



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 20, 2023

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Patrick E. Deady
Schoenberg Finkel Beederman Bell Glazer, LLC
300 South Wacker Drive, Suite 1500
Chicago, Illinois 60606
patrick.deady@sfbbg.com

RE: FOIA Request for Review – 2023 PAC 76410

Dear [REDACTED] and Mr. Deady:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the Village of Hillside (Village) improperly assessed a fee for a portion of records it provided in response to [REDACTED] March 31, 2023, FOIA request which were not responsive to that request.

On that date, [REDACTED] submitted a FOIA request to the Village "[s]eeking copies of Hillside government written documents and written communications **including but not limited to** emails, building permits, building inspections, business licenses, zoning documents **and all other subjects** for the period of January 1, 2005 to present day for the property at 4329 Butterfield Rd. Hillside, IL 60162."¹ (Emphasis added.) He did not specify a format in which he wished to obtain the records. On April 27, 2023, the Village assessed [REDACTED] a \$52.50 fee to obtain the records he was seeking, which [REDACTED] paid. On April 28, 2023, the Village provided [REDACTED] with records in paper format as well as on a compact disc. On April 28, 2023, [REDACTED] submitted the above-referenced Request for Review contesting

¹FOIA request from [REDACTED] to Village of Hillside (March 31, 2023).

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the fee assessed by the Village. He alleged that most of the records provided by the Village were not responsive to his FOIA request.

On May 9, 2023, this office forwarded a copy of the Request for Review to the Village and asked it to provide a detailed explanation of the legal and factual bases for the fee assessed in response to ██████████ FOIA request, copies of the responsive records, and an explanation of how each record is responsive to ██████████ request. On May 17, 2023, the Village responded. On that same date, this office forwarded the Village's response to ██████████. On June 1, 2023, he replied.

DETERMINATION

Section 6 of FOIA (5 ILCS 140/6 (West 2022)) provides the authority for a public body to charge fees for certain records. Section 6(b) of FOIA (5 ILCS 140/6(b) (West 2022)) provides, in pertinent part:

Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. **No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.** (Emphasis added.)

In its response to this office, the Village noted that ██████████ request did not request copies of records in electronic format. The Village stated that, because some of the provided records were also provided to ██████████ pursuant to previous FOIA requests, it counted only 400 of the 489 pages of provided records to calculate the fee. The Village therefore did not charge ██████████ for the first 50 pages, but charged him 15 cents per page for the remaining 350 pages for a total of \$52.50.² ██████████ contends that many of the records provided by the Village were not responsive to his request and, therefore, the fee assessed for those records is improper.

In light of the "policy embodied in the FOIA requiring disclosure of information in government documents unless it falls within the reach of one of the specified exemptions, the

²In his reply, ██████████ noted that the paper records and records provided on a compact disc were not identical and provided arguments regarding the records in both formats. However, the Village only assessed a fee for the paper records, so this office's review is limited to whether those records were responsive to ██████████ request.

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agency should err on the side of liberally construing what material falls within the scope of the request." *Dunaway v. Webster*, 519 F. Supp. 1059, 1083 (N.D. Cal. 1981); *see also, e.g., People for the Ethical Treatment of Animals v. National Institutes of Health*, 745 F.3d 535, 541 (D.C. Cir. 2014) ("Agencies have 'a duty to construe a FOIA request liberally.'" (quoting *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995))). Ambiguities should be resolved in favor of disclosure. *LaCedra v. Executive Office for U.S. Attorneys*, 317 F.3d 345, 348 (D.C. Cir. 2003) (rejecting public body's narrow construction of language used in request).

