



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 12, 2023

Via electronic mail

Ms. Pam Harmon
FOIA Officer
Illinois Department of Agriculture
agr.foia@illinois.gov

RE: FOIA Request for Review: 2023 PAC 78385
Requester: Mr. Cole Preston
Date of FOIA Request: September 22, 2023

Dear Ms. Harmon:

The Public Access Bureau has received the enclosed Request for Review of the response by the Illinois Department of Agriculture (Department) to a Freedom of Information Act (FOIA) request submitted by Mr. Cole Preston. This office has determined that further action is warranted.

On September 22, 2023, Mr. Preston submitted a FOIA request to the Department seeking copies of the fines levied against cannabis cultivars from January 1, 2020, through August 15, 2023, with any confidential information redacted. On September 29, 2023, the Department denied the request pursuant to section 7(1)(a) of FOIA.¹ In its denial letter, the Department referenced section 1300.600(f) of Title 8 of the Illinois Administrative Code (8 Ill. Admin. Code § 1300.600(f) (2023)) (Code) as its basis for asserting the section 7(1)(a) exemption. Later that day, Mr. Preston submitted the above-referenced Request for Review challenging the Department's denial.

As required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2022)), please provide this office with copies of the withheld records for our confidential review along with a detailed legal and factual explanation for the Department's assertion that the records are

¹5 ILCS 140/7(1)(a) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023.

Ms. Pam Harmon

exempt from disclosure pursuant to section 1300.600(f) of Title 8 of the Code. In your response, please explain how that provision specifically prohibits the disclosure of anonymized fines issued to cannabis cultivars. Please also address whether the fines are required to be disclosed pursuant to section 2.5 of FOIA, which states that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." 5 ILCS 140/2.5 (West 2022). As we review this matter, we will advise you if we require additional information. If you believe that other documents or information would help us as we review these issues, you may submit additional records or affidavits with the requested information.

This information must be submitted to our office within seven (7) business days after receipt of this letter. Under FOIA, "[t]he Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing[.]" 5 ILCS 140/9.5(d) (West 2022). **If you claim that any portion of your written response is confidential, please send two versions of your response letter: a complete copy for this office's confidential review and a redacted version suitable for this office to forward to the requester.**

Please contact me at (217) 843-0564, laura.harter@ilag.gov, or the Springfield address on this letter if you have questions or would like to discuss this matter. Thank you.

Very truly yours,

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

Attachment

cc: *Via electronic mail*
Mr. Cole Preston

Dunham, Lorraine

From: Public Access
Sent: Monday, October 2, 2023 9:23 AM
To: Public Access
Subject: FW: FW: [External] Freedom of Information Act Request

From: Cole Preston>
Sent: Friday, September 29, 2023 3:02 PM
To: Jones, Joshua Joshua. Jones@ilag.gov>
Subject: Re: FW: External] Freedom of Information Act Request

Hello

Can you please review my request, below? Let me know if I can help. I appreciate your support with this so far.

I am a member of the public media. This request is made in the public interest, as it seeks to promote transparency and accountability in the regulation of the cannabis industry in Illinois. Given the public significance of this topic and its potential impact on the welfare and safety of Illinois residents, I believe that the release of this information is in the public interest. Therefore, I kindly request a waiver of any fees associated with this request. If there are fees associated with this request, please inform me in advance of fulfilling the request.

Cole Preston

On Fri, Sep 29, 2023 at 9:13 AM AGR.FOIA AGR.FOIA@illinois.gov wrote:

Hello,

Regarding your FOIA request received on September 22, 2023, for fines rendered confidential through the Consent Order process is denied. 8 IAC 1300.600(f) renders records of consent orders confidential and therefore exempt from disclosure under Sections 7(1)(a) of the Illinois Freedom of Information Act, FOIA")

Section 1300.600 Investigations

f) In appropriate cases, the Department may resolve a complaint against a licensee, or agent through the issuance of a Consent to Administrative Supervision order. A licensee or agent subject to a Consent to Administrative Supervision order shall be considered by the Department as an active licensee or agent in good standing. This order shall not be reported or considered by the Department to be a discipline of the licensee or agent. The records regarding an investigation and a Consent to Administrative Supervision order shall be considered confidential and shall not be released by the Department except as mandated by law. A complainant shall be notified if his or her complaint has been resolved by a Consent to Administrative Supervision order.

Section 7(1)(a) of FOIA states in pertinent part as follows:

1. When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

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a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

You have the right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/ 9.5(a). You may file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, IL 62701
Phone: 877.299.3642
E mail: Public.Access@ilag.gov

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

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 denial letter. 5 ILCS 140/ 9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Pam Harmon
FOIA Officer

From: Cole Preston
Sent: Friday, September 22, 2023 2:14 PM
To: AGR. FOIA AGR. FOIA@Illinois. gov>; Public. Access@ilag. gov
Subject: Re: FW: External] Freedom of Information Act Request

To fulfill my initial request, can you provide fines that were originally considered confidential, but in an anonymized format, as rendered confidential through the Consent Order process provided in 8 IAC 1300.600(f)? In simpler terms, I'm asking for a list of fines issued within the specified date range with all confidential information removed, in accordance with the procedures outlined in 8 IAC 1300.600(f).

