow the request, you must submit a revised written request to my attention. City Council Committee FOIA will take no further action or send your any further correspondence unless and until your current request is narrowed in writing.

To the extent that this is a denial under FOIA, you have a right of review by the Illinois Attorney General's Public Access Counselor Leah Bartelt, who can be contacted at 500 South Second St., Springfield, IL 62701, by telephone at (877) 299-3642, or by email at public.access@ilag.gov . You may also seek judicial review of a denial under 5 ILCS 140/11 of FOIA.

Sincerely,

Margaret Dever

Council Committee FOIA

CouncilCommitteeFOIA@cityofchicago.org

5. Amended request

May 13, 2023

This is a follow up to a previous request:

Dear Margaret Dever,

Thank you for your initial response to this request. I recognize the need to balance the burden of fulfilling the request and the public interest in the information. While the latter side of the ledger is difficult to estimate as precisely as you have the former, I would note that the Chicago Fair Workweek Ordinance represents the most expansive labor standard of its kind. Along with a handful of other cities and one state, Chicago has established the most significant new rights and protections on working time since the Fair Labor Standards Act of 1938. My research seeks to understand the origins and development of fair workweek laws, a project in which the National Science Foundation found sufficient merit to award me a competitive research fellowship (#2203815).

Notwithstanding the considerable public interest in this information, I am willing to narrow my request to the period 1/1/2018-12/31/2019 and only the following email accounts: Susan.Sadlowski-Garza@cityofchicago.org, Patrick.OConnor@cityofchicago.org, Carlos.Ramirez-Rosa@cityofchicago.org, Tom.Tunney@cityofchicago.org, Ward45@cityofchicago.org. I would still like a copy, preferably in electronic format, of all emails and attachments sent or received by the Committee Chairpersons or select Members during the specified period that contain either of the phrases "fair workweek" or "fair scheduling."

Please note that I submitted a separate FOIA request on May 9, 2023 for related records, namely: "All written or recorded comments or testimony received by the City Council Committee on Workforce Development (formerly known as the Workforce Development and Audit Committee) regarding the Chicago Fair Workweek Ordinance (record numbers O2017-4947, O2018-5089, O2019-3928, O2020-2370)." In the event that there are records responsive to both requests (e.g. written testimony sent as an email attachment to the Committee Chair), you may omit these records from the first collection or include them in both, whichever would reduce the burden on your office.

I appreciate your continued assistance and look forward to your response to this narrowed request.

Sincerely,

Peter Fugiel

6. Partial denials

Dear Peter Fugiel;

Below is a response to your Freedom of Information Act ("FOIA") request received by Ward10@cityofchicago.org on April 27, 2023, amended on May 15, 2023, and timely extended, requesting:

[...]

I am willing to narrow my request to the period 1/1/2018–12/31/2019 and only the following email accounts: Susan.Sadlowski-Garza@cityofchicago.org, Patrick.OConnor@cityofchicago.org, Carlos.Ramirez-Rosa@cityofchicago.org, Tom.Tunney@cityofchicago.org, Ward45@cityofchicago.org. I would still like a copy, preferably in electronic format, of all emails and attachments sent or received by the Committee Chairpersons or select Members during the specified period that contain either of the phrases "fair workweek" or "fair scheduling."

[...]

A search was conducted for the emails accounts of Susan.Sadlowski-Garza@cityofchicago.org, Patrick.OConnor@cityofchicago.org, Carlos.Ramirez-Rosa@cityofchicago.org, Tom.Tunney@cityofchicago.org, and Ward45@cityofchicago.org, for the time frame of January 1, 2018 to December 31, 2019, for the terms "fair workweek" and "fair scheduling."

Attached please find fifty-four (54) responsive records in four (4) attachments with the following redactions as indexed below. Please note in addition the name of the staff member, who printed the email, located at the top left of the emails, was redacted as not being part of the record.

Please further note that the Freedom of Information Act ("FOIA") places certain requirements on "public bodies" to respond to requests for documents. See 5 ILCS 140/3. To the extent that your request is directed toward aldermen seeking email messages, it is not a request under FOIA because it is not a request to a public body. The Illinois Appellate Court has ruled that requests to Aldermen for their records are not requests to a public body, as Aldermen are not considered public bodies. See *Quinn v. Stone*, 570 N.E. 676, 678 (1st Dist. 1991). Therefore, emails sent or received by Alderman Tunney, Alderman Carlos Ramirez-Rosa, and Ward45@cityofchicago, were not attached unless they were sent by or to the named chairs of the Committee on Workforce Development as listed in the request or the staff of the Committee on Workforce Development.

However, the Illinois Appellate Court, in citing *Champaign v. Madigan*, has stated that "city council was capable of conducting public business only when a quorum of council members was involved." *Better Gov't Ass'n v. City of Chicago*, 2020 IL App (1st) 190083. To the extent that your request seeks to invoke *Better Gov't Ass'n v. City of Chicago* and email messages of when Aldermen Tunney, Ramirez-Rosa, and Arena were part of a quorum of council members, as written it is unduly burdensome because it does not contain sufficient search parameters to run an effective search for messages sought by the request. However, if you would like to narrow the request, please provide (1) dates of committee or City Council meeting, (2) name of committee or City Council meeting, (3) timeframes, and (4) email addresses which to search. If you need assistance narrowing the request, please contact me and I would be happy to assist you. If you agree to narrow the request, you must submit a revised written request to my attention. City Council Committee FOIA will take no further action or send you any further correspondence unless and until your current request is narrowed in writing.

