



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 11, 2025

PUBLIC ACCESS OPINION 25-001
(Request for Review 2024 PAC 83751)

FREEDOM OF INFORMATION ACT:
Duty to Furnish Records in the
Electronic Format Specified by the
Requester if Feasible

Mr. Derek Van Buer
230 Thornbrook Road
DeKalb, Illinois 60115

Mr. Timothy F. Horning
Attorney for the Housing Authority of DeKalb
Meyer and Horning P.C.
3400 North Rockton Avenue
Rockford, Illinois 61103

Dear Mr. Van Buer and Mr. Horning:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons discussed below, this office concludes that the Housing Authority of the County of DeKalb (Authority) violated the requirements of FOIA by improperly denying a FOIA request submitted by Mr. Derek Van Buer.

BACKGROUND

On September 30, 2024, Mr. Van Buer submitted a FOIA request to the Authority seeking copies of the "FY24 and FY 25 Excel workbooks[]" for the Authority's budgets, including the workbook links for supporting files.¹ On October 7, 2024, the Authority extended

¹E-mail from Derek Van Buer to [David Siegel, Executive Director, Housing Authority of the County of DeKalb] (September 30, 2024).

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its time to respond to the request by five business days pursuant to section 3(e)(v) of FOIA (5 ILCS 140/3(e)(v) (West 2022)).² On October 15, 2024, the Authority e-mailed Mr. Van Buer copies of locked versions of the Excel workbooks.³

On October 16, 2024, Mr. Van Buer e-mailed an Assistant Attorney General (AAG) in the Public Access Bureau and copied the Authority's Executive Director; his e-mail stated that he believed the Authority improperly responded to his request by providing password-protected workbooks with hidden columns.⁴ On October 29, 2024, the Authority provided Mr. Van Buer with copies of the workbooks with the previously hidden columns now viewable but still locked;⁵ the Authority also provided this office with a copy of that response.⁶ That same day, Mr. Van Buer reiterated in an e-mail to the AAG that he was seeking unlocked versions of the Excel workbooks, as he could not access formula information within the documents because they were locked.⁷ On October 30, 2024, the AAG stated in an e-mail to the Authority's Executive Director that Mr. Van Buer was seeking the unlocked workbooks and asked if the Authority was willing to provide Mr. Van Buer with unlocked copies.⁸ On that same date, the Authority's Executive Director replied by stating: "Our position is that we have fulfilled the request."⁹

On November 1, 2024, Mr. Van Buer submitted the above-referenced Request for Review contesting the Authority's response.¹⁰ Specifically, Mr. Van Buer argued that the password-protected Excel workbooks "effectively redacts information" because the locked

²Letter from David Siegel, Executive Director – FOIA Officer, Housing Authority of the County of DeKalb, to Derek Van Buer (October 7, 2024).

³E-mail from FOIA Requests, Housing Authority, County of DeKalb, to Derek Van Buer (October 15, 2024).

⁴E-mail from Derek Van Buer to AAG [Benjamin] Silver, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (October 16, 2024).

⁵E-mail from FOIA Requests, Housing Authority of the County of DeKalb, to Derek Van Buer (October 29, 2024).

⁶E-mail from Dave [Siegel] to Ben [Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (October 29, 2024).

⁷E-mail from Derek Van Buer to Ben [Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (October 29, 2024).

⁸E-mail from Benjamin Silver, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General], to Dave [Siegel, Executive Director, Housing Authority of the County of DeKalb] (October 30, 2024).

⁹E-mail from Dave [Siegel, Executive Director, Housing Authority of the County of DeKalb], to Ben [Silver, Assistant Attorney General, Public Access Bureau] (October 30, 2024).

¹⁰E-mail from Derek Van Buer to Public Access [Bureau, Office of the Attorney General] (November 1, 2024).

