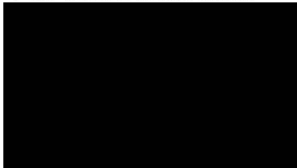


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 6, 2024

Via electronic mail



Via electronic mail

Ms. Amelia Finch
Technical Advisor III
Illinois State Police
Legal Office
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
ISP.FOIA.Officer@illinois.gov

RE: FOIA Request for Review – 2023 PAC 76612

Dear [REDACTED] and Ms. Finch:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons stated below, the Public Access Bureau concludes that the Illinois State Police (ISP) improperly required [REDACTED] to fill out a form to obtain squad camera and body worn camera footage and improperly assessed fees to provide the footage. This office further concludes that ISP did not improperly redact the audio recording provided to [REDACTED].

On April 7, 2023, [REDACTED] submitted a FOIA request to ISP seeking "Dashcam, bodycam, and interior of patrol vehicle video which depict me or my vehicle"

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pertaining to a traffic stop.¹ After extending the time to respond by five business days, on April 21, 2023, ISP provided a responsive audio record subject to redactions under sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA.² That same day, ISP informed ██████████ that it found video responsive to his request, but placed his request for the video recordings on hold because he is on a waitlist. ISP also informed ██████████ that once his request came up on its waitlist, it would send him a request form and require payment. On June 12, 2023, ISP informed ██████████ that it located video that may be responsive to his FOIA request, and that if he still wished to receive the video recordings, consisting of a disk containing the recording from the squad camera and another disk containing body worn camera footage, he was required to fill out a form and pay ISP \$100.00 for each disk pursuant to the fee schedule set forth in section 1298.40 of title 20 of the Administrative Code.³ ISP also informed ██████████ that the video recordings would not be reviewed or redacted until after payment is received. In his Request for Review, ██████████ contests the redactions of the audio recording and the denial of the video recording.

After an Assistant Attorney General (AAG) in the Public Access Bureau's efforts to mediate this matter were unsuccessful, on July 12, 2023, this office forwarded a copy of ██████████ Request for Review to ISP and asked it to provide for our confidential review unredacted copies of the audio recording and the withheld squad camera footage and body worn camera footage, along with a detailed written explanation of the factual and legal bases for redacting and withholding those records. This office also asked ISP to address the factual and legal basis for requiring ██████████ to fill out a standardized form to obtain the requested squad camera and body worn camera recordings, and for requiring ██████████ to pay ISP \$200.00 before providing the two video recordings. On July 21, 2023, ISP responded. ██████████ did not reply.

DETERMINATION

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2022). Under section 1.2 of FOIA,⁴ "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." FOIA requires that "[e]ach public body shall make available to any person for inspection or copying all public records,

¹E-mail from ██████████ to Illinois State Police, on Illinois State Police Freedom of Information Act Video Request Form (April 7, 2023).

²5 ILCS 140/7(1)(a), 1(b), 1(c) (West 2022).

³20 Ill. Adm. Code § 1298.40 (West 2022), last amended at 42 Ill. Reg. 19238, effective October 10, 2018.

⁴5 ILCS 140/1.2 (West 2022).

except as otherwise provided in Sections 7 and 8.5 of this Act."⁵ FOIA shall be "liberally construe[d] * * * in favor of ease of access to public records on the part of any interested citizen." *Sage Information Services. v. Humm*, 2012 IL App (5th) 110580, ¶ 19.

The Audio Recording

██████████ contested the redaction of the audio recording that ISP provided to him. In its response, ISP explained that it had redacted one license plate number from the recording pursuant to section 7(1)(b) of FOIA. Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA⁶ defines "private information" as "unique identifiers, including a person's * * * home address and personal license plates[.]" This office has listened to the audio recording and concludes that the redacted license plate number is exempt under FOIA. Accordingly, ISP did not violate FOIA by redacting the license plate number in the audio clip.

The Squad Camera and Body Worn Camera Footage

Section 3(d) of FOIA⁷ provides that "[e]ach public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section." Section 3(e) of FOIA⁸ provides that "[t]he time for response under this Section may be extended by the public body for not more than 5 business days from the original due date" for any of seven enumerated reasons. FOIA permits an extension for more than five business days only if the requester and the public body "agree in writing to" the extension. 5 ILCS 140/3(e) (West 2022). Section 3(f) of FOIA⁹ further provides:

When additional time is required [under section 3(e)], the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. **A public body that fails to**

⁵5 ILCS 140/3(a) (West 2022).

