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VIA EMAIL

July 23, 2020

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Edie Steinberg
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Public Access Bureau
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Re: Response to FOIA Request for Review – 2020 PAC 63565

Dear Ms. Steinberg

This letter serves as the Village of Hillside's (the "Village") response to FOIA Request for Review, 2020 PAC 63565, submitted by Roger Romanelli on June 23, 2020, concerning a FOIA request he made to the Village on April 28, 2020.

In response to FOIA request 20-0051, the Village consulted Mayor Joseph Tamburino and Administrative Assistant to the Mayor, Evelyn Belmonte, who advised that the bank account, event flyers and other materials for the Proviso Municipal League ("PML") were not maintained as part of any Village records or data bases and that the funds of the PML were maintained in a separate bank account maintained by Mayor Tamburino as Treasurer of the PML. Based on the fact that the PML is a separate, unincorporated association comprised of municipalities in Proviso Township and the PML is a member of the Illinois Municipal League, the Village made the determination that the PML was not a "public body" as defined by FOIA and that the records of the PML were not the records of the Village.

The Village is permitted to join the PML and the Illinois Municipal League pursuant to 65 ILCS 5/1-8-1. The Illinois Municipal League is an unincorporated, nonprofit, nonpolitical association of Illinois cities, villages and incorporated towns that provides and disseminates information and research services, as well as engages in other activities for the purpose of improving local government. PML activities include the hosting of monthly dinner meetings for the mayors of the municipalities of Proviso Township, quarterly dinners for the general public with special speakers, when available, and an annual PML-sponsored golf outing and dinner. Village Mayor Tamburino has served as Secretary/Treasurer of the PML since at least 1995. As such, checks for tickets

to PML events or golf outing sponsorships are typically sent by mail, addressed to the PML, to the attention of Evelyn Belmonte, c/o Village of Hillside, 425 Hillside Avenue, Hillside, IL 60162, or to the address of the prior Village Hall, 30 N. Wolf Road, Hillside, IL 60162. Bank statements of the PML bank account are sent to Mayor Tamburino at the Village of Hillside.

Funds of the Village of Hillside are used to pay the annual membership fee of \$425 as authorized by 65 ILCS 5/1-8-1. The records of PML events are not maintained by the Village. The resources of the Village are not used by the PML except to the extent that Ms. Belmonte uses the Village emails system to notify the mayor of the member municipalities of the time and location of the monthly and quarterly meetings. In some instances, the Village has hosted PML events at the Village Municipal Complex in much the same way that other community organizations, like the Chamber of Commerce and Hillside Little League, host meetings or events at the facility.

Affidavits from Mayor Tamburino and Ms. Belmonte have been included in this response in Appendix A. A sample of the PML records in the possession of Ms. Belmonte, including golf outing information and a flyer for a recent speaker event, are included in this response in Appendix B. Portions of the bank statement for the account maintained by Mayor Tamburino for the PML along with the 2004 application for a separate Federal Employer Identification Number ("FEIN") from the IRS are included as Appendix C for your confidential review.

First, the Village would submit that the PML is not a "public body" under the Act. The Act defines a public body as follows:

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act.

5 ILCS 140/2(a). The PML is an unincorporated association comprised of member municipalities which, in turn, is a member of the Illinois Municipal League, an

organization defined by statute as an “unincorporated, nonprofit, nonpolitical associations of Illinois cities, villages and incorporated towns.” 65 ILCS5/1-8-1. This statutory provision further provides that the member cities, villages and incorporated towns acting by, through and in the name the Illinois Municipal League “may provide and disseminate information and research services, and may do other acts for the purposes of improving local government.” *Id.* The fact that the PML was not a public body subject to FOIA was one of the Village’s stated reasons for denying this FOIA request on May 5, 2020. The materials and the affidavits of Mayor Tamburino and his Administrative Assistant, Mr. Belmonte, submitted with this response clearly demonstrate that the purposes and activities of the PML are consistent with the statutory purposes of the Illinois Municipal League and do not involve the public transaction of the businesses of Village or the other member municipalities. For this reason alone, the Public Access Bureau should deny this Request for Review.

The Village further asserts that records relating to the PML are not “public records” because they do not pertain to the transaction of public business subject to disclosure under FOIA. Section 2(c) of FOIA defines “public records” as:

[A]ll records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

5 ILCS 140/2(c). While the term “public business” is not defined in the statute, the Illinois Appellate Court has found its meaning to be plain and unambiguous: “to qualify as a public record a communication must first pertain to business or community interests as opposed to private affairs.” *City of Champaign v. Madigan*, 992 N.E.2d 629 (Ill. App. Ct. 2013). The Attorney General has further clarified that whether information is a public record depends upon “whether that record was prepared by or used by one or more members of a public body in conducting the affairs of government. The focus is on the creation of the record itself, and how it was used.” *Public Access Opinion*, No. 11-006, ATTORNEY GENERAL (2011), available here: <http://foia.ilattorneygeneral.net/pdf/opinions/2011/11-006.pdf>.

Here, the Village maintains that materials relating to PML are not “public records” that pertain to the transaction of public business. Namely, the materials were not prepared by or used by the members of any public body conducting the affairs of government. The fact that the PML meets regularly to foster better communication and



cooperation among the municipal members of the PML does not establish that these records were used to conduct the actual business of any of these municipalities. Similarly, any records relating to PML in the possession of Mayor Tamburino and Ms. Belmonte, whether in their Village offices or at their homes, were not used by Mayor Tamburino or Ms. Belmonte to conduct the affairs of the Village. Accordingly, the Village requests that the Public Access Bureau deny this Request for Review.

