

August 22, 2023

*Via electronic mail*

Matt Goodman  
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Assistant Attorney General  
Public Access Bureau

RE: FOIA Request for Review – 2023 PAC 77329

Dear Mr. Goodman:

I am writing in reply to Margaret Dever's letter (dated August 14, 2023) which reiterates the reasons for her partial denial of my request for emails and attachments related to the Chicago Fair Workweek Ordinance. There are two assertions in Ms. Dever's response that I want to rebut. First, Ms. Dever asserts that individuals who participated in the Fair Workweek Working Group "did not expect their comments to be made public." I will show that at least one of these individuals made essentially the same comments in written testimony and public hearings of the Workforce Committee, where he also voluntarily disclosed his participation in the Working Group meetings. Second, Ms. Dever asserts that "requests to aldermen for their records are not requests to a public body, as aldermen are not considered public bodies." This assertion is repudiated by the *Quinn v. Stone* decision, from which I quote below.

To rebut the first assertion, I compared unredacted public records against the redacted notes from the Working Group. If the individuals whose names were redacted from the Working Group notes did not expect their comments to be made public, they would not have reiterated these comments in public hearings and testimony. However, this is precisely what occurred in at least one instance.

On April 4, 2019, Zach Koutsky, then Legislative and Political Director for UFCW Local 881, was the first person to testify at a public hearing of the Workforce Committee which I attended and recorded for my research. Mr. Koutsky identified himself by name and affiliation at the beginning of his oral testimony. He then reported the number of members that Local 881 represents, characterized UFCW as "lead[ing]" the policy process around this issue, cited academic research on the harmful effects of erratic schedules, and argued that the Fair Workweek Ordinance would reduce inequality by providing lower paid workers with more hours and predictable schedules. He also addressed Alderman Tunney directly, reminding him that they both participated in most of the Working Group meetings "where we brought in workers and advocates from every industry." Mr. Koutsky reiterated many of these remarks in emails to the Committee Chair and staff, for instance, an email dated March 25, 2019 that included an academic study published in the *American Sociological Review* showing unpredictable scheduling is associated with worse health and well-being.

Compare these public remarks and references with the redacted Working Group notes responsive to my FOIA request. According to the notes for meeting 1 (dated October 30, 2018),

the first presentation for the Fair Workweek proponents was given by an unnamed individual “with Local 881 UFCW” who reported the number of workers represented by the union, characterized Local 881 as “leading the proposed FWW discussion,” and argued that this proposal would “lower the poverty rate and bring stability” to the affected workers (Attachment IV, p. 23). Another set of notes for meeting 6 (dated February 5, 2019) mention a proponent whose name is redacted but affiliation is given as “Local 881, UFCW” shared a “recent article in the Sociological American” and “stated that unpredictable scheduling is detrimental to mental and health wellbeing” (Attachment III, p. 114). Although the meeting notes are not a verbatim record, it is clear from the context, content, and references that this unnamed representative of UFCW Local 881 is Zach Koutsky, a fact that the Public Access Bureau can verify in the unredacted notes. Together these records show that Mr. Koutsky’s participation in the Working Group meetings was not a personal matter he expected the Committee keep private, but part of his leading role lobbying on behalf of UFCW and its members at every step of the policy process around this issue.

Since the Public Access Bureau has the unredacted records, I believe you could identify additional instances of individuals whose remarks were included in the Working Group notes and later reiterated in public meetings, testimony, and media interviews. I would suggest starting with Tanya Dawood, then Vice President and General Counsel for the Illinois Retail Merchants Association (IRMA), who was the counterpart to Mr. Koutsky in leading the opposition to Fair Workweek. Her unique job title appears in the redacted notes (Attachment IV, p. 24) and in subsequent reporting on the Ordinance, including a July 2019 article by Heather Cherone for *The Daily Line* (Attachment IV, pp. 4-8). Another unnamed individual who likely participated in the Working Group meetings and testified in public against the Ordinance is Michael Jacobson of the Illinois Hotel and Lodging Association.

Even if we grant that some participants in the Working Group did not expect their comments to be made public, it does not follow that disclosing their names and comments “would constitute a clearly unwarranted invasion of personal privacy” as required for the Section 7(c) FOIA exemption. The public has an interest in knowing the identity of representatives of business and labor groups who sought to influence the most expansive new regulations on working time since the Fair Labor Standards Act of 1938. If there was any doubt as to whether the privacy rights of these individuals outweighs the public interest in knowing their names, it should be dispelled by the Illinois Lobbyist Registration Act. In 2019, both Koutsky and Jacobson submitted registration forms to the Secretary of State in accordance with this Act, which stipulates that these forms (including lobbyist names and employers) are “public information and open to public inspection” (25 ILCS 170/7a).

Ms. Dever’s second assertion—that individual Aldermen are not public bodies subject to FOIA—cites the Illinois Appellate Court ruling in *Quinn v. Stone*, 570 N.E. 676, 678 (1st Dist. 1991). Although I am not a lawyer, I was able to find and read the text of the Court’s decision in *Quinn v. Stone*, which clearly repudiates Ms. Dever’s interpretation: “By holding that plaintiff has pursued her statutory remedy against the wrong person, we do not in any way intend to decide whether or not plaintiff has a right to the information requested.” Since I submitted my request to the Workforce Committee, the *Quinn* ruling is irrelevant. If Ms. Dever persists in her denial of my request, I will pursue my statutory remedy against the relevant public body.

Sincerely,

*Peter J. Fugiel*