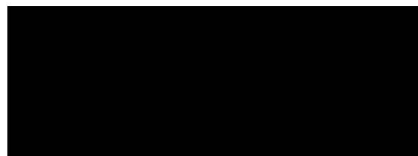


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 8, 2025

Via electronic mail



Via electronic mail

Ms. Alexandra Snodsmith
Village of Orland Park
14700 Ravinia Avenue
Orland Park, Illinois 60462
asnodsmith@orlandpark.org

RE: FOIA Request for Review – 2024 PAC 82313; Reference No. N017942-071024

Dear [REDACTED] and Ms. Snodsmith:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)).

On July 10, 2024, [REDACTED] submitted a FOIA request to the Village of Orland Park (Village) seeking copies of "all records related to the incomplete audits for fiscal years 2022 and 2023", including the following:

1. Communications and e-mails between the financial department, the village manager George Koczwara, and Keith Peak,
2. Correspondence with the State of Illinois' Comptroller's Office regarding the incomplete audits for fiscal years 2022 and 2023,

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
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(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

██████████
Ms. Alexandra Snodsmith

May 8, 2025

Page 2

3. Communications and emails from Village of Orland Park Trustees regarding the incomplete audits for fiscal years 2022 and 2023, [and]
4. If the Village of Orland Park uses a specific accountant or law firm for independent audits, please include any communication and emails regarding the incomplete audits for fiscal years 2022 and 2023.^[1]

On July 18, 2024, the Village extended its time to respond to ██████████ FOIA request by five business days as allowed by section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)).

On July 24, 2024, the Village responded that it does not possess records responsive to ██████████ request. On that same date, this office received ██████████ Request for Review disputing the Village's response. In particular, ██████████ asserted that the Village should possess these records because he received copies of correspondence exchanged between the Village and the State of Illinois Comptroller's Office (Comptroller's Office) after he submitted a nearly identical FOIA request to the Comptroller's Office on July 10, 2024. ██████████ provided this office with the Comptroller's Office's response to his request.

On July 30, 2024, this office sent a copy of this Request for Review to the Village and asked it to provide a detailed description of its search for responsive records. Specifically, this office asked the Village if it possessed copies of the e-mails between its employees and the Comptroller's Office that were included in the materials submitted by ██████████. On August 2, 2024, the Village provided this office with its written response. On August 9, 2024, this office forwarded a copy of this response to ██████████; he replied on August 11, 2024.

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 2022); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). The adequacy of a public body's search for responsive records is judged by a standard of reasonableness and depends upon the particular facts of the case. *Better Government Ass'n v. City of Chicago*, 2020 IL 190038, ¶ 31. "Although a public body is not required to perform an exhaustive search of every possible location, the body must construe FOIA requests liberally and search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n*, 2020 IL 190038, ¶ 31 (quoting *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)). Further, a public body must use search terms that are reasonably calculated to locate all responsive records. *Hall v. C.I.A.*, 668 F. Supp. 2d 172, 183-84 (D.D.C. 2009). "At all times the

¹Freedom of Information Act request submitted by ██████████ to Freedom of Information Act Officer, Village of Orland Park (July 10, 2024).

██████████
Ms. Alexandra Snodsmith
May 8, 2025
Page 3

burden is on the [public body] to establish the adequacy of its search." *Rugiero v. U.S. Dep't of Justice*, 257 F.3d 534, 547 (6th Cir. 2001).

In its response to this office, the Village described its search for responsive records as follows:

Pursuant to this request, the Village conducted an internal document search in the places that were requested by ██████████ and that are reasonably likely to contain any responsive records including an e-mail search for the term "incomplete audit" in the e-mail accounts of [a list of named individuals]. Per ██████████ request, the time period searched for was 2022 to the present. The Village's IT Department responded that there were no results for the requested term and time frame.

After receiving the results from the electronic search, the Village's FOIA officer individually requested information regarding any additional potentially responsive documents from current Village Director of Finance Chris Frankenfield. After he reviewed the request, it was determined that documents responsive to the request would not exist because the Village does not have any "incomplete audits."^[2]

Further, the Village argued that the wording used in this FOIA request was misleading and different from ██████████ FOIA request to the Comptroller's Office in that ██████████ asked the Comptroller's Office for all records related to the Village's "audits" whereas he asked the Village, for all records related to its "incomplete audits." The Village asserted it "is not required to have clairvoyant capabilities to discover the requester's needs or to advise him on what public records he should seek."³

In his reply, ██████████ responded that his FOIA request "was very clearly and plainly worded" and "sought all documents and correspondence with the Comptroller's Office relating to the Village's fiscal year 2022 and 2023 audits, which are incomplete."⁴ ██████████

²Letter from Dennis G. Walsh, Klein, Thorpe and Jenkins, LTD., to Christina Lucente-McCullough, Assistant Public Access Counselor, Office of the Illinois Attorney General (August 2, 2024), at 1-2.

