



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 14, 2014

PUBLIC ACCESS OPINION 14-013
(Request for Review 2014 PAC 30269)

FREEDOM OF INFORMATION ACT:
Photocopies of Records Deemed
Exempt from Disclosure under
Section 7(1)(e-5)

Mr. Adam Escamilla, M27513
Lawrence Correctional Center
10930 Lawrence Road
Sumner, Illinois 62466

Ms. Lisa Weitekamp
Illinois Department of Corrections
Freedom of Information Act Officer
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Springfield, Illinois 62794-9277

Dear Mr. Escamilla and Ms. Weitekamp:

This is a binding opinion issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons discussed below, this office concludes that the Illinois Department of Corrections (IDOC) did not violate FOIA by denying Mr. Adam Escamilla's request for copies of Administrative Directives that were available in the library of the correctional facility in which he is confined.

BACKGROUND

Mr. Escamilla submitted a FOIA request dated April 16, 2014, to IDOC (IDOC Request 140421178) seeking "a copy" of several IDOC Administrative Directives.¹ Mr.

¹Correspondence from Adam Escamilla to Lawrence Correctional Center Records Office, Freedom of Information Officer (April 16, 2014).

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Escamilla's FOIA request acknowledged that these Directives are available for inspection, during scheduled library time, in the library of the correctional center in which he is confined, but he asserted that he is entitled to receive photocopies of the requested Directives. In a letter dated April 28, 2014, IDOC denied the request under section 7(1)(e-5) of FOIA (5 ILCS 140/7(1)(e-5) (West 2013 Supp.)),² which exempts from disclosure "[r]ecords requested by persons committed to the Department of Corrections if those materials are available in the library of the correctional facility where the inmate is confined." IDOC's response asserted that the Directives sought by Mr. Escamilla are maintained in the library of the correctional facility in which he is confined.³

On June 30, 2014, this office received Mr. Escamilla's Request for Review, dated May 22, 2014, in which he confirmed that he has access to the Directives in the Lawrence Correctional Center library and that inmates are permitted to copy those Directives by hand.⁴ However, Mr. Escamilla asserted that his access to the Directives had been improperly restricted because inmates are not permitted to obtain photocopies of records maintained in the prison library.⁵ On July 11, 2014, the Public Access Bureau forwarded a copy of the Request for Review to IDOC and asked IDOC to provide a detailed response to Mr. Escamilla's assertions.⁶ In a letter dated July 17, 2014, IDOC responded "[t]he Department can confirm that the records requested by Mr. Escamilla are in fact maintained in the library at Lawrence Correctional Center and available for review by any inmate housed at Lawrence Correctional Center."⁷ IDOC further asserted that "[t]here is no requirement under Section 7(1)(e-5) for IDOC to provide an inmate copies of documents maintained in the library."⁸ In his reply, dated August 3, 2014, Mr.

²Letter from Lisa Weitekamp, Freedom of Information Officer, Illinois Department of Corrections, to Adam Escamilla (April 28, 2014).

³Letter from Lisa Weitekamp, Freedom of Information Officer, Illinois Department of Corrections, to Adam Escamilla (April 28, 2014).

⁴Freedom of Information Act Appeal to Public Access Counselor from Adam Escamilla (May 22, 2014).

⁵Freedom of Information Act Appeal to Public Access Counselor from Adam Escamilla (May 22, 2014).

⁶Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau, to Lisa Weitekamp, Freedom of Information Act Officer, Illinois Department of Corrections (July 11, 2014).

⁷Letter from Lisa Weitekamp, Freedom of Information Officer, Illinois Department of Corrections to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (July 17, 2014).

⁸Letter from Lisa Weitekamp, Freedom of Information Officer, Illinois Department of Corrections to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (July 17, 2014).

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Escamilla argued that IDOC has not presented clear and convincing evidence that prohibiting photocopies of Administrative Directives complies with the requirements of FOIA.⁹

On August 28, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2012)).¹⁰

ANALYSIS

Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." Section 3(b) of FOIA further provides that "[s]ubject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section[.]" As noted above, however, section 7(1)(e-5) provides that if "[r]ecords requested by persons committed to the Department of Corrections * * * are available in the library of the correctional facility where the inmate is confined," then the records are "exempt from inspection and copying" under the provisions of FOIA (*see generally* 5 ILCS 140/7(1) (West 2013 Supp.)).

Mr. Escamilla does not dispute that copies of the Administrative Directives in question are located in the Lawrence Correctional Center library or that he is allowed to inspect the Directives. Rather, Mr. Escamilla contends that the records are not "available," within the meaning of section 7(1)(e-5) of FOIA, because inmates are not permitted to make or otherwise obtain photocopies of records located in the library.¹¹ Therefore, IDOC is obligated to provide him with photocopies of the Administrative Directives under the provisions of FOIA.

⁹Letter from Adam Escamilla to Office of Attorney General, State of Illinois, Public Access Bureau (August 3, 2014).

¹⁰Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau, to Adam Escamilla and Lisa Weitekamp, Freedom of Information Act Officer, Illinois Department of Corrections (August 28, 2014).

¹¹In his Request for Review, Mr. Escamilla specifically states that IDOC allows prisoners to hand copy Administrative Directives. *See* Freedom of Information Act Appeal to Public Access Counselor from Adam Escamilla (May 22, 2014). In his reply to IDOC's response to the Public Access Bureau inquiry, however, Mr. Escamilla argues that IDOC's response does not confirm or deny that it allows hand copying of records. *See* Letter from Adam Escamilla to Office of Attorney General, State of Illinois, Public Access Bureau (August 3, 2014). Whether IDOC permits a prisoner to hand copy records is not material to the resolution of Mr. Escamilla's Request for Review.