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workbooks hide certain information and restrict the functionality of the records in comparison to the unlocked versions used by the Authority.¹¹ Mr. Van Buer stated that "the password prevents the cell contents from being examined for additional information like formulas or notes. The password also prevents the unhiding of hidden columns."¹²

On November 14, 2024, the Public Access Bureau sent a copy of the Request for Review to the Authority. The Public Access Bureau also sent the Authority a letter requesting a detailed factual and legal explanation for the Authority's assertion that the locked Excel workbooks constitute a complete response to Mr. Van Buer's request.¹³ The Public Access Bureau also asked the Authority to address whether its response was consistent with the holdings of the Illinois Appellate Court in *Fagel v. Department of Transportation*, 2013 IL App (1st) 121841.¹⁴ On December 8, 2024, counsel for the Authority provided this office with copies of locked versions of the records at issue along with a written response asserting that those records were properly furnished to Mr. Van Buer in the locked version in which they are maintained.¹⁵ On December 9, 2024, this office forwarded a copy of the Authority's answer to Mr. Van Buer and notified him of his opportunity to reply in writing.¹⁶ On December 16, 2024, he submitted a reply in which he maintained that "[t]here is not a separate file format for an Excel file with a password from an Excel file without a password. The electronic format or file format is still *xlsx*."¹⁷

On December 30, 2024, this office extended the time for issuing a binding opinion by 30 business days, to February 14, 2025, pursuant to section 9.5(f) of FOIA.¹⁸

¹¹E-mail from Derek Van Buer to Public Access [Bureau, Office of the Attorney General] (November 1, 2024).

¹²E-mail from Derek Van Buer to Public Access Bureau, [Office of the Attorney General] (November 1, 2024).

¹³Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to David Siegel, Executive Director, Housing Authority of the County of DeKalb (November 14, 2024), at 2.

¹⁴Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to David Siegel, Executive Director, Housing Authority of the County of DeKalb (November 14, 2024), at 2.

¹⁵Letter from Timothy F. Horning, Meyer and Horning P.C., to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2024), at 3.

¹⁶Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Derek Van Buer (December 9, 2024).

¹⁷Letter from Derek Van Buer to AAG Benjamin J. Silver, Public Access Bureau, Office of the Illinois Attorney General (December 16, 2024), at 2.

¹⁸Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Derek Van Buer and Timothy F. Horning, Attorney for the Housing Authority of DeKalb, Meyer and Horning P.C. (December 30, 2024).

ANALYSIS

It is the public policy of the State of Illinois that "all persons are entitled to full and complete information regarding the affairs of government." 5 ILCS 140/1 (West 2022). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2022)), "[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 (5 ILCS 140/3(a) (West 2022)) 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." Further, section 6(a) of FOIA (5 ILCS 140/6(a) (West 2022)) provides:

When a person requests a copy of a record maintained in an electronic format, **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. (Emphasis added.)

In *Fagel*, the Illinois Appellate Court considered whether the Illinois Department of Transportation (IDOT) improperly responded to a FOIA request seeking data in an Excel spreadsheet by providing the information in a locked version of the spreadsheet. *Fagel*, 2013 IL App (1st) 121841, ¶ 1. IDOT asserted that "delivery of the requested information in a locked format 'was designed to protect the integrity of the material and not to withhold information in any way.'" *Fagel*, 2013 IL App (1st) 121841, ¶ 6. The locked spreadsheet, however, while still in Excel format, "did not allow [the requester] to utilize the data in a manner ordinarily allowed by the Excel program—such as selecting, sorting and filtering the data in the cells, or accessing hidden secondary information relating to the file." *Fagel*, 2013 IL App (1st) 121841, ¶ 4. The court found that the request for the record "in 'Excel format,' * * * necessarily encompassed the production of the information in a manner that would allow *Fagel* to fully exercise the functions of the Excel program with regard to the document." *Fagel*, 2013 IL App (1st) 121841, ¶ 31. Thus, the locked version provided by IDOT did not satisfy the request because it "resembled a 'picture' of an Excel spreadsheet, akin to a portable document format (PDF), rather than an actual Excel spreadsheet." *Fagel*, 2013 IL App (1st) 121841, ¶ 31. Although the court shared IDOT's concerns regarding the security of information with an unlocked spreadsheet, it concluded that "[a] fear of manipulation or misuse of the information is not an exemption under section 7 of FOIA upon which IDOT could justify withholding the unlocked version of the Excel spreadsheet." *Fagel*, 2013 IL App (1st) 121841, ¶ 35.