³Letter from Dennis G. Walsh, Klein, Thorpe and Jenkins, LTD., to Christina Lucente-McCullough, Assistant Public Access Counselor, Office of the Illinois Attorney General (August 2, 2024), at 3.

⁴Letter from ██████████ to Christina M. Lucente-McCullough, Assistant Attorney General (August 12, 2024), at 1.

██████████
Ms. Alexandra Snodsmith
May 8, 2025
Page 4

also argued that the Village improperly fixated on the phrase "incomplete audit" and ignored the known context, including the local media coverage, surrounding its past audits.

Having reviewed the information submitted by the parties, this office concludes that the Village did not demonstrate that it conducted a reasonable search for records responsive to ██████████ request. The Village acknowledged that it limited its search to records that contained the phrase "incomplete audit." Although this phrase was included in ██████████ FOIA request, the Village did not show that searching only for records containing that specific phrase was reasonable under the circumstances. In this matter, ██████████ provided copies of the records he received from the Comptroller's Office. Those records reflect that the Village received a notice of delinquency regarding its FY 2022 audit, and that the Village had responded to the Comptroller's Office that it was working "to get the 2022 audit done as quickly as possible. In addition, we have added a financial incentive for the audit firm to complete the 2022 audit within the 4 months in order to get our financial reporting back on track."⁵ In subsequent communications, the Village's Finance Director, Chris Frankfenfield, advised:

I understand the Village is delinquent with submitting our 2022 and now the 2023 audited financials. We are actively engaged in our audit with Sikich to finalize our ACFR for 2022. This was delayed due to an abundance of staff turnover and retirements, in addition to a new ERP implementation. We have already made significant progress, and depending on the audit firm, I hope to have the Final draft by the end of August 2024.^[6]

The plain and ordinary meaning of "incomplete" is: "not complete : UNFINISHED: such as a: lacking a usually necessary part, element, or step[.]"⁷ It is clear that the Village had not completed or finished its audits for FY 2022 and FY 2023 on time and was working to complete them. The Village did not explain why it had not considered communications related to audits that were still unfinished to be responsive to the request for records concerning "incomplete audits." Further, this office's own research located multiple news articles surrounding the Village's failure to file its financial audits with the Comptroller's Office.⁸ Given this media

⁵E-mail from Kevin Wachtel, Financial Director, Village of Orland Park, to June [Canello, Illinois State Comptroller] (October 19, 2023).

⁶E-mail from Chris Frankenfield, CPA, Finance Director, Village of Orland Park, to June [Canello, Illinois State Comptroller] (July 1, 2024).

⁷Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/incomplete>.

⁸See e.g., Ben Bradley, *Orland Park latest suburb to fail to file audits*, WGN Investigates (Oct. 14, 2024, 6:10 p.m.), <https://wgntv.com/news/wgn-investigates/orland-park-latest-suburb-to-fail-to-file-audits>.

[REDACTED]
Ms. Alexandra Snodsmith
May 8, 2025
Page 5

attention, the available information suggests that the Village was also reasonably aware of the circumstances in which [REDACTED] submitted his request.

Even if the Village disputes that the audits its finance director acknowledged to be delinquent were "incomplete", FOIA required the Village to construe [REDACTED] FOIA request liberally and conduct a search that was reasonably tailored to find any responsive records. The Village's argument that it needed "clairvoyant capabilities" to ascertain Mr. [REDACTED] needs is unavailing because [REDACTED] request provided enough context as to the subject matter and types of records requested. *See Government Accountability Project v. U.S. Dep't of Homeland Sec.*, 335 F. Supp. 3d 7, 11-12 (D.D.C. 2018) (ruling that "FOIA requests are not a game of Battleship" and that the government fails its FOIA obligations when it ignores "logical variations," "synonyms," and "proxies" "calculated to turn up all responsive documents"). It is apparent from the wording of the request that [REDACTED] was seeking records concerning the fiscal year 2022 and 2023 audits regardless of whether they were most properly characterized as incomplete, delinquent, or otherwise deficient or untimely. Accordingly, the Public Access Bureau concludes that the Village failed to perform a reasonable search for responsive records.

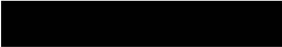
To remedy this violation, this office asks the Village to conduct a search of the applicable recordkeeping systems for responsive records concerning its FY 2022 and 2023 audits and issue a supplemental response to [REDACTED] that fully complies with section 9 of FOIA (5 ILCS 140/9 (West 2022)). If no records are located, the Village should provide [REDACTED] with a detailed description of the measures that were taken to search for records.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. This letter shall serve to close these matters. If you have any questions, please contact me at c.lucentemccullough@ilag.gov or the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
CHRISTINA LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

82313 f 3a search improper mun


Ms. Alexandra Snodsmith

May 8, 2025

Page 6

cc: *Via electronic mail*
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