⁶5 ILCS 140/2(c-5) (West 2022).

⁷5 ILCS 140/3(d) (West 2022).

⁸5 ILCS 140/3(e) (West 2022).

⁹5 ILCS 140/3(f) (West 2022).

respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies.
(Emphasis added.)

After extending the time to respond to [REDACTED] FOIA request, on April 21, 2023, ISP sent correspondence to [REDACTED] informing him that it found responsive squad car and body camera video but placed his request for the video recordings on hold because he is on a waitlist. That correspondence neither complied with [REDACTED] request for the squad car or body camera video by providing him the responsive records, nor properly denied his request for those records. Instead, the correspondence amounted to an indefinite extension that is not authorized by any provision of FOIA.

ISP's response to this office emphasized that it "receives an average of 550 FOIA requests each month. ISP does not maintain the resources to compile, review, redact and subsequently produce every record responsive to every FOIA request in 10 business days. ISP sends requesters detailed communications to keep them apprised of the status of their request if it is not handled completely within the 10 days"¹⁰ The Public Access Bureau recognizes that responding to large numbers of FOIA requests, especially for records such as recordings that may be lengthy and require careful review for information that is subject to redaction under FOIA, may make substantial demands on a public body's resources. Nevertheless, section 1 of FOIA provides: "The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding." More importantly, section 3(f) of FOIA expressly precludes public bodies from assessing copies of fees for records if they fail to provide records within the time permitted for extensions under the Act. Because ISP extended the time to respond to [REDACTED] request by five business days but subsequently failed to comply with the request, properly deny the request, or obtain [REDACTED] written consent to a longer extension, this office concludes that FOIA does not permit ISP to charge [REDACTED] fees for copies of the video recordings.

Even if ISP did issue a timely substantive response to [REDACTED] request, FOIA precludes ISP from charging \$200.00 for the two video recordings. That charge derives from section 1298.40(c) of the Administrative Code,¹¹ which fixes a fee of \$100 for each video recording that is more than 160 megabytes. Section 6(a) of FOIA¹² provides:

¹⁰Letter from Amelia Finch, Technical Advisor III, Office of the Director, Illinois State Police, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau (July 21, 2023), at 3.

¹¹20 Ill. Adm. Code § 1298.40(c) (West 2022), last amended at 42 Ill. Reg. 19238, effective October 10, 2018.

¹²5 ILCS 140/6(a) (West 2022).

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. * * * Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format.** (Emphasis added.)

Section 6(b) of FOIA¹³ 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. * * * In calculating its actual cost for reproducing records or for the use of the equipment of the public body to reproduce records, a public body shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section.

Based upon these provisions, the Illinois Appellate Court held that "FOIA does not allow a fee in excess of the cost of the electronic medium for the reproduction of electronic records **unless another statute** expressly provides that the fees for producing paper records also apply to electronic copies." (Emphasis added.) *Sage Information Services*, 2012 IL App (5th) 110580, ¶ 18. In concluding that fees for an electronic copy of a real property assessment record was limited to cost of the recording medium under section 6(a) of FOIA rather than the substantially greater fees for paper records set forth in the Property Tax Code, the court explained:

¹³5 ILCS 140/6(b) (West 2022).

[W]e are guided by the expressed legislative intent and the public policy sought to be effected by the FOIA. Section 1 of the FOIA states that restraints on access to information are not to be permitted except as very limited exceptions and that the FOIA should be construed in accordance with this principle. 5 ILCS 140/1 (West 2010). **A substantial fee constitutes a restraint on access to information in contravention of the expressed legislative intent.** Section 1 also makes clear that providing public records to citizens is a primary duty of public bodies and that the FOIA should be construed to this end, fiscal obligations notwithstanding. 5 ILCS 140/1 (West 2010). It is our duty to liberally construe the FOIA in favor of ease of access to public records on the part of any interested citizen. We have done so here. (Emphasis added.)

See also Sage Information Services v. Suhr, 2014 IL App (2d) 130708, ¶ 20 (section 6(a) of FOIA is unambiguous and does not allow exceptions to the cost-only rule for electronic records unless fees fixed by another statute expressly state that they apply to other records).

