OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 1, 2024

Via electronic mail
[redacted]

RE: FOIA Request for Review – 2024 PAC 81880

Dear [redacted]

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons that follow, the Public Access Bureau has no authority to take further action in this matter.

On June 10, 2024, Mr. Sean Dailey, Senior Client Director at AHEAD, submitted a FOIA request to the Chief Procurement Office for General Services (Office) seeking copies of e-mails related to the decision to cancel a bid that AHEAD was awarded. On June 17, 2024, the Office denied your request pursuant to sections 7(1)(f), 7(1)(h), and 7(1)(m) of FOIA,[1] and cited section 8.5 for materials posted on its website.[2] On June 20, 2024, this office received your Request for Review contesting the Office's denial on behalf of AHEAD. When this office asked

[1]5 ILCS 140/7(1)(f), (1)(h), (1)(m) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

[2]5 ILCS 140/8.5 (West 2022).

you about the purpose of the request, you stated: "It's related to a bid cancellation, to which we have filed a protest."[3]

Section 9.5(a) of FOIA[4] allows a person whose FOIA request has been denied to seek review of that denial with the Public Access Counselor. However, section 9.5(b) of FOIA[5] creates an exception, providing that a "person whose request to inspect or copy a public record is made for a commercial purpose as defined in subsection (c-10) of Section 2 of this Act may not file a request for review with the Public Access Counselor."[6] Under the plain language of this provision, the Public Access Counselor's review process is not available to a person whose request was made for a commercial purpose.

Although it does not appear that Mr. Dailey marked the FOIA request to the Office as having a commercial purpose, the request was submitted on behalf of AHEAD, which provides commercial services in Illinois.[7] Your confirmation that the request is for a bid protest demonstrates the commercial nature of the request. The Public Access Bureau has determined that a request for the purpose of a potential bid protest is a commercial request. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 47083, issued April 4, 2017, at 2 ("A request that seeks records for use in efforts to obtain a business contract has a commercial purpose."). Accordingly, section 9.5(b) of FOIA precludes this office from reviewing the substance of the Office's denial. Please note that you have the option of filing suit against the Office for injunctive or declaratory relief pursuant to section 11 of FOIA (5 ILCS 140/11 (West 2022)).

This letter serves to close this file. If you have questions, please contact me at joshua.jones@ilag.gov or (773) 590-7951.

Very truly yours,

[redacted]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

---

[3]E-mail from [redacted], Vice President, Legal, AHEAD, to [Joshua] Jones (July 1, 2024).

[4]5 ILCS 140/9.5(a) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

[5]5 ILCS 140/9.5(b) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

[6]Section 2(c-10) of FOIA (5 ILCS 140/2(c-10) (West 2022), as amended by Public Act 103-554, effective January 1, 2024) defines "commercial purpose" as "the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services."

[7]AHEAD, https://www.ahead.com/ (last visited July 1, 2024).

81880 f no fi war sa

cc: *Via electronic mail*
Ms. Jennifer A. Winking
Assistant General Counsel
Chief Procurement Office for General Services
300 West Jefferson Street, Suite 128
Springfield, Illinois 62702
jennifer.winking@illinois.gov