



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

November 13, 2023

Via electronic mail
Mr. Jeffrey Pyle
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Boston, Massachusetts 02110
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Via electronic mail
Ms. Katherine C. Tower
Illinois Department of the Lottery
122 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
Katherine.Tower@illinois.gov

RE: FOIA Request for Review – 2023 PAC 75666; FOIA 22-144

Dear Mr. Pyle and Ms. Tower:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the searches performed by the Illinois Department of the Lottery (Lottery) to locate records responsive to Mr. Jeffrey Pyle's December 21, 2022, FOIA request were reasonable.

On that date, Mr. Pyle, on behalf of his law firm, submitted a FOIA request to the Lottery seeking:

1. All records relating to any Lottery prize paid to [a named individual], or in the name of [a named individual], during the year 2012.
2. Documents sufficient to show the process by which Lottery players submitted winning tickets in 2012.

Mr. Jeffrey Pyle
Ms. Katherine C. Tower
November 13, 2023
Page 2

3. Documents sufficient to identify any and all processes or procedures that were used by the Lottery and/ or any contractor of the Lottery in 2012 to verify the identity of a person claiming a prize of \$1 million or more.
4. Documents sufficient to identify any and all processes or procedures used to verify the payee's identity and address in the case of any prize paid to [a named individual] in 2012.^[1]

On December 31, 2022, the Lottery informed Mr. Pyle that it did not possess any records responsive to the first part of his request. The Lottery recommended that he contact a private entity, Northstar Lottery Group, to request those records. It also provided a narrative answer to parts 2-4 of Mr. Pyle's request. On February 27, 2023, this office received Mr. Pyle's Request for Review challenging the Lottery's response. Mr. Pyle alleged that because the records may be in the possession of Northstar, a Lottery contractor, the Lottery must obtain those records to properly respond to his request.

On March 14, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Lottery and asked it for a written response. This office requested that the Lottery address the applicability of section 7(2) of FOIA² to responsive records in the possession of Northstar, the Lottery's contractor in 2012. On March 16, 2023, the Lottery provided a written response. On March 17, 2023, this office forwarded the Lottery's response to Mr. Pyle; he did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2022).

Section 7(2) of FOIA provides:

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the

¹E-mail from Jeffrey J. Pyle, Prince Lobel Tye LLP, to FOIA Officer, Office of the General Counsel, Illinois Lottery (December 21, 2022).

²5 ILCS 140/7(2) (West 2022).

Mr. Jeffrey Pyle
Ms. Katherine C. Tower
November 13, 2023
Page 3

public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

Under this provision, public records in the possession of a contractor that directly relate to a governmental function that the contractor has contracted to perform for the public body are considered to be records of the public body. Further, a public body has a duty to request any responsive records related to the governmental function in the physical custody of the third party and to provide the requester with copies of them unless they fall within one or more of FOIA's exemptions. *See Ill. Att'y Gen. Pub. Acc. Op. No. 20-006*, issued July 27, 2020, at 7.

In its response to this office, the Lottery explained that Northstar was its private manager during the time period specified in the FOIA request, but its management agreement with Northstar ended in January 2017. In October 2017, Camelot became the Lottery's private manager. The Lottery confirmed that it and Camelot conducted searches of their records, but did not locate responsive documents. The Lottery explained that it retained no control over Northstar's records after the contract ended and "the Survival Clause contained in the Letter of Agreement between the Lottery and Northstar require[d] that the parties continue to be bound by the Private Management Agreement, including [section] 9.3.5 FOIA Required Disclosures" only until 2017.³ The Lottery explained that it has nevertheless attempted to contact Northstar in connection with the firm's FOIA request, but has not been able to reach Northstar by phone. The Lottery also e-mailed executives and a general account for International Game Technology (IGT), a Northstar affiliate, seeking the records specified by Mr. Pyle. The Lottery stated that IGT was not able to locate responsive records.

Based on this office's review, the Lottery has taken reasonable measures to obtain responsive records, if any, in its former contractor's possession. The Lottery acknowledges its obligations under section 7(2) of FOIA to obtain responsive records from its contractors, but its efforts to comply with section 7(2) have been hampered by the termination of its agreement with Northstar and the passage of time. The Lottery has taken reasonable steps to contact Northstar, and it does not appear to have any viable means to compel a response at this time. It also is unclear whether Northstar still retains the records Mr. Pyle is seeking from 2012. Because the Lottery demonstrated that it made a good faith effort to obtain any responsive records from Northstar and because it appears that any additional efforts would be futile, this office is unable to conclude that the Lottery's response to Mr. Pyle's request violated section 7(2) of FOIA.

³Letter from Katherine C. Tower, Illinois Department of the Lottery, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (March 16, 2023), at [1].

Mr. Jeffrey Pyle
Ms. Katherine C. Tower
November 13, 2023
Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 843-0564 or laura.harter@ilag.gov.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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