



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 3, 2025

Via electronic mail



RE: FOIA Request for Review – 2024 PAC 84329

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 this Request for Review is unfounded.

On December 2, 2024, you submitted a FOIA request to the Marion County Assessor's Office (Assessor's Office) seeking a copy of a Marshall & Swift cost table. On December 9, 2024, Mr. Timothy J. Hudspeth, the Marion County States Attorney (State's Attorney), responded to your FOIA request on behalf of the Assessor's Office. In the response, the State's Attorney informed you that the Assessor's Office did not possess or maintain a hard copy of the Marshall & Swift cost table. The States Attorney also explained that "information contained in that table is accessed by making choices/selections in a software program which requires input from the user. The end result is the software program provides a valuation of a subject property."¹ On December 12, 2024, you submitted your Request for Review contesting the Assessor's Office's response because you are "seeking access to a copy of the Marshall & Swift cost table embedded in the DEVNET software used by the assessor's office," which is an integral tool in the assessment process and, therefore, should be accessible under FOIA.²

¹Letter from Timothy J. Hudspeth, Marion County States Attorney, to [REDACTED] (December 9, 2024).

²E-mail from [REDACTED] to Public Access [Counselor] (December 12, 2025).

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

The requirements of FOIA apply to "public records," which are existing records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2023 Supp.). However, section 7(1)(o) of FOIA³ exempts from disclosure:

Administrative or technical information associated with automated data processing operations, including but not limited to **software**, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section. (Emphasis added.)

In *Chapman v. Chicago Department of Finance*, 2023 IL 128300, the Illinois Supreme Court analyzed the scope of section 7(1)(o) and concluded that file layouts are *per se* exempt from disclosure because they are among the specific forms of administrative or technical information listed in the exemption. *Chapman*, 2023 IL 128300, ¶ 41. The listed items also include software.

On January 15, 2025, an AAG in the Public Access Bureau spoke to you by telephone regarding the type of record you were seeking. You stated that you were seeking a copy of the Marshall & Swift table that is embedded into the software that the Assessor's Office uses to calculate assessments. For background you explained that prior to computerization, the Assessor's Office would hand calculate an assessment using a hard copy of the Marshall & Swift cost table. On January 23, 2025, the AAG spoke to the State's Attorney who explained that the Marshall & Swift cost table is embedded in the DEVNET software the Assessor's Office uses to calculate assessments.⁴ He explained that asking for the embedded cost table is akin to seeking reference material. Subsequently, the State's Attorney informed this office that the DEVNET software in which the table is embedded is copyrighted.

The Marshall & Swift cost table you seek is embedded in the DEVNET software used by the Assessor's Office. Because embedded information is included as part of the software, it is exempt from disclosure under the plain language of section 7(1)(o) of FOIA.

³5 ILCS 140/7(1)(o) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024.

⁴DEVNET is a privately held company providing integrated software and hardware solutions to local governments, including integrated property tax systems, and includes various partnerships with vendors, including Marshall & Swift, whose systems are integrated into DEVNET's software to ensure seamless workflow for users. DEVNET, ABOUT, available at <https://www.devnetinc.com/about/> (last viewed February 28, 2025).

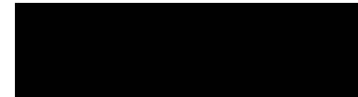
March 3, 2025

Page 3

In addition, section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Section 106 of the Copyright Act⁵ gives a copyright holder exclusive authority to reproduce the copyrighted work, whereas section 107 of the Copyright Act⁶ provides parameters for "the fair use of a copyrighted work[,]" which "is not an infringement of copyright." In *Garlick v. Naperville Township*, 2017 IL App (2d) 170025, the Illinois Appellate Court affirmed a trial court's ruling that Federal copyright law prohibited a township from providing a requester with a copy of copyright-protected software in which it maintained the contents of a property record database. Because the DEVNET software is protected by copyright laws, section 7(1)(a) of FOIA prohibits the Assessor's Office from providing a copy of the software, including the embedded information, to you.⁷

Based on the analysis above, this office has determined that your Request for Review is unfounded. Accordingly, this file is closed. If you have any questions, please contact me at 312-814-5201, edie.steinberg@ilag.gov, or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,



EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

84329 f unf co

cc: *Via electronic mail*
Mr. Timothy J. Hudspeth
Marion County States Attorney
100 East Main, Room 107
Salem, Illinois 62881
thudspeth@marionco.illinois.gov

⁵17 U.S.C. § 106 (2020).

⁶17 U.S.C. § 107 (2020).

⁷Because the requested records are exempt under sections 7(1)(a) and 7(1)(o) of FOIA, this office need not address the Assessor's Office contention that the Marshall & Swift cost table embedded in the software is reference material, and thus, not a public record.