OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 16, 2019

Via electronic mail
[redacted]

RE: FOIA Request for Review – 2019 PAC 59194

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 2018)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in this matter.

On June 10, 2019, you submitted a FOIA request to the Village of Cambridge (Village) seeking portable document format (PDF) copies of certain records that you acknowledged existed solely in paper format; you stated that this request was a repeat of one of your previous requests to the Village. On June 20, 2019, the Village responded that your request was an unduly burdensome repeated request under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2018)), but that, in any event, it was not required to provide electronic copies of records that it did not maintain electronically. On August 5, 2019, this office received your Request for Review arguing that because the Village possesses a scanner, it is required to scan in records maintained solely in paper format and provide you with electronic copies, free of charge. You contend that this office's previous determination that a public body is not required to provide electronic copies of records that it maintains only in paper format in incorrect,[1] arguing that the determination did not account for the definition of "copying" in section 2(d) of FOIA (5 ILCS 140/2(d) (West 2018)).

Section 3(g) of FOIA provides, in relevant part, "[r]epeated requests from the same person for the same records that are unchanged or identical to records previously provided or *properly denied* under this Act shall be deemed unduly burdensome under this provision." (Emphasis added.) You argue that the Village did not properly assert section 3(g) in its denial. However, as your Request for Review acknowledges, whether or not the denial was proper under section 3(g), the underlying issue is the same: whether FOIA requires a public body to provide a

[1]Ill. Att'y Gen. PAC Req. Rev. Ltr. 46913, issued May 2, 2017, at 3.

requester with electronic copies of records that it maintains in paper format. Therefore, we need not address the section 3(g) issues here.

Under FOIA, "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018). Statutes must be construed "as a whole, so that no part is rendered meaningless or superfluous." *People v. Jones*, 223 Ill. 2d 569, 581 (2006).

Section 2(d) of FOIA defines "copying" 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." Additionally, sections 6(a) and 6(a-5) of FOIA (5 ILCS 140/6(a), (a-5) (West 2018)) provide, in pertinent part:

> (a) 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. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. * * *
>
> (a-5) If a voluminous request is for electronic records and those records are not in a portable document format (PDF), the public body may charge up to $20 for not more than 2 megabytes of data, up to $40 for more than 2 but not more than 4 megabytes of data, and up to $100 for more than 4 megabytes of data. If a voluminous request is for electronic records and those records are in a portable document format, the public body may charge up to $20 for not more than 80 megabytes of data, up to $40 for more than 80 megabytes but not more than 160 megabytes of data, and up to $100 for more than 160 megabytes of data. If the responsive electronic records are in both a portable document format and not in a portable document format, the public body may separate the fees and charge the requester under both fee scales.

Further, section 6(b) of FOIA (5 ILCS 140/6(b) (West 2018)) sets forth fees for paper copies based on page count, unlike section 6(a), which authorizes a public body to charge at most the cost of the recording medium used to transmit electronic copies of electronic records.

Construing FOIA as a whole, the statute does not require a public body to provide electronic copies of paper records. Section 6(a) of FOIA specifically addresses providing electronic copies of records "maintained in an electronic format." The absence of similar language stating that a public body shall provide electronic copies of records maintained in a paper format indicates that the General Assembly intended no such requirement. Further, section 6(a) provides that a public body is only required to provide copies of records maintained electronically in a specified electronic format if it is "feasible" to do so. If the definition of "copying" in section 2(d) imposed a blanket obligation on public bodies to reproduce all records by any means "available" to a public body, as you appear to assert, then the provisions in section 6(a) limiting the extent of the obligation to provide electronic records in a specified electronic format to when it is "feasible" would be superfluous.

Similarly, section 6(a-5) of FOIA provides fees only for electronic copies of electronic records, in cases of voluminous requests. The notion that a public body would be required to scan in paper records responsive to a voluminous request would have an absurd result: a public body would be able to charge up to $100 for electronic copies of electronic records, but no more than the cost of a recording medium for electronic copies of paper records, despite the high probability that the effort and resources involved in making electronic copies of paper records would exceed the effort and resources involved in providing electronic copies of electronic records. Such an absurd result must be rejected. *See, for example, People v. Garcia*, 241 Ill. 2d 416, 421 (2011) ("It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results.").

Construing FOIA as requiring public bodies to provide only paper copies of paper records does not conflict with section 2(d) of FOIA. To the contrary, this interpretation is harmonious with section 2(d) and the other provisions of FOIA in that section 2(d) merely accounts for various methods of reproduction depending on the circumstances. In other words, because the method of reproduction applicable to one type of record may not work for a different type of record, the definition must be expansive enough to account for those differences. The discussion of copying in *Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836, ¶73, 56 N.E.3d 1049, 1065 (2016) is irrelevant to the legal question here, as *Hites* did not address whether a public body is required to make and provide electronic copies of records that it maintains only in paper format.. Rather, the court discussed the unrelated notion that electronic sorting of a database could be considered a form of copying.

For all of these reasons, this office concludes that no further action is warranted in this matter. This letter closes this file.

Very truly yours,

[redacted]

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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