

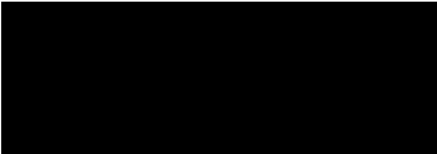


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 17, 2020

*Via electronic mail*



*Via electronic mail*

Ms. Laura Lechowicz Felicione  
Special Legal Counsel  
Freedom of Information Officer  
Office of the Cook County Board President  
69 West Washington Boulevard, Suite 1415  
Chicago, Illinois 60602  
laura.lechowicz@cookcountyil.gov

RE: FOIA Request for Review – 2016 PAC 43174

Dear [REDACTED] and Ms. Felicione:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)).<sup>1</sup> For the reasons that follow, the Public Access Bureau concludes that the Cook County Medical Examiner's Office (Medical Examiner's Office) did not improperly respond to [REDACTED] June 26, 2016, FOIA request.

On June 26, 2016, [REDACTED] submitted a FOIA request to the Medical Examiner's Office seeking to inspect the inquest files concerning the deaths of Mr. Thomas Kelly in 1912 and Mr. Andrew Kelly in 1914. In his FOIA request, [REDACTED] informed the Medical Examiner's Office that he intended to take photographs while inspecting the records. On July 12,

---

<sup>1</sup>In issuing this letter, we recognize that it is coming long after the FOIA dispute took place. Because it raises a legal question that may reoccur, however, this letter is intended to provide guidance to the requester and public body.

██████████  
Ms. Laura Lechowicz Felicione

July 17, 2020

Page 2

2016, the Medical Examiner's Office responded by stating that if ██████████ wished to receive copies of the records, the cost would be \$655.00 pursuant to section 4-7001 of the Counties Code (55 ILCS 5/4-7001 (West 2016)), which authorized a coroner's office to charge \$5.00 per page for transcripts of sworn testimony. The Medical Examiner's Office stated that if ██████████ wished to inspect the records, he should contact its office to schedule a time for inspection; however, he would not be permitted to photograph the records during the inspection. ██████████ contacted the Medical Examiner's Office seeking clarification of the basis for prohibiting photography during inspection. On July 19, 2016, the Medical Examiner's Office responded by stating that if ██████████ took photographs of the records, it would assess the \$5.00 per page fee authorized by section 4-7001 of the Counties Code because photographs are the same as copies. On July 26, 2016, ██████████ submitted a Request for Review to this office contesting the Medical Examiner's Office's refusal to allow him to photograph the records during inspection without charge.

On August 1, 2016, this office sent a copy of the Request for Review to the Medical Examiner's Office and asked it to respond to ██████████ allegations. On August 15, 2016, Legal Affairs for the Office of the Cook County Board President provided this office with a written answer on behalf of the Medical Examiner's Office. On August 17, 2016, this office sent a copy of the Medical Examiner's Office's answer to ██████████; he replied on July 25, 2017.

#### DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2016). FOIA requires that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 5 ILCS 140/3(a) (West 2016). "Copying" is defined in section 2(d) of FOIA (5 ILCS 140/2(d) (West 2016)) as "the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means now known or hereafter developed and available to the public body." Section 3(b) of FOIA (5 ILCS 140/3(b) (West 2016)) states: "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[.]"

Section 6(b) of FOIA (5 ILCS 140/6(b) (West 2016)) provides, in pertinent part:

**Except when a fee is otherwise fixed by statute, 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. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. (Emphasis added.)

Section 4-7001 of the Counties Code provides:

Coroner's fees. The fees of the coroner's office shall be as follows:

1. For a copy of a transcript of sworn testimony: \$5.00 per page.
2. For a copy of an autopsy report (if not included in transcript): \$50.00.
3. For a copy of the verdict of a coroner's jury: \$5.00.
4. For a copy of a toxicology report: \$25.00.
5. For a print of or an electronic file containing a picture obtained by the coroner: actual cost or \$3.00, whichever is greater.
6. For each copy of miscellaneous reports, including artist's drawings but not including police reports: actual cost or \$25.00, whichever is greater.
7. For a coroner's or medical examiner's permit to cremate a dead human body: \$50.00. The coroner may waive, at his or her discretion, the permit fee if the coroner determines that the person is indigent and unable to pay the permit fee or under other special circumstances.

All of which fees shall be certified by the court; in the case of inmates of any State charitable or penal institution, the fees shall be paid by the operating department or commission, out of the State Treasury. The coroner shall file his or her claim in probate for his or her fees and he or she shall render assistance to the State's attorney in the collection of such fees out of the estate of the

Ms. Laura Lechowicz Felicione

July 17, 2020

Page 4

deceased. In counties of less than 1,000,000 population, the State's attorney shall collect such fees out of the estate of the deceased.

\* \* \*

All fees under this Section collected by or on behalf of the coroner's office shall be paid over to the county treasurer and deposited into a special account in the county treasury. Moneys in the special account shall be used solely for the purchase of electronic and forensic identification equipment or other related supplies and the operating expenses of the coroner's office.