In its answer to this office's inquiry letter, the Authority contended that the facts in *Fagel* are distinguishable from this matter because IDOT maintained the requested spreadsheet in an unlocked state whereas the Authority "maintains in the ordinary course of business, the budget worksheets in a locked format."¹⁹ The Authority argued that "*Fagel* stands

¹⁹Letter from Timothy F. Horning, Meyer and Horning P.C., to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2024), at 2.

for the proposition that if a public body maintains documents in [a] certain format, it cannot change the format on the basis of concern for potential risk of manipulation or misuse of the information."²⁰ In contrast, the Authority argued that it complied with FOIA by providing Mr. Van Buer with a locked version of the spreadsheet because it maintains the spreadsheet in a locked format.²¹ The Authority further argued that it has provided the spreadsheets in a locked state "throughout this process,"²² whereas IDOT provided an unlocked spreadsheet to the Public Access Counselor during the Request for Review process that preceded the lawsuit in *Fagel*. *Fagel*, 2013 IL App (1st) 121841, ¶ 31.

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 56. Under the plain language of section 6(a) of FOIA, records maintained in an electronic format must be provided in the format specified by the requester unless doing so is not feasible. 5 ILCS 140/6(a) (West 2022). Providing records in the electronic format in which they are maintained, or in paper format if that is the requester's preference, only becomes an option "[i]f it is not feasible to furnish the public records in the specified electronic format[.]" 5 ILCS 140/6(a) (West 2022).

Although the parties in *Fagel* did not dispute that IDOT maintained an unlocked version of the contested spreadsheet,²³ the court did not hold or suggest that IDOT would have complied with FOIA by providing a locked version of the records if IDOT had maintained both locked and unlocked versions of the requested spreadsheet. Rather, the court unambiguously held that a public body must provide a record in the format specified by the requester if doing so is feasible and the records are not exempt from disclosure. *Fagel*, 2013 IL App (1st) 121841, ¶ 31. The court emphasized that "IDOT has not pled, nor does it argue on appeal, that it was not feasible to provide Fagel with an electronic copy of the unlocked version of the Excel spreadsheet. Indeed, the record shows that IDOT provided an unlocked copy of the Excel spreadsheet at issue to the [Public Access Counselor] during the inquiry process over this matter in 2011." *Fagel*, 2013 IL App (1st) 121841, ¶ 31.

In this matter, Mr. Van Buer specified that he sought the records in Excel format. As stated above, the Illinois Appellate Court clarified in *Fagel* that a request for records in Excel format "necessarily encompass[s] the production of the information in a manner that would

²⁰Letter from Timothy F. Horning, Meyer and Horning P.C., to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2024), at 3.

²¹Letter from Timothy F. Horning, Meyer and Horning P.C., to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2024), at 3.

²²Letter from Timothy F. Horning, Meyer and Horning P.C., to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2024), at 3.

²³*See Fagel*, 2013 IL App (1st) 121841, ¶ 31.

allow [a requester] to fully exercise the functions of the Excel program with regard to the document." *Fagel*, 2013 IL App (1st) 121841, ¶ 31. The Authority appears to have created the workbooks, and it did not assert that it is not *feasible* to provide Mr. Van Buer with an unlocked version of the workbooks in Excel format. The Authority's assertion that it complied with FOIA by providing Mr. Van Buer with a locked version of the spreadsheet is contrary to the plain language of the statute as well as *Fagel*. The *Fagel* court noted IDOT's provision of the unlocked spreadsheet to the Public Access Counselor merely to illustrate the feasibility of providing an unlocked version of the spreadsheet to the requester. *Fagel*, 2013 IL App (1st) 121841, ¶ 31.²⁴ When a request seeks nonexempt records in a specified electronic format, such as an Excel spreadsheet, section 6(a) of FOIA requires a public body to provide an unlocked version of the records that allows the requester to fully access and exercise the functions of the specified software program unless it is not feasible to provide the records in that manner.