ISP argues that it is allowed to charge fees for electronic video recordings based on section 2605-10(b) of the Illinois State Police Law,¹⁴ which provides that ISP "shall have the powers and duties set forth in the following Sections[.]" and section 2605-15 of the Illinois State Police Law,¹⁵ which allows ISP "[t]o promulgate rules and regulations necessary for the administration and enforcement of its powers and duties, wherever granted and imposed, pursuant to the Illinois Administrative Procedure Act." ISP maintains that these statutes authorize it to require individuals who submit a FOIA request to pay fees to obtain imaging products such as squad car and body camera videos, as set forth in sections 1298.10 through 1298.40 of title 20 of the Illinois Administrative Code.¹⁶ According to ISP, "[i]f the General Assembly did not intend to grant ISP the authority to charge fees for imaging products via FOIA, it would have been clear in the Illinois State Police Law where such authority is granted."¹⁷

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

¹⁴20 ILCS 2605/2605-10 (West 2022).

¹⁵20 ILCS 2605/2605-15 (West 2022).

¹⁶20 Ill. Adm. Code §§ 1298.10, 1298.20, 1298.30, 1298.40 (West 2022), last amended at 42 Ill. Reg. 19238, effective October 10, 2018.

¹⁷Letter from Amelia Finch, Technical Advisor III, Illinois State Police, Office of the Director, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau (July 21, 2023), at 3.

(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. Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16.

Section 6(a) and 6(b) of FOIA plainly state that the fee provisions of FOIA apply to requests for public records unless a different fee is fixed by another statute and the General Assembly expressly states that the fee applies to electronic records. If the General Assembly had intended to authorize State agencies to use administrative rules as well as statutes to establish fees that supersede FOIA, it would have specifically referred to administrative rules as it has in crafting provisions such as section 7(1)(a) of FOIA,¹⁸ which exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." To the extent that section 2605-15 of the Illinois State Police Law could be construed as conflicting with FOIA, it is a general grant of authority to promulgate rules and regulations that does not contain any reference to fees for public records. In contrast, section 6(b) of FOIA specifically relates to such fees and therefore takes precedence. *People v. Villarreal*, 152 Ill. 2d 368, 379 (1992) ("It is a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or another act, which both relate to the same subject, the specific provision controls and should be applied.").

Charging fees in excess of the cost of the recording medium for imaging products pursuant to administrative rules cannot be reconciled with the plain language of FOIA and constitutes a restraint on access to information that contradicts the intent of the Act. This office has consistently determined, and has previously notified ISP, that FOIA does not permit it to charge requesters fees based on a fee schedule in the Administrative Code. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 31244, issued February 21, 2018 (requesting ISP to reimburse a requester the fee paid for a DVD); Ill. Att'y Gen. PAC Req. Rev. Ltr. 39015, issued January 6, 2016 (determining that ISP improperly charged a requester for a copy of a CD beyond the cost for the recording medium); Ill. Att'y Gen. PAC Req. Rev. Ltr. 17989, issued February 5, 2014 (same). Likewise, in the present matter, this office concludes that ISP violated FOIA by improperly charging [REDACTED] \$200.00 for the two recordings based on fees fixed by its administrative rule.

In addition, section 3(c) of FOIA (5 ILCS 140/3(c) (West 2022)) provides, in part, that "[a] public body may not require that a request be submitted on a standard form[.]"

¹⁸ 5 ILCS 140/7(1)(a) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

[REDACTED]
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Accordingly, ISP also violated FOIA by requiring [REDACTED] to fill out a form to obtain squad car and body camera videos.

In accordance with the conclusions set out above, this office requests that ISP provide [REDACTED] with copies of the squad car and body camera videos responsive to his FOIA request, without charging fees or requiring a form to be filled out, subject only to permissible redactions under section 7 of FOIA if it has not done so already. If [REDACTED] has already paid ISP for the requested records, this office requests that ISP reimburse [REDACTED] for all amounts paid for the recordings. This office also requests that in the future ISP refrain from assessing fees beyond the cost of the recording medium for video recordings requested under FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at 312-814-5201 or at edie.steinberg@ilag.gov.

Very truly yours,

[REDACTED]

EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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