



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 19, 2023

Via electronic mail

[REDACTED]

RE: FOIA Request for Review – 2023 PAC 79328

Dear [REDACTED]:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On December 11, 2023, you submitted a FOIA request to the Kendall County Technology Services Department (Department) seeking copies of "any electronic communications, including but not limited to, emails and texts between Circuit Court Clerk Matthew Prochaska and the law firm Harris & Harris, including its principals during the time frame of July 1-July 31, 2023."¹ Later that same day, the Kendall County Circuit Clerk's Office (Circuit Clerk's Office) responded, asserting that as a member of the judiciary, it was not subject to the requirements of FOIA. On December 12, 2023, you submitted this Request for Review contesting that response. In particular, you contend that your FOIA request was directed to the Department, which is not a member of the judiciary but rather is a public body subject to the requirements of FOIA. You also argue that disclosure of the requested information, which pertains to a signed contract between the Circuit Clerk's Office and a private entity, is of significant public interest because it concerns the use of public funds.²

FOIA governs requests for public records maintained by public bodies. *See* 5

¹FOIA request from [REDACTED] to "Web_Email_Technology@kendallcountyil.gov" (December 11, 2023).

²Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2022)) provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."

December 19, 2023

Page 2

ILCS 140/1 (West 2022). Section 2(c) of FOIA (5 ILCS 140/2(c) (West 2022)) defines "public records" as "all records * * * pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." Section 2(a) of FOIA (5 ILCS 140/2(a) (West 2022)) defines a "public body" as:

[A]ll legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act.

Based on that definition, the Illinois Appellate Court has determined that FOIA is not applicable to the judiciary or its agents. *Newman, Raiz & Shelmadine, LLC v. Brown*, 394 Ill. App. 3d 602 (2009) (the office of the Circuit Clerk being a part of the judicial branch is excluded from the definition of a "public body" as it is defined in section 2(a) of FOIA); *see also Copley Press, Inc. v. Administrative Office of the Courts*, 271 Ill. App. 3d 548 (2d Dist. 1995).

It is undisputed that you seek electronic correspondence sent to and received by the Circuit Clerk's Office. You contend that the records are subject to FOIA because the Department, as the County's apparent custodian of electronic information, is subject to FOIA and presumably possesses the requested records in the ordinary course of its business. When interpreting a statute, however, "[i]t is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results." *People v. Garcia*, 241 Ill. 2d 416, 421 (2011). To permit members of the public to obtain records of the judiciary that are not otherwise subject to FOIA merely because those records are hosted on e-mail servers managed by a shared information technology department would lead to an absurd result that is contrary to plain language of FOIA, which excludes the judiciary from its requirements. Accordingly, the Public Access Bureau has previously determined that e-mails in the possession of a county information technology department that were sent or received from members of the judiciary pertain to the transaction of the business of the judiciary, which is not a public body subject to the disclosure requirements of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 74783, issued October 18, 2021, at 3. Similarly, because the records you seek pertain to the transaction of the business of the Circuit Clerk's Office, which is an agent of the judiciary, those records are not subject to the requirements of FOIA despite presumably being maintained on the Department's e-mail servers.


December 19, 2023

Page 3

Likewise, the public interest in disclosure of the contract and the requirements of section 2.5 of FOIA³ are not relevant to this matter because the records are not "public records" as defined by FOIA in the first place. Accordingly, this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have future questions concerning the requirements of FOIA, please contact me at the Springfield address on the first page of this letter.

Very truly yours,


CHRISTOPHER R. BOGGS
Deputy Public Access Counselor
Public Access Bureau

79328 f not a pb

³"All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." 5 ILCS 140/2.5 (West 2022).