In consideration of the department's resources, and being new to this process, I would like to inquire if it would be appropriate for me to submit a new request instead of directly replying to this email. If this is the preferred course of action, please guide me on the next steps we should take.

Cole

On Tue, Sep 12, 2023 at 1:43 PM AGR. FOIA AGR. FOIA@Illinois. gov> wrote:

Hello,

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Regarding your FOIA request received on August 30, 2023,

1. In response to data request number one, please see the attached document listing fines that were not rendered confidential through the Consent Order process provided in 8 IAC 1300.600(f).

Section 1300. 600 Investigations

f) In appropriate cases, the Department may resolve a complaint against a licensee, or agent through the issuance of a Consent to Administrative Supervision order. A licensee or agent subject to a Consent to Administrative Supervision order shall be considered by the Department as an active licensee or agent in good standing. This order shall not be reported or considered by the Department to be a discipline of the licensee or agent. The records regarding an investigation and a Consent to Administrative Supervision order shall be considered confidential and shall not be released by the Department except as mandated by law. A complainant shall be notified if his or her complaint has been resolved by a Consent to Administrative Supervision order.

2. In response to data request number two, please see the attached document listing fines that were not rendered confidential through the Consent Order process provided in 8 IAC 1300.600(f).

Your request for correspondence and notices related to fines is denied. The requested records are exempt from disclosure pursuant to Sections 7(1)(a), 7(1)(f), 7(1)(g), 7(1)(m), and 7.5(rr) of the Illinois Freedom of Information Act, FOIA", Sections 145(a)(2) and c) of the Compassionate Use of Medical Cannabis Program Act, Medical Act", and Sections 55 30(b)(1) and 55 30(b)(2) of the Illinois Cannabis Regulation and Tax Act, CRTA". 5 ILCS 140/ 7(1)(a); 5 ILCS 140/ 7(1)(f); 5 ILCS 140/ 7(1)(g); 5 ILCS 140/ 7(1)(m); 5 ILCS

Section 7(1) of FOIA states in pertinent part as follows:

Sec. 7. Exemptions.

1. When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

f) Preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and

identified by the head of the public body. The exemption provided in this paragraph f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are

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proprietary, privileged, or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested. The information included under this exemption includes all trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph g) shall be construed to prevent a person or business from consenting to disclosure.

m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil, or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

Section 7.5(rr) of FOIA states in pertinent part as follows

Sec. 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from

rr) Information that is exempt from disclosure under the Cannabis Regulation and Tax Act.

Section 145(a)(2) and c) of the Compassionate Use of Medical Cannabis Program Act state:

Sec. 145. Confidentiality.

a. The following information received and records kept by the Department of Public Health, Department of Financial and Professional Regulation, Department of Agriculture, or Illinois State Police for purposes of administering this Act are subject to all applicable federal privacy laws, confidential, and exempt from the Freedom of Information Act, and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of those authorized agencies to perform official duties under this Act and the following information received and records kept by Department of Public Health, Department of Agriculture, Department of Financial and Professional Regulation, and Illinois State Police, excluding any existing or non existing Illinois or national criminal history record information as defined in subsection d), may be disclosed to each other upon request:

2) Applications and renewals, their contents, and supporting information submitted by or on behalf of cultivation centers and dispensing organizations in compliance with this Act, including

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their physical addresses. This does not preclude the release of ownership information of cannabis business establishment licenses.

c) Except for any ownership information released pursuant to subsection b 5) or as otherwise authorized or required by law, it is a Class B misdemeanor with a 1,000 fine for any person, including an employee or official of the Department of Public Health, Department of Financial and Professional Regulation, or Department of Agriculture or another State agency or local government, to breach the confidentiality of information obtained under this Act.

Sections 55 30(b)(1) and 55 30(b)(2) of the Illinois Cannabis Regulation and Tax Act states in pertinent part: Sec. 55 30.

