



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 25, 2024

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

Mr. Scott Zak
FOIA Officer
City of DeKalb
164 East Lincoln Highway
DeKalb, Illinois 60115
scott.zak@cityofdekalb.com

RE: FOIA Request for Review – 2022 PAC 72599; City FOIA No.: N000154

Dear [REDACTED] and Mr. Zak:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons explained below, the Public Access Bureau concludes that the fees charged by the City of DeKalb (City) in response to [REDACTED] June 7, 2022, FOIA request did not violate FOIA.

On that day, [REDACTED] submitted a FOIA request to the City seeking copies of "City of DeKalb FOIA N000093-041622 Information should include: the Original FOIA request from the Requestor and the response from the city along with all responsive documents. All documents are to be provided in their native format."² Based on the records [REDACTED] included with his Request for Review, the City responded on July 6, 2022, assessing [REDACTED]

¹5 ILCS 140/9.5(f) (West 2022).

²E-mail from [REDACTED] to [Scott Zak] (June 7, 2022).

a fee of \$20.00 to obtain the records he was seeking pursuant to section 6 of FOIA.³ On July 12, 2022, [REDACTED] submitted this Request for Review contesting the fees.

On July 20, 2022, this office forwarded a copy of the Request for Review to the City and asked it to provide a detailed explanation of the legal and factual bases for the fees the City assessed in its response. On July 21, 2022, the City submitted a written response. On July 25, 2022, this office forwarded a copy of the City's response to [REDACTED]; he replied on August 2, 2022.⁴ On August 2, 2022, the City responded to [REDACTED] reply on its own accord.

DETERMINATION

In its answer to this office, the City stated that it responded on June 14, 2022,⁵ informing [REDACTED] that it was treating his request as a voluminous request pursuant to section 3.6 of FOIA.⁶ The City noted that the voluminous request designation was at issue in a previous Request for Review in which the Public Access Bureau determined that the City properly treated the underlying request as voluminous.⁷

Section 6 of FOIA⁸ provides the authority for a public body to charge fees for certain records. Section 6(a) of FOIA⁹ provides, in pertinent part:

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

³5 ILCS 140/6(b) (West 2022).

[REDACTED] reply argues that the underlying FOIA request was improperly treated as a voluminous request. However, that issue was resolved in a previous Request for Review (2022 PAC 72265) and is not at issue in this matter. The matter in this Request for Review is limited to the assessment of fees.

⁵Although section 9.5(a)(ii) (5 ILCS 140/9.5(a)(ii) (West 2022)) requires a requester to submit "any responses from the public body[.]" [REDACTED] did not provide this office with the City's June 14, 2022, response.

⁶5 ILCS 140/3.6 (West 2022).

⁷Ill. Att'y Gen. PAC Req. Rev. Ltr. 72265, issued July 13, 2022, at 4.

⁸5 ILCS 140/6 (West 2022).

⁹5 ILCS 140/6(a) (West 2022).

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.

Section 6(a-5) of FOIA¹⁰ further provides:

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.

(Emphasis added.)

[REDACTED] request specifically sought copies of records "in their native format."¹¹ The City confirmed that the responsive records are stored electronically in a portable document format and would require the compilation of not more than 80 megabytes of data. The plain language of section 6(a-5) of FOIA permits a public body to charge up to \$20.00 for records responsive to a voluminous request that consists of not more than 80 megabytes of data. Because this office has previously determined that [REDACTED] June 7, 2022, FOIA request was a voluminous request, and because section 6(a-5) expressly permits the charge assessed by the City, the City's fees did not violate FOIA.

¹⁰5 ILCS 140/6(a-5) (West 2022).

¹¹E-mail from [REDACTED] to [Scott Zak] (June 7, 2022).

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The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This matter is closed. If you have FOIA or OMA questions, you may contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

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SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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