



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 29, 2010

**PUBLIC ACCESS OPINION No. 10-001
(Request for Review 2010 PAC 5688)**

**FREEDOM OF INFORMATION ACT:
Duty of Public Body to Furnish Copies**

Jeff Justice
Village Attorney
Village of Wapella
c/o Shade & Justice
132 South Water Street
515 Millikin Court
Decatur, Illinois 62523

Dear Mr. Justice:

This binding opinion is issued pursuant to Section 9.5(f) of the Freedom of Information Act (hereinafter "FOIA") (5 ILCS 140/9.5(f)).

Findings of Fact

On January 6, 2010, Edward Fleck ("Requester") sent a letter to the Village of Wapella ("Wapella") requesting a copy of the Requester's "water meter card" showing all readings from June 2009 through December 2009. In a letter dated January 12, 2010, Vernon Meadows, Village President of Wapella, responded that Wapella required five additional business days to gather the requested information. In addition, Mr. Meadows stated:

Please be advised that there is no obligation on the part of the Village to make copies for you. The Village is only obligated to make the documents available for inspection and photocopying. These documents will be available for inspection and photocopying at the Wapella Village Hall. (Emphasis added.)

On January 19, 2010, Mr. Meadows sent a second letter to the Requester stating that the Requester's FOIA request was denied. He again reiterated that "[t]here is no obligation on the part of the Village to make copies for you. The Village is only obligated to make the document available for inspection and photocopying." Mr. Meadows further stated that the requested documents would be available for inspection and copying by the Requester on Friday, January 22, 2010, between 9 am and 10 am at the Wapella Village Hall.

The Requester filed a Request for Review regarding his January 6, 2010, FOIA request to Wapella, which was received by the Public Access Counselor ("the PAC") on February 3, 2010. The Requester stated that Wapella was not justified in requesting an additional 5 days for response because there are "no more than 300 water meter cards for the whole village, contained in three 2-ring binders[.]" The Requester also stated that he was not allowed to inspect his original water meter card, instead being shown a copy of his card, which, according to the Requester, was more difficult for him to read. Ultimately, the Requester copied his meter card during the limited time that the documents were available for inspection.

On February 16, 2010, we sent a letter to Mr. Meadows notifying Wapella of the receipt of the Requester's Request for Review and advising that further inquiry was necessary to determine whether a violation of FOIA had occurred. Pursuant to Section 9.5(c) of FOIA (5 ILCS 140/9.5(c)), we requested that Wapella respond to the allegations included in the Request for Review within 7 working days after receipt.

On February 24, 2010, Jeff Justice, an attorney representing Wapella, sent a letter to the PAC responding to the allegations set forth in the Request for Review. In his letter, Mr. Justice stated that Wapella had requested a 5-day extension to the FOIA request because Wapella has no full-time or part-time administrative or secretarial personnel. With respect to the allegation that the Requester was not allowed to inspect his original water meter card, Mr. Justice responded that because the Requester never specified that he wanted to view original documents, his request was fulfilled by producing a copy for inspection. Further, Mr. Justice stated that due to the large number of FOIA requests Wapella receives and its lack of support staff, Wapella "exercised [its] rights under paragraph 3 of [FOIA] to make documents available for inspection and photocopying on a machine provided by the village in the same room."

Applicable Statutes

The authority of the Public Access Counselor to issue a binding opinion is set out in Section 9.5 of the Freedom of Information Act (5 ILCS 140/9.5). Pursuant to Section 9.5, a person whose request to inspect or copy a public record has been denied by a public body may, not later than 60 days after the date of the final denial, file a written request for review with the Public Access Counselor established in the Office of the

Attorney General. If the Public Access Counselor determines that the alleged violation warrants further review, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion in response to the request for review. The opinion shall be binding upon both the requester and the public body, subject to administrative review.

We find that the Request for Review was timely filed and otherwise complies with the requirements of Section 9.5 of FOIA.

With respect to the specific issue raised in this Request for Review, Section 3(b) of FOIA (5 ILCS 140/3(b)) provides as follows:

(b) Subject 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* and shall certify such copy if so requested. (Emphasis added.)

When the language of a statute is clear and unambiguous, it must be given effect as written. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

The language of Section 3(b) is clear and unambiguous: it is the duty of a public body, when requested and upon payment of applicable fees, if any, to provide the requester with a copy of any record that is not exempt from disclosure under FOIA. Section 3(b) does not provide a public body with the option to decline to provide copies when copies are requested. Although a public body may offer the requester an opportunity to inspect and make copies if he or she elects to do so, it may not properly refuse to provide copies if requested to do so.

Conclusions of Law

Wapella has taken the position with respect to this FOIA request and several others¹ that it is under no obligation to provide copies of public documents to requesters. It has

¹ We have received numerous requests for review of FOIA responses from Wapella in which the village refused to furnish copies of public records to requesters and, instead, informed the requesters that they could view documents and make copies between 9:00 am and 10:00 am on a specified date. Wapella responded in this way, for example, to FOIA requests dated January 3 and 6, 2010, seeking copies of village bank statements (2010 PAC 5490); January 5, 2010, seeking copies of receipts and deposit records for specific village payments as well as records relating to publicly-owned materials discarded as scrap (2010 PAC 5496); January 4, 2010, seeking a copy of the village's year end financial report (2010 PAC 5621); January 20 and February 3, 2010, seeking water rate reports, a water meter card and account history for the requester, the treasurer's check register and specific invoices to the village (2010 PAC 5881); and

asserted that FOIA provides public bodies the option of simply making public records available for inspection and copying. Wapella's interpretation is unsupported by law. To the contrary, Section 3(b) of FOIA clearly requires public bodies to furnish copies of records in response to requests therefore.²

We find and conclude that the Village of Wapella has violated Section 3(b) of FOIA by refusing to provide copies of public records to Edward Fleck upon his request. In accordance with this Opinion, the Village of Wapella is directed to immediately provide copies of the records requested by Mr. Fleck, subject only to the payment of any fee properly imposed pursuant to FOIA. Under Section 9.5(f) of FOIA, the Village of Wapella shall either take necessary action immediately to comply with this opinion or shall initiate administrative review under Section 11.5 of FOIA (5 ILCS 140/11.5).

This opinion shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law, 735 ILCS 5/Art. III.

Sincerely,

LISA MADIGAN

By: Cara Smith
Public Access Counselor

cc: Edward Fleck
13 Thomas Court
Wapella, IL 61777

February 12, 2010, seeking one page of the water deposit receipt report for specific months (2010 PAC 6051).

² More recently, Wapella has responded to FOIA requests by refusing to furnish copies of public records and informing requesters that the responsive records are available for viewing on the village website. (Wapella response to February 23, 2010 FOIA request, 2010 PAC 6110; Wapella response to March 7, 2010 FOIA request, 2010 PAC 6335). This approach also is unsupported by the law and violates Section 3(b)'s express requirement that public bodies furnish copies of records when requesters seek copies.