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STATE OF ILLINOIS

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FILE NO. 05-002

PUBLIC RECORDS AND INFORMATION:
Fees for Accessing Information Contained
in a Geographic Information System

The Honorable Barbara Flynn Currie
House Majority Leader
Illinois House of Representatives
300 State House
Springfield, Illinois 62706

Dear Representative Currie:

I have your letter inquiring whether a public body may charge a fee in excess of that authorized by section 6 of the Freedom of Information Act (the Act) (5 ILCS 140/6 (West 2002)) for providing copies of public records contained in or generated by a geographic information system, where access to such records may properly be denied pursuant to subsection 7(1)(i) of the Act (5 ILCS 140/7(1)(i) (West 2003 Supp.)). For the following reasons, it is my opinion that absent express statutory authority, public bodies may not charge additional or increased fees if they elect to furnish copies of records that may be exempted from disclosure

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under section 7 of the Act (5 ILCS 140/7 (West 2003 Supp.)), including information generated by or contained in a geographic information system.

Many units of local government have created or acquired geographic information systems to maintain enhanced geographical information for the provision of government services. The term "geographic information system" or "GIS" refers to a:

> computer system that records, stores, and analyzes information about the features that make up the earth's surface. A GIS can generate two- or three-dimensional images of an area, showing such natural features as hills and rivers with artificial features such as roads and power lines. * * *
>
> Many GIS databases consist of sets of information called *layers*. Each layer represents a particular type of geographic data. For example, one layer may include information on the streets in an area. Another layer may contain information on the soil in that area, while another records elevation. The GIS can combine these layers into one image, showing how the streets, soil, and elevation relate to one another. * * * A GIS database can include as many as 100 layers.
>
> A GIS is designed to accept geographic data from a variety of sources, including maps, satellite photographs, and printed text and statistics. * * * The GIS converts all geographical data into a digital code, which it arranges in its database. Operators program the GIS to process the information and produce the images or information they need. (Emphasis in original.) ("Geographic Information System", Microsoft® Encarta® Online Encyclopedia 2001, <http://encarta.msn.com/index/conciseindex/6D/06DA0000.htm>.)

It is our understanding that some units of local government have elected to recoup part of the costs associated with paying for and supporting their geographic information systems by charging increased fees for furnishing documents and other information generated by the

systems to persons or businesses which may use that information for commercial purposes. These units of local government have taken the position that when access to information in a geographic information system may properly be denied under section 7 of the Act, access to such information may be conditioned on payment of fees in any amount that the body determines to be appropriate. You have inquired whether, pursuant to the Act, a "public body," a term which includes units of local government (5 ILCS 140/2 (West 2002)), may charge and collect a fee in excess of that ordinarily permitted by section 6 for providing copies of records contained in or generated by the public body's geographic information system.

The principal mandate of the Act is found in subsection 3(a) (5 ILCS 140/3(a) (West 2002)), which provides that "[e]ach public body shall make available to any person for inspection or copying all public records." To enable public bodies to keep certain types of sensitive public records confidential, however, section 7 provides a number of narrow exceptions to the general mandate that public records be made available for public inspection. An exception for "computer geographic systems," found in subsection 7(1)(i) of the Act provides, in pertinent part:

> (1) The following shall be exempt from inspection and copying:
>
> * *
>
> (i) Valuable formulae, *computer geographic systems*, designs, drawings and research data obtained or produced by any public body *when disclosure could reasonably be expected to produce private gain or public loss.* The exemption for "computer geographic systems" provided in this paragraph (i) does not extend

> to requests made by news media as defined in Section 2 of this Act when the requesting information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public. (Emphasis added.)

Subsection 7(1)(i) was amended in 2002 to include the reference to computer geographic systems. *See* Public Act 92-645, effective July 11, 2002.

Under the language of subsection 7(1)(i) of the Act, "computer geographic systems" are exempt from inspection and copying in those limited circumstances "when disclosure could reasonably be expected to produce private gain or public loss." This language was added to address situations in which public bodies, and specifically units of local government, were being required under the Act to provide virtually unlimited access to geographic information stored in the public bodies' computer systems to members of the public, who would then disseminate or otherwise use the information for their own financial benefit. *See* Remarks of Rep. Hultgren and Rep. Beaubien, March 29, 2001, House Debate on House Bill No. 3209 (which, as Public Act 92-241, effective August 3, 2001, enacted the original exemption for "computer graphic systems"), at 17-18; Remarks of Sen. T. Walsh, April 3, 2002, Senate Debate on Senate Bill No. 1706 (which, as Public Act 92-645, effective July 11, 2002, enacted the current exemption for "computer geographic systems"), at 35; Remarks of Rep. Brosnahan, April 30, 2002, House Debate on Senate Bill No. 1706, at 1. Although public bodies have been given the express authority to withhold from disclosure in certain specified circumstances information related to computer geographic systems, which commonly include geographic information

systems (*see* VII House Journal, 92nd Ill. Gen. Assem., November 7, 2001, at 6519 (Approval Message from the Governor)), your question concerns not the circumstances in which these particular records may be withheld from the public, but rather the fee that a public body may charge for information contained in or generated by a computer geographic system when it elects to provide access thereto.

Subsection 6(a) of the Act (5 ILCS 140/6(a) (West 2002)) grants public bodies the general authority to charge fees for reproducing public documents:

> (a) *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. *Such fees* shall exclude the costs of any search for and review of the record, and *shall not exceed the actual cost of reproduction and certification, unless otherwise provided by State statute*. (Emphasis added.)

Under the plain language of subsection 6(a), a public body is ordinarily limited to charging a fee for furnishing copies of public records that is calculated "to reimburse its actual cost for reproducing * * * public records." In calculating such fees, section 6 further provides that the fee "shall not exceed the actual cost of reproduction * * *, unless otherwise provided by State statute." The language of section 6 applies to all public records; nothing in its language either expressly or impliedly indicates that the fee provisions are inapplicable to those public records where access may be exempted. Moreover, nothing in section 6 indicates any intent on the part of the General Assembly to authorize public bodies to collect an increased fee with respect to furnishing records that may be withheld from disclosure under section 7 or subsection 7(1)(i)

specifically. In circumstances where the General Assembly has authorized the charging of a fee in excess of that otherwise provided for by the Act, it has done so expressly. *See, e.g.,* 625 ILCS 5/11-416 (West 2002) ("The Department of State Police may furnish copies of an Illinois State Police Traffic Accident Report that has been investigated by the State Police and shall be paid a fee of $5 for each such copy * * *. * * * [L]aw enforcement agencies of local authorities may furnish copies of traffic accident reports prepared by such agencies and may receive a fee not to exceed $5 for each copy .").

Nothing in subsection 7(1)(i) of the Act either expressly or impliedly addresses the amount of the fee that a public body may charge to allow access to information in computer geographic systems. Moreover, nothing in the legislative history related to the 2001 or 2002 amendments to subsection 7(1)(i) indicates an intent by the General Assembly to grant to public bodies the authority to collect a fee in excess of that otherwise provided for in the Act.

Accordingly, it is my opinion that although subsection 7(1)(i) of the Act permits a public body to withhold access to records contained in or generated by a geographic information system in the limited circumstances where disclosure is likely to produce a private gain or a public loss, if a public body determines that it is appropriate to provide access to such information, the public body may not charge a fee for reproducing the information in excess of the fee authorized by section 6 of the Act. In other words, a public body may not charge or collect a fee in excess of that calculated to reimburse the body for its actual reproduction and

certification costs for providing access to information contained in a computer geographic system, absent express statutory authority so providing.

Very truly yours,

LISA MADIGAN
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