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The "fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent." *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 394, 789 N.E.2d 1211, 1212 (2003). The most reliable indicator of legislative intent is the plain language of the statute. *Krohe*, 204 Ill. 2d at 395, 789 N.E.2d at 1212. The information submitted indicates that Mr. Escamilla may inspect the Directives in the prison library. However, it is not clear whether the legislature intended the term "available" in section 7(1)(e-5) to mean that an inmate must not only be able to inspect the documents in the library, but also to make or obtain photocopies of those documents. When a statute is susceptible to multiple interpretations, the statute's legislative history can be a valuable aid in determining legislative intent. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 19, 678 N.E.2d 1009 (1996).

During the floor debate on House Bill No. 4592 (which, as Public Act 97-783, effective July 13, 2012, enacted section 7(1)(e-5) of FOIA), one of the bill's sponsors, Representative Cunningham, explained the purpose of the legislation as follows:

The point of this Bill is that instead of [inmates] filling out a Freedom of Information request, submitting it to the warden, forcing the warden to take out the state's statute books and make copies of it, they would instead be instructed if that information is available at the library, you can go to the library and access it yourself. Remarks of Rep. Cunningham, March 8, 2012, House Debate on House Bill No. 4592, at 63-64.

Representative Cunningham stated that "with the * * * exception of employee records [addressed in section 7(1)(e-6) of FOIA (*see* 5 ILCS 140/7(1)(e-6) (West 2013 Supp.))], this Bill will not seal any information from inmates. It will merely force them to go through other means to obtain that information than FOIA, like visiting the prison library." Remarks of Rep. Cunningham, March 8, 2012, House Debate on House Bill No. 4592, at 62. The legislative history of section 7(1)(e-5) further indicates that the amendment was intended to preclude inmates from using FOIA to request "information that a trip to the library would yield to them" and would be "saving the state a great deal of money in regard to time that the department has to put in making these copies, distributing these copies, et cetera, et cetera." Remarks of Rep. Morthland and Rep. Cunningham, March 8, 2012, House Debate on House Bill No. 4592, at 62.

Prior to the enactment of section 7(1)(e-5), IDOC states that it routinely provided copies of responsive records to inmates who requested them pursuant to FOIA, even if copies of the records were maintained in the libraries of the facilities in which the inmates were incarcerated. This practice created an administrative burden on IDOC. *See* Remarks of Rep. Cunningham, March 8, 2012, House Debate on House Bill No. 4592, at 61, 62. The comments

made during the House Debate on House Bill No. 4592 reveal a clear intent on the part of the General Assembly to alleviate this burden by carving out an exception for records that are available in prison libraries, thereby relieving IDOC of the obligation of providing inmates with photocopies of those records. Nothing in the legislative history suggests that the applicability of section 7(1)(e-5) is contingent upon IDOC allowing inmates to obtain photocopies of documents available in prison libraries. To the contrary, the sponsor simply stated that under the amendment, an inmate would be instructed that he or she could go to the library and *access* a document, rather than requesting a copy under FOIA.

Therefore, for the reasons stated above, this office concludes that the records at issue are exempt from disclosure under section 7(1)(e-5) of FOIA because they are available in the library of the correctional facility in which Mr. Escamilla is confined, and that IDOC is not required by section 7(1)(e-5) to allow Mr. Escamilla to make photocopies of the records or to furnish photocopies to him. Accordingly, IDOC's denial of photocopies of the records requested by Mr. Escamilla did not violate FOIA.

FINDINGS AND CONCLUSIONS

1) On April 16, 2014, Mr. Adam Escamilla submitted a FOIA request to the Illinois Department of Corrections seeking copies of several IDOC Administrative Directives.

2) On April 28, 2014, IDOC denied the request citing section 7(1)(e-5) of FOIA, which exempts from disclosure "[r]ecords requested by persons committed to the Department of Corrections if those materials are available in the library of the correctional facility where the inmate is confined."

3) On June 30, 2014, the Public Access Counselor received Mr. Escamilla's Request for Review, dated May 22, 2014. Because Mr. Escamilla's Request for Review is postmarked June 25, 2014, it was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).

4) On July 11, 2014, the Public Access Bureau sent a copy of the Request for Review to IDOC and requested a detailed explanation of its response to Mr. Escamilla's April 16, 2014, FOIA request.

5) On July 17, 2014, IDOC responded that it properly denied Mr. Escamilla's FOIA request under section 7(1)(e-5) of FOIA, and that it is not required under FOIA to provide an inmate with photocopies of records that are available for inspection in the library of the correctional facility in which the inmate is confined.

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6) On August 28, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA, to October 14, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) The legislative history of section 7(1)(e-5) of FOIA indicates that the General Assembly intended for that provision to ease the administrative burden associated with requiring IDOC to furnish inmates with copies of records that are available for inspection in the libraries of the facilities in which the inmates are confined. Nothing in its legislative history suggests that section 7(1)(e-5) was intended to apply only if IDOC allowed inmates to photocopy those records. Therefore, records are "available," within the meaning of that term in section 7(1)(e-5) of FOIA, if an inmate has access to inspect the records in the library of the prison in which he or she is confined. IDOC is not required to permit the inmate to make photocopies of documents that are available for inspection in the library or to furnish an inmate with copies of those records in order for section 7(1)(e-5) to apply.

8) Because it is undisputed that the records Mr. Escamilla requested were available for inspection in the library of the facility in which he was confined, IDOC has sustained its burden of demonstrating that those records are exempt from disclosure under section 7(1)(e-5) of FOIA.

Therefore, it is the opinion of the Attorney General that IDOC properly denied Mr. Escamilla's FOIA request. This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and the Illinois Department of Corrections as defendants. See 5 ILCS 140/11.5 (West 2012).

Very truly yours,

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By:


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