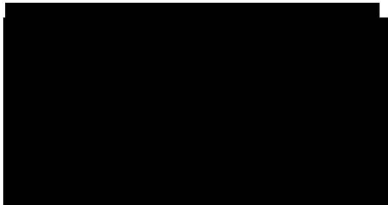


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 23, 2021

Via electronic mail



Via electronic mail

The Honorable Randy Funk
Algonquin