Respectfully submitted by,

VILLAGE OF HILLSIDE

A handwritten signature in black ink, appearing to read 'Patrick E. Deady', is written over a horizontal line.

Patrick E. Deady
Attorney for Village of Hillside

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APPENDIX A

DECLARATION OF JOSEPH TAMBURINO

I, JOSEPH TAMBURINO, upon penalty of perjury, state that I have personal knowledge of the facts set forth herein, that I am competent to testify, and if called to testify would state as follows:

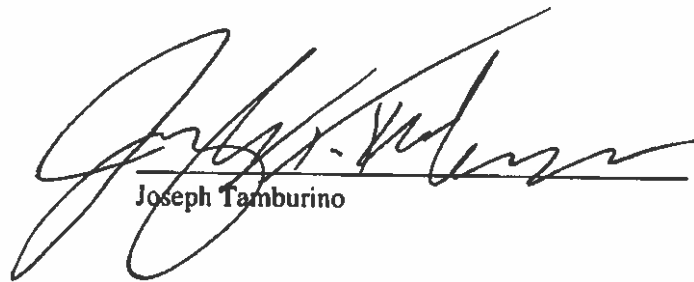
- 1. I am the Mayor of the Village of Hillside, located in Cook County, Illinois and have been the Mayor of Hillside since April , 1981.**
- 2. The Village of Hillside became a member of the Proviso Municipal League (the "PML")long before I became Mayor of the Village.**
- 3. I have served as Secretary/Treasurer of the PML since approximately 1995.**
- 4. The PML is an unincorporated association, which is a member of the Illinois Municipal League, an unincorporated, nonprofit, nonpolitical association of Illinois cities, villages and incorporated towns.**
- 5. Through the PML, the mayors of the participating municipalities of Proviso Township hold monthly dinners, sponsor quarterly dinners with special speakers, when available, and host an annual golf outing to foster communication and cooperation between and among the towns and villages of Proviso Township and surrounding communities.**
- 6. As the Treasurer of the PML, I maintain a separate bank account that is used deposit annual dues, receipts for ticket sales and payments for sponsorships of the annual golf outing and to pay the expenses of the PML. The bank statement, any checks for tickets or payments for sponsorships of PML events are sent to the Proviso Municipal League, c/o Village of Hillside, usually to the attention of Evelyn Belmonte, who serves as my administrative assistant.**
- 7. Emails announcing the scheduled events of the PML are sent on my behalf by Ms. Belmonte using her email address at the Village of Hillside. All correspondence between myself and the other mayors of the member municipalities are to and from the email addresses of the mayors at the village or town.**

8. The Village of Hillside, as well as all of the other members of the PML, pay an annual membership fee. The current membership fee is \$425.

Further Declarant Sayeth Naught.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 23, 2020



Joseph Tamburino

DECLARATION OF EVELYN BELMONTE

I, EVELYN BELMONTE, upon penalty of perjury, state that I have personal knowledge of the facts set forth herein, that I am competent to testify, and if called to testify would state as follows:

1. I am the Administrative Assistant of the Mayor of the Village of Hillside, located in Cook County, Illinois, and have held that position since August 14, 1995.

2. The Village of Hillside has been a member of the Proviso Municipal League (the "PML") for the entire time I have worked for the Office of the Mayor.

3. PML events include monthly dinner meetings with the mayors of all of the member municipalities in Proviso Township, quarterly dinners for the general public with special speakers, and a sponsored annual golf outing for PML members, their employees and residents. As the Administrative Assistant to Mayor Tamburino, I have assisted with scheduling the monthly meetings and quarterly events, as well as the annual golf outing.

4. Mayor Tamburino has been Secretary/Treasurer of the PML since at least 1995. In his capacity as Secretary/Treasurer, Mayor Tamburino maintains a separate bank account for PML funds. Bank statements for that account are received by Mayor Tamburino at his office at the Hillside Municipal Complex. I do not have any authority to sign or order checks, make changes to the account, or request information from the bank.

5. In addition to the annual membership fees paid by the participating municipalities, activities of the PML are funded by the sale of tickets to quarterly speakers' dinners, tickets to the golf outing and dinner and through sponsorships of the golf outing. Payments for those tickets and sponsorships are sent to the PML, to my attention, c/o Village of Hillside, 425 Hillside Avenue, Hillside, IL 60162. Checks for those events are deposited by the Mayor into the PML's bank account. Records of those events and contributions are maintained by me at my home. All costs of printing, mailing and other event expenses are paid from the funds of the PML.

6. To my knowledge, there are no minutes recorded at the monthly Mayor meetings or quarterly dinners with special speakers.

7. Correspondence sent and received by Mayor Tamburino on behalf of the PML to or from the mayors of the participating municipalities with respect to the scheduling of monthly meetings, quarterly dinners, and the annual golf outings are usually sent or received by me using my email address at the Village of Hillside. This correspondence is sent to the mayors at their municipal email addresses.

8. The mailings of the flyers are done from my home, not on Village time and are paid for with funds from the PML. All of the records of donations, ticket sales and sponsorships are maintained by me at my home.

9. The Village pays an annual membership fee to the PML of \$425.

Further Declarant Sayeth Naught.

Pursuant to 735 ILCS 5/1-109, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 23, 2020



Evelyn Belmonte