Because the Authority did not dispute or demonstrate that it is not feasible to unlock the workbooks and provide unlocked copies to Mr. Van Buer, section 6(a) does not permit the Authority to provide exclusively locked versions of the records. Accordingly, the Authority's refusal to provide Mr. Van Buer with copies of the Excel workbooks in the electronic format he requested violated FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On September 30, 2024, Mr. Derek Van Buer submitted a FOIA request to the Authority seeking copies of the Excel workbooks for the Authority's fiscal year 2024 and 2025 budgets, including the workbook links for supporting files.
- 2) On October 15, 2024, the Authority provided Mr. Van Buer with copies of the requested Excel workbooks in a locked format.
- 3) On October 16, 2024, Mr. Van Buer e-mailed an AAG and copied the Authority's Executive Director to state that he believed the response was incomplete or improperly redacted because the Excel workbooks included hidden columns and were password protected.
- 4) On October 29, 2024, the Authority provided Mr. Van Buer with locked copies of the Excel workbooks with the hidden columns now viewable.
- 5) On that same date, Mr. Van Buer reiterated in an e-mail to an AAG that he was seeking unlocked copies of the Excel workbooks, as he could not access formula information within the documents because they were locked.

²⁴In this matter, the Public Access Bureau did not request locked or unlocked versions of the workbooks—the Authority voluntarily submitted locked versions with its response.

6) On October 30, 2024, the AAG stated in an e-mail to the Authority that Mr. Van Buer was seeking the unlocked workbooks and asked if the Authority was willing to provide Mr. Van Buer with unlocked copies.

7) On that same date, the Authority responded to the AAG by stating that it had fulfilled Mr. Van Buer's request.

8) In an e-mail on November 1, 2024, Mr. Van Buer submitted a Request for Review contesting the Authority's response. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2023 Supp.)).

9) On November 14, 2024, the Public Access Bureau sent a copy of the Request for Review to the Authority. The Public Access Bureau also sent the Authority a letter requesting a detailed factual and legal explanation for the Authority's assertion that the password protected Excel workbooks constitute a complete response to Mr. Van Buer's request.

10) On December 8, 2024, the Authority provided its response to this office.

11) On December 9, 2024, the Public Access Bureau forwarded to Mr. Van Buer a copy of the Authority's answer and notified him of his opportunity to reply. On December 16, 2024, he submitted a reply.

12) On December 30, 2024, this office properly extended the time within which to issue a binding opinion by 30 business days, to February 14, 2025, pursuant to section 9.5(f) of FOIA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

13) Section 6(a) of FOIA provides: "When a person requests a copy of a record maintained in an electronic format, 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."

14) Mr. Van Buer's request specified that it sought records in Excel format.

15) When nonexempt records are requested in an electronic format such as Excel, section 6(a) of FOIA requires a public body to provide an unlocked version of the records that allows the requester to fully access and exercise the functions of the software program unless it is not feasible to provide the records in that manner.

16) The Authority did not demonstrate that providing unlocked copies of the records was not feasible or that the unlocked copies were exempt from disclosure.

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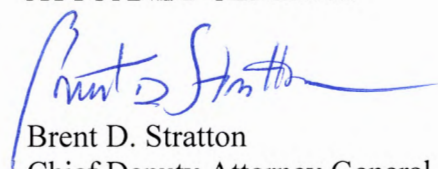
Therefore, it is the opinion of the Attorney General that the Housing Authority of the County of DeKalb improperly denied Mr. Van Buer's September 30, 2024, Freedom of Information Act request by refusing to provide him with copies of responsive records in the format he specified. Accordingly, the Authority is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Van Buer with unlocked copies of the Excel workbooks.

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 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Derek Van Buer as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

cc: Mr. David Siegel
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CERTIFICATE OF SERVICE

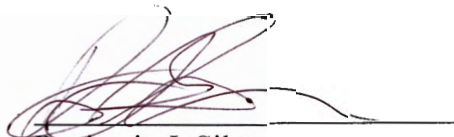
Benjamin J. Silver, Supervising Attorney, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 25-001) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on February 11, 2025.



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