In its response, the Village argued that all of the provided records were responsive to ██████████ request given the time period covered and the broad scope of subject matter. It stated that the address specified in ██████████ request is the property of a longstanding business in the Village that has been involved in various Village processes as the business expanded. The Village noted that, while the specified property is mentioned in only limited portions of some responsive documents, each of those documents are maintained by the Village as a single record. These records include agenda packets for meetings of the Village Board of Trustees in which the specified property was addressed along with numerous other topics, as well as a road construction project application under the Illinois Transportation Enhancement Program that includes a notice sent to the property in question and involves work on the frontage of this property. The Village asserted that its "FOIA Officer attempted to be circumspect and searched for only those Village records that referred to the specific address in the request, 4329 Butterfield Road, not Hillside Lumber more generally."³

In his reply, ██████████ argued in detail as to why he believed specific records, including the agenda packets and road construction application, were not responsive to his request. He argued that they have nothing to do with his FOIA request, "which was specific to the PROPERTY at 4329 Butterfield Rd. in Hillside."⁴ ██████████ further argued that some of these records, such as FOIA requests that ██████████ previously submitted "have nothing to do with the Hillside government's records for the 4329 Butterfield Rd. property."⁵

FOIA defines "public records" as all records "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

³Letter from Patrick E. Deady, Village Attorney, Village of Hillside, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 17, 2023), at 4.

⁴E-mail from ██████████ to Benjamin Silver, [Assistant Attorney General], [Public Access Bureau] (June 1, 2023).

⁵E-mail from ██████████ to Benjamin Silver, [Assistant Attorney General], [Public Access Bureau] (June 1, 2023).

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public body." (Emphasis added.) 5 ILCS 140/2(c) (West 2022). This definition includes documents submitted to as well as created by the Village as part of a governmental process.

While many of the records that the Village provided to ██████████ do not pertain exclusively to the specified property, the records are nonetheless responsive to the wording of the request when it is liberally construed as FOIA requires. ██████████ argued that the Village should have provided "specific information from the Hillside government related solely to the PROPERTY at 4329 Butterfield Rd. in Hillside for the time period requested."⁶ However, the wording of the request more broadly sought "Hillside government written documents and written communications including but not limited to emails, building permits, building inspections, business licenses, zoning documents and **all other subjects** for the period of January 1, 2005 to present day for the property at 4329 Butterfield Rd." (Emphasis added.) Most of the records do refer to 4329 Butterfield Road and are records maintained by the Village government. Given the Village's obligation to liberally construe the FOIA request, this office is unable to conclude those documents are not responsive to the request even though many of them do not exclusively concern 4329 Butterfield Road and contain a multitude of additional information that ██████████ may not find useful.

However, a portion of the records consist of documents that do not relate to the property at 4329 Butterfield Road. Though the Village argues that it stores agenda packets as a single document, the agenda packets consist of numerous individual records; only a small portion of those records relate to the property at 4329 Butterfield Road. Those discrete records are readily segregable from unrelated records and do not constitute a single record for purposes of FOIA simply because the Village aggregated all of the individual records in agenda packets. Additionally, approximately five pages of the records described by the Village as "Permits and Zoning permit copies" appear to relate to properties owned by the owners of 4329 Butterfield Road but not to that property itself. These records also are not responsive to ██████████ request for "Hillside government written documents and written communications * * * for the property at 4329 Butterfield Rd. Hillside, IL 60162." Therefore, the Public Access Bureau concludes that the Village assessed an improper fee in response to ██████████ March 31, 2023, FOIA request by including the unresponsive portions of the agenda packets and permit copies in calculating its fee for responsive records. Accordingly, this office requests that the Village reassess the fee without including those pages and refund the difference to ██████████ ██████████

The Public Access Bureau is also charged with providing advice and education to the public and public bodies. 15 ILCS 205/7(a), (c) (West 2020). To that end, ██████████

⁶E-mail from ██████████ to Benjamin Silver, [Assistant Attorney General, Public Access Bureau] (June 1, 2023).


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may wish to specify in future FOIA requests the format in which he wishes to receive records. If a requester requests a record in electronic format and the public body maintains the record electronically, "the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester." 5 ILCS 140/6(a) (West 2022). However, "[t]he plain language of section 6(a) [only] requires a public body to provide records in electronic format *if* the public body maintains those records in electronic format. * * * [S]ection 6(a) does not require a public body to furnish in electronic format records maintained solely in paper format, even if the public body has the resources to reproduce those records in PDF." (Emphasis in original.). Ill. Att'y Gen. PAC Req. Rev. Ltr. 28697, issued April 18, 2014, at 2.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,



BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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