



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 17, 2024

Via electronic mail

[REDACTED]

RE: FOIA Request for Review – 2024 PAC 83586

Dear [REDACTED]:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2023 Supp.)). For the reasons set forth below, the Public Access Bureau concludes that the above-referenced Request for Review is unfounded.

On October 10, 2024, you submitted a Freedom of Information Act (FOIA)¹ request to the Village of Lee (Village) seeking:

All timesheets, expense reports, and reimbursement requests, filed by or on behalf of Village of Lee employee Mike Woodbury, between July 1st, 2024, through October 9th, 2024, inclusive. The two most recently filed Illinois Economic Interest statements for Mike Woodbury.^[2]

On October 14, 2024, the Village responded by providing timesheets and stating that there were no expense reports or reimbursement requests. On October 15, 2024, you sent an e-mail to the Village of Lee Clerk inquiring whether the timesheets that were provided were the original files submitted by the employee. According to your Request for Review, the Village Clerk responded affirmatively. On October 22, 2024, you submitted a Request for Review contesting, among other things, the Village's response that there were no expense reports or

¹5 ILCS 140/1 *et seq.* (West 2022).

²Village of Lee Freedom of Information Act (FOIA) Request form submitted by [REDACTED] (October 10, 2024).

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reimbursement requests, and the lack of a response regarding Illinois Economic Interest Statements. You also questioned whether the timesheets that were provided were the original records submitted by the employee, and whether the Village Clerk had completed legally mandated FOIA training.

As a threshold matter, the Public Access Counselor's authority is limited to resolving disputes concerning the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2022)) and reviewing denials of FOIA requests. 15 ILCS 205/7 (West 2022). The Public Access Counselor does not have authority to review allegations concerning conflicts of interests, violations of criminal statutes, the filing of economic interest statements under the Illinois Governmental Ethics Act (5 ILCS 420/1-101 *et seq.* (West 2022)), or the retention and disposal of records, which is governed by the Local Records Act (50 ILCS 205/1 *et seq.* (West 2022)) rather than FOIA.

With respect to 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 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager*, 678 F.2d at 321. Although FOIA generally requires a public body to take reasonable measures to search for records, a public body is not required to conduct a search that would be futile. *See American-Arab Anti-Discrimination Committee v. United States Dep't of Homeland Security*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

On November 12, 2024, an Assistant Attorney General in the Public Access Bureau spoke with Ms. Dawn Woodbury, the Village of Lee Clerk, about her response to your FOIA request. Ms. Woodbury stated that as the Village Clerk, she is knowledgeable regarding the nature of the records you requested. She stated that there are no expense reports or reimbursement requests because the employee you identified in your request, who works in the public works department, uses a Village debit card for any expenses incurred on behalf of the Village. She explained that the Village Treasurer then compares the debit card receipts to the bank account. She also stated that only Village officials—and not Village employees—are required to file economic interest statements, and she confirmed that the employee named in your request had not done so. As noted above, whether another statute such as the Illinois Governmental Ethics Act requires a particular employee to file an economic interest statement is not subject to review by the Public Access Counselor.

You argued in your Request for Review that the response that there were no expense reports or reimbursement requests was inaccurate because, during a Village Board meeting, the Village Treasurer stated that receipts were being turned in. You implied that the Village should have interpreted your request for expense reports and reimbursement requests as encompassing a request for receipts. Your FOIA request, however, specifically sought expense reports and reimbursement requests, which are distinct from receipts for charges to a Village debit card. The Village was not required to interpret your request for those distinct records as a request for any and all records related to Village expenses. Public bodies are not required to

search beyond the four corners of a FOIA request, nor are they required to divine the requester's intent. *Manna v. U.S. Department of Justice*, 106 F. Supp. 3d 16, 19 (D.D.C. 2015). If you still wish to obtain copies of the receipts, you may wish to submit a new FOIA request specifically requesting those records.

Because the Village explained why it did not possess responsive economic interest statements, expense reports, and reimbursement requests, it appears that searching for those records would be futile. This office has not received any information to the contrary. The Village is not required to provide a notice of denial pursuant to section 9(a) of FOIA (5 ILCS 140/9(a) (West 2022)) when a request seeks records that the Village does not maintain. *See Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (1989) (public bodies not obligated to create records). Accordingly, the Public Access Bureau has no basis to conclude that the Village violated FOIA by failing to provide you with economic interest statements, expense reports, and reimbursement requests.

Regarding the authenticity of the timesheets, Ms. Woodbury explained in an e-mail to the Public Access Bureau that the employee had submitted his hours to the treasurer via e-mail, and that Ms. Woodbury had copied and pasted the information from those e-mails onto the documents that were provided to you. On December 3, 2024, Ms. Woodbury sent you a supplemental FOIA response providing you with copies of the original time-keeping e-mails submitted by the employee. That supplemental response resolves your complaint that the Village had not provided the original records.

Lastly, you questioned whether the Village Clerk has completed statutorily-required training for FOIA officers. Section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2023 Supp.)) authorizes the Public Access Bureau to review denials of FOIA requests; it does not authorize this office to review whether public bodies' FOIA officers have complied with training requirements. This office, however, is also charged with providing advice and education to public bodies and members of the public. 15 ILCS 205/7(a), (c) (West 2022). In that capacity, this office notes that section 3.5(b) of FOIA (5 ILCS 140/3.5(b) (West 2022)) provides:

All Freedom of Information officers shall, within 6 months after the effective date of this amendatory Act of the 96th General Assembly, successfully complete an electronic training curriculum to be developed by the Public Access Counselor and thereafter successfully complete an annual training program. Thereafter, whenever a new Freedom of Information officer is designated by a public body, that person shall successfully complete the electronic training curriculum within 30 days after assuming the position. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a Freedom of Information officer.

The Village should ensure that its designated FOIA officer complies with these training requirements. The 2025 version of the Public Access Counselor's annual training program will be available early in the year.

This file is closed. If you have questions, you may contact me at michael.knight@ilag.gov.

Very truly yours,

MICHAEL J. KNIGHT
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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Village Clerk
Village of Lee
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