Although section 4-7001 states that all coroner's fees "shall be certified by the court" and collected "out of the estate of the deceased[.]" that statutory language pre-dates FOIA. *See, e.g.*, Laws 1919, p. 554, §1. The subsequent enactment of FOIA by the General Assembly, with its specific reference to fees fixed by statute in section 6(b), provides guidance on how to interpret the applicability of the fees for coroner's records in section 4-7001 of the Counties Code. *See Mitsuuchi v. City of Chicago*, 125 Ill. 2d 489, 497 (1988) ("Legislative enactments can certainly cast light on the legislative intent of earlier enacted statutes[.]"). The General Assembly has amended this section of the Counties Code several times to increase the document fees charged by coroners, most recently in 2010. The legislative history of the latest amendment indicates that the General Assembly intended to raise revenue for coroners' offices: "This is a fee increase that they haven't [had in] over 20 years and they're just trying to bring in more revenue like everybody else." Remarks of Rep. Phelps, April 27, 2010, House Debate on Senate Bill No. 2529 (which as Public Act 96-1161, effective July 21, 2010, amended the fee provision in question), at 26. By amending section 4-7001 to increase the fee for copies of coroners' records to fund the operations of the coroners' offices, it may be presumed that the General Assembly intended those fees to apply generally to all types of information requests. *See People v. McChriston*, 2014 IL 115310, ¶18, 4 N.E.3d 29, 34 (2014) (subsequent statutory amendments are sources for determining legislative intent); *see also* Remarks of Rep. Brady, April 27, 2010, House Debate on Senate Bill No. 2529, at 27-28 ("What this particular Bill does, specifically deals with only the type of information request[ed] from a coroner's office, probably through a complex investigation, and what I was very concerned with was that the funds would go directly to a line item within the coroner's budget for specific operations of that office[.]").

In light of its stated fiscal purpose, it would make little sense to construe the fee provision in section 4-7001 of the Counties Code as applying only when the records are produced in the course of a probate action and the fee is certified by the court. The purpose of this fee provision would be defeated if the same records could be obtained by the decedent's surviving family members or the public through a FOIA request upon payment of the 15 cents

██████████  
Ms. Laura Lechowicz Felicione

July 17, 2020

Page 5


per page fee contemplated by section 6(b) of FOIA. *See Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 106 (2000) (holding that a statute should not be construed in a way that would defeat its purpose or yield an absurd or unjust result). Consequently, this office concludes that the fee provision in section 4-7001 of the Counties Code applies to copies of records provided in response to FOIA requests submitted to a coroner or medical examiner's office.

Turning to the issue of photographing the inquest records, in a case decided prior to the enactment of FOIA that was cited by Mr. Costin in his Request for Review, the Illinois Appellate Court held that the common law right to inspect records included the right to photograph records. *People ex. rel. Gibson v. Peller*, 34 Ill. App. 2d 372 (1962). In *Peller*, the parents of students enrolled in a school district sought to inspect the district's financial records. At the time of inspection, the parents brought a professional photographer to photograph the records. The district refused to allow the records to be photographed. The district asserted that the parents "have the right to look, examine and inspect with the naked eye the public records and copy by hand these public records, but they have no right to photograph the records." *Peller*, 34 Ill. App. 2d at 375. The court disagreed stating:

Modern photography is accurate, harmless, noiseless, and time saving. It does nothing more than capture that which is seen with the naked eye. Neither defendants nor the public can be harmed by the reproduction of the records exactly as they exist. The fact that more modern methods of copying are devised should not lessen the basic right given under the common law. *Peller*, 34 Ill. App. 2d at 375.

In its response to this office, the Medical Examiner's Office did not contest ██████████ right to make photographs during his inspection of the inquest files; rather, it asserted only that he would be assessed the fee authorized by the Counties Code for any photographs taken of those records. The Medical Examiner's Office stated that there were 38 pages of sworn testimony in the coroner's inquest for the death of Thomas F. Kelly and 93 pages of sworn testimony for the death of Andrew A. Kelly. The Medical Examiner's Office asserted that the \$5.00 fee per page of sworn testimony in section 4-7001 of the Counties Code would apply to any photographs taken by ██████████ during his inspection of the records.

In this matter, ██████████ seeks to photograph inquest files for which the Counties Codes establishes a fixed fee. A public body may not charge a fee to inspect records; however, ██████████ is not merely seeking to inspect the records but to reproduce them. The court in *Peller* recognized that the right to photograph accompanied the right to inspect under common law. The General Assembly has since enacted FOIA, which provides the right to inspection or copying of public records and includes the reproducing of records by photograph within the

  
Ms. Laura Lechowicz Felicione

July 17, 2020

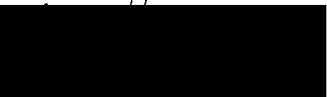
Page 6

definition of "copying" in section 2(d) of FOIA. In addition, the General Assembly did not state that the statutory fees for copies of public records shall not apply to photographs of those records unless expressly provided, as it did in section 6(a) of FOIA (5 ILCS 140/6(a) (West 2016)) for records furnished in electronic format.

Section 4-7001 of the Counties Code does not distinguish between the format of the copy or whether the copy is made by the requester or the Medical Examiner's Office when assessing the \$5.00 per page fee for copies. Further, unlike fees such as those in section 6(b) of FOIA that are intended to allow a public body to recover its actual cost of reproducing the record, the express purpose of the fees in section 4-7001 of the Counties Code is to provide a funding mechanism for a coroner's office to obtain identification equipment and to cover its operating expenses related to death investigations. Construing the fee provision in the Counties Code to allow a requester to generate his or her own copies by photographing coroner's records without charge would defeat the purpose of this provision. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d at 106. Accordingly, under section 6(b) of FOIA, the Medical Examiner's Office did not improperly respond to Mr. Costin's FOIA request by stating that it would assess a \$5.00 per page fee for any photographs taken of the inquest files.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (217) 782-9054, [mhartman@atg.state.il.us](mailto:mhartman@atg.state.il.us), or the Springfield address on the first page if you have questions. This letter serves to close this file.

Very truly yours,

  
MATT HARTMAN  
Assistant Attorney General  
Public Access Bureau

43174 f 6a fee proper co