

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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January 13, 2012

Mr. Ray Long
Chicago Tribune
435 North Michigan Avenue
Chicago, Illinois 60611-4066

Ms. Kathy Ward, FOIA Officer
Senior Deputy General Counsel
Illinois Department of Human Services
100 W. Randolph Street – Suite 6-400
Chicago, Illinois 60601

RE: Request for Review – 2011 PAC 16868

Dear Mr. Long and Ms. Ward:

Pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2010), as amended by Public Act 97-579, effective August 26, 2011), we have received a Request for Review of the response by the Illinois Department of Human Services to a FOIA request submitted by Ray Long of the *Chicago Tribune*. We have considered the Department's response to the allegations in the Request for Review, as well as the *Tribune's* reply.

On August 23, 2011, Mr. Long requested records concerning Community-Integrated Living Arrangements (CILA) for developmentally disabled individuals, including the locations of those group homes. On August 30, 2011, the Department provided some responsive records, including the municipality and zip code in which CILAs are located. On August 31, 2011, the Department supplemented its response by asserting that the addresses of CILAs are exempt pursuant to section 7(1)(a) and section 7(1)(b) of FOIA (5 ILCS 140/7(1)(a), (b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011).

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DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2010); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2010).

Section 7(1)(a) exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Department based its assertion of section 7(1)(a) on section 3 of the Mental Health and Developmental Disabilities Confidentiality Act (MHDDCA) (740 ILCS 110/3 (West 2010)), which provides that "[a]ll records and communications shall be confidential and shall not be disclosed except as provided in this Act." Section 2 of MHDDCA defines "record" to include "any record kept by a therapist *or by an agency* in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided." (Emphasis added.) A "recipient" is a "person who is receiving or has received mental health or developmental disabilities services." 740 ILCS 110/2 (West 2010). Section 2 broadly defines "[m]ental health or developmental disabilities services" as including, but not limited to, "examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation."

Section 3 of MHDDCA "prohibits the release of information that would tend to identify [an individual] as a recipient of mental health services." *Giangiulio v. Ingalls Memorial Hospital*, 365 Ill. App. 3d 823, 838 (1st Dist. 2006) (holding that section 3 of MHDDCA bars disclosure of the name, address and telephone number of an individual who was alleged to have received mental health services); *see also Sassali v. Rockford Memorial Hospital*, 296 Ill. App. 3d 80, 84-85 (2nd Dist. 1998) (internal citation omitted): "The Confidentiality Act is carefully drawn to maintain the confidentiality of mental health records except in the specific circumstances explicitly enumerated." Sections 15 and 16 of MHDDCA (740 ILCS 110/15, 16 (West 2010)) provide civil and criminal penalties for violations of its provisions.

By definition, CILAs are homes for recipients of mental health or developmental disabilities services. Section 3(d) of the Community-Integrated Living Arrangements Licensure and Certification Act (CILALCA) (210 ILCS 135/3(d) (West 2010)) defines a CILA as a "living arrangement certified by a community mental health or developmental services agency under this Act where 8 or fewer recipients with mental illness or recipients with a developmental disability * * * reside under the supervision of the agency." Community mental health or developmental services agencies licensed under CILALCA must certify that CILA residents are "receiving

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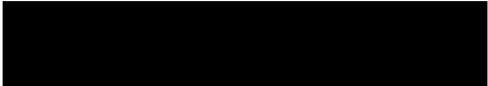
appropriate community-based services, including treatment, training and habitation or rehabilitation." 210 ILCS 135/4(c)(1) (West 2010).

Disclosure of the addresses of CILAs could enable residents to be identified, for example, through names on mailboxes, government records such as police, fire, or rescue reports, and various resources for locating people that have become increasingly available via the Internet. In addition, disclosing the addresses of CILAs would enable residents to be observed physically entering and exiting CILAs. Thus, the disclosure of the addresses of CILAs, when combined with other readily available information, could lead to the identification of recipients of mental health or developmental disabilities services and frustrate the public policy behind MHDDCA. There is no exception to the confidentiality provisions of MHDDCA which applies to media requests for information. Therefore, agencies engaged in administering CILAs or the provisions of the Community-Integrated Living Arrangements Licensure and Certification Act are prohibited from disclosing the addresses of CILAs by section 3 of MHDDCA, and the addresses are correspondingly exempt pursuant to section 7(1)(a) of FOIA.

Because our determination that the addresses of the CILAs are exempt under section 7(1)(a) is dispositive, we make no determination concerning the Department's assertion of section 7(1)(b).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter shall serve to close this matter.

Very truly yours,



STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

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cc: Mr. Brendan Healey
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