Attachment I Redactions

Email Page Number	Redaction
Pages 92-95	Content redacted as a preliminary draft pursuant to 5 ILCS 140/7(1)(f)
Page 96	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)

Attachment II Redactions

Email Page Number	Redaction
Pages 1-2	Content redacted as a preliminary draft pursuant to 5 ILCS 140/7(1)(f)
Pages 22-31	Content redacted as a preliminary draft pursuant to 5 ILCS 140/7(1)(f)
Page 33	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 35	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 50	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 56	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 58	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 64	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 66	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 98	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c)

Attachment III Redactions

Email Page Number	Redaction
Page 4	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 6	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c).
Page 8	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
	Email communications with a City attorney was withheld pursuant to 140/7(1)(m)
Page 34	Personal private email address was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 35	Content redacted as a preliminary draft pursuant to 5 ILCS 140/7(1)(f)
Page 61	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 64	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)
Page 114	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 115	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 116	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 117	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 118	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 119	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 120	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)

Attachment IV Redactions

Email Page Number	Redaction
Page 1	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 3	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)

Page 4	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 5	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 6	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 7	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 8	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 15	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 16	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 17	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 18	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 21	Personal private cell phone number and personal private email address were redacted pursuant to 5 ILCS 140/7(1)(b)(c) and witness identifiers of names and emails were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 22	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c) and witness identifiers of names and emails were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 23	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 24	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 25	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 26	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 27	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 28	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 29	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 30	Witness names were redacted pursuant to 5 ILCS 140/7(1)(c)
Page 34	Personal private cell phone number was redacted pursuant to 5 ILCS 140/7(1)(b)(c)

To the extent that this is a denial under FOIA, you have a right of review by the Illinois Attorney General's Public Access Counselor Leah Bartelt, who can be contacted at 500 South Second St., Springfield, IL 62701, by telephone at (877) 299-3642, or by email at public.access@ilag.gov . You may also seek judicial review of a denial under 5 ILCS 140/11 of FOIA.

Sincerely,

Margaret Dever

7. Objection to denials

June 13, 2023

This is a follow up to a previous request:

Good afternoon Margaret Dever,

Thank you for providing these records and a table summarizing the redactions. I recognize the need to protect private information from disclosure. However, I object to the redaction of witness names under section 7(1)(c) of the Illinois FOIA. The statute requires that disclosure of this information "constitute a clearly unwarranted invasion of personal privacy, unless the

disclosure is consented to in writing by the individual subjects of the information." It is not at all clear to me that this exemption applies to lobbyists or individuals testifying to a legislative body about their business or working conditions.

The individuals whose names were redacted all participated, presumably voluntarily, in a meeting of the Fair Workweek Working Group convened by Chairman O'Connor and other members of the Workforce Committee. Although I am not a lawyer, my understanding is that the meetings of this Working Group should have been public under the Illinois Open Meetings Act. If they were public meetings, then disclosing the names of individual participants cannot be an invasion of personal privacy.

Even if the Working Group meetings were closed or not subject to the Open Meetings Act, many of the participants wrote their names and contact information on a sign-in sheet, indicating their consent to disclose their identities to the Committee members and staff. I suspect that some of these same individuals wrote their names on witness slips in order to testify on this issue at later (indisputably public) meetings of the full Committee. These documents would seem to waive the right to privacy in connection with the named individuals' testimony for or against the Fair Workweek proposal.

Finally, even if we grant that some of the individuals did not give written consent to have their names disclosed, the claimed exemption was not applied in a consistent way across the responsive records. For example, an email from Zach Koutsky discloses his full name, employer, job title, and email address. But his name is redacted from the Working Group notes in which he clearly participated (as demonstrated by his citation of a scholarly article on unpredictable scheduling he previously shared via email). If there is a legitimate reason for disclosing Mr. Koutsky's name and email in one record and redacting it in another, I would appreciate if it were made clear to me.

I hope that you will resend the responsive records with the names of all individuals participating in meetings of the Fair Workweek Working Group. Otherwise I will appeal the redaction of these names with Public Access Counselor Leah Bartelt.

Sincerely,
Peter Fugiel

8. Reiteration of denials

Good afternoon Dr. Peter Fugiel,

Thank you again for the opportunity to review and address your concerns and objections to redactions made in the responsive records sent on June 12, 2023, in response to your FOIA request sent on April 27, 2023, and amended on May 15, 2023.

Upon further review and legal consultation, the redactions in Attachment III, pages 114-120, and Attachment IV, pages 1-30, Working Group Notes were appropriate pursuant to 5 ILCS 140/7 (1)(c), because the attendees of the working group meetings had a right to privacy. In applying the redactions we weighed the "subject's right to privacy" against "any legitimate

public interest in obtaining the information" and, though we provided the remaining information of the record, we redacted their names, because releasing the names together with the content of their discussion "would constitute a clear unwarranted invasion of personal privacy." The working group meetings were not held before the entire Committee, nor a quorum of Committee members, nor the public, and so within this forum the attendees could not reasonably expect their comments to be made public. And we do not concur that the attendees of the working group meetings provided consent by signing in at the working group meetings, nor by providing testimony at committee meetings held at later dates. Finally, you claimed the redactions were inconsistent across all records; however, we review each responsive record individually and redact the information exempt from disclosure pursuant to 5 ILCS 140/7 accordingly.

Sincerely,
Council Committee FOIA