Confidentiality.

b) The following information received and records kept by the Department of Agriculture, the Department of Public Health, the Illinois State Police, and the Department of Financial and Professional Regulation for purposes of administering this Article are subject to all applicable federal privacy laws, are confidential and exempt from disclosure under the Freedom of Information Act, except as provided in this Act, and not subject to disclosure to any individual or public or private entity, except to the Department of Financial and Professional Regulation, the Department of Agriculture, the Department of Public Health, and the Illinois State Police as necessary to perform official duties under this Article and to the Attorney General as necessary to enforce the provisions of this Act. The following information received and kept by the Department of Financial and Professional Regulation or the Department of Agriculture may be disclosed to the Department of Public Health, the Department of Agriculture, the Department of Revenue, the Illinois State Police, or the Attorney General upon proper request:

1) Applications and renewals, their contents, and supporting information submitted by or on behalf of dispensing organizations, cannabis business establishments, or Community College Cannabis Vocational Program licensees, in compliance with this Article, including their physical addresses; however, this does not preclude the release of ownership information about cannabis business establishment licenses, or information submitted with an

application required to be disclosed pursuant to subsection f);

2) Any plans, procedures, policies, or other records relating to cannabis business establishment security;

3. In response to data request number three, your request for documents and correspondence related to transportation and security violations is denied. The requested records are exempt from disclosure pursuant to Sections 7(1)(a), 7(1)(f), 7(1)(g), 7(1)(m), and 7.5(rr) of the Illinois Freedom of Information Act, FOIA”), Sections 145(a)(2) and c) of the Compassionate Use of Medical Cannabis Program Act, Medical Act”), and Sections 55 30(b)(1) and 55 30(b)(2) of the Illinois Cannabis Regulation and Tax Act, CRTA”). 5 ILCS 140/ 7(1)(a); 5 ILCS 140/ 7(1)(f); 5 ILCS 140/ 7(1)(g); 5 ILCS 140/ 7(1)(m); 5 ILCS 140/ 7(1)(rr); 410 ILCS 130/ 145(a)(2); 410 ILCS 130/ 145(c); 410 ILCS 705/ 55 30(b)(1); and 410 ILCS 705/ 55 30(b)(2)]. Please see excerpts of relevant statutory provision above.

You have the right to have the denial of your request reviewed by the Public Access Counselor PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/ 9.5(a). You may file your Request for Review with the PAC by writing to:

Public Access Counselor

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Office of the Attorney General

500 South Second Street

Springfield, IL 62701

Phone: 877.299.3642

E mail: Public.Access@ilag. gov

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

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 denial letter. 5 ILCS 140/ 9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Pam Harmon

FOIA Officer

From: AGR.FOIA AGR.FOIA@Illinois. gov>

Sent: Thursday, September 7, 2023 2:48 PM

To: Cole Preston

Subject: RE: External] Freedom of Information Act Request

Hello,

Regarding your FOIA request received on August 30, 2023, please be advised the Department is extending for five additional working days the time limit for responding to your request. Section 140/ 3(e)(vi) of the Illinois Freedom of Information Act 5 ILCS 140] states:

e) The time for response under this Section may be extended by the public body for not more than 5 business days from the original due date for any of the following reasons: vi) the request for records cannot be complied with by the public body within the time limits prescribed by paragraph c) of this Section without unduly burdening or interfering with the operations of the public body”

The extension due date for your request will be September 14, 2023.

Pam Harmon

FOIA Officer

From: Cole Preston

Sent: Wednesday, August 30, 2023 2:43 PM

To: AGR.FOIA AGR.FOIA@Illinois.gov>

Subject: External] Freedom of Information Act Request

The following records have been requested pursuant to the Illinois Freedom of Information Act 5 ILCS 140/):

1. A list and details of all fines levied against cannabis cultivators by the Illinois Department of Agriculture from January 1, 2020, through August 15, 2023.

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2. Any correspondence, notices, or reports related to the aforementioned fines, including the reasons for each fine, the entities or individuals fined, the date for each fine, and the amount of each fine.
3. Any documentation or correspondence related to transportation and security violations at cannabis cultivation sites during the specified period.
4. If there are no records of fines levied against cultivators during the specified period, please provide a statement affirming the absence of fines.

I would like to acknowledge and express my appreciation for the department's past commitment to transparency, as evidenced by previous FOIA requests made by entities like GrownIn.com. Their successful request for information on similar topics demonstrates the department's willingness to provide essential data in the public interest.

This request is made in the public interest, as it seeks to promote transparency and accountability in the regulation of the cannabis industry in Illinois. Given the public significance of this topic and its potential impact on the welfare and safety of Illinois residents, I believe that the release of this information is in the public interest. Therefore, I kindly request a waiver of any fees associated with this request. If there are fees associated with this request, please inform me in advance of fulfilling the request.

Please provide the requested records in electronic format if possible. If some portions of the requested records are exempt from disclosure, please redact the exempt portions and provide me with the remainder of the records. If you determine that any portion or all of the requested records are exempt from disclosure, I request that you provide a written explanation for such a decision.

Thank you for your prompt attention to this matter. I look forward to receiving the requested information within the five business days as stipulated by the Illinois Freedom of Information Act. If you need any clarification or additional information, please feel free to contact

Sincerely,

Cole

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

