

Public Access Counselor Opines Legal Invoices Are Generally Not Exempt From FOIA

The Public Access Counselor ("PAC") recently issued a binding opinion finding that public bodies must produce legal invoices in response to a Freedom of Information Act ("FOIA") request, but they may redact portions of the invoices that would reveal privileged information.

The opinion came in response to a FOIA request by the *O'Fallon Progress* to Central School District No. 104 ("District") seeking legal expenses related to the District's lawsuit with the City of O'Fallon ("City") regarding the City's attempt to restrict the District's use of an access road, the District's opposition to a TIF District the City was planning, and the District's lawsuit against the City for the creation of a \$22.5 million TIF District.

The District stated that the invoices were the only record that included a categorized description of legal expenses. The District then denied the request outright and asserted that the invoices were exempt pursuant to Section 7(1)(m) of FOIA, which exempts "[c]ommunications between a public body and an attorney . . . representing the public body that would not be subject to discovery in litigation[.]" PAC Binding Opinion 12-005, 2.

In arriving at its opinion, the PAC relied on *People ex rel Ulrich v. Stukel*, which held, "[i]t is well-recognized that information regarding a client's fees generally is not a 'confidential communication' between an attorney and client, and thus is not protected by the attorney-client privilege. The payment of fees is merely incidental to the attorney-client relationship and typically does not involve the disclosure of confidential communications arising from the relationship." 294 Ill. App. 3d 193, 203-04 (1st 2003) (internal citations omitted).

The PAC determined that most of the information on the invoices was not privileged information. The PAC opined that the number of hours worked on a task, the initials of the lawyer who performed the task, and the rate and dollar amounts charged for the task, were not the types of information that would be protected by the attorney-client privilege. It also stated that generic descriptions of tasks performed by an attorney

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins.



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such as "read e-mail," "telephone conference," and "court appearance" could be disclosed without revealing any privileged information.

The PAC, however, did acknowledge that some task descriptions may be specific and may reveal privileged information. The PAC opined that public bodies are permitted to redact these portions of the invoices before providing them to the requester.

The full opinion is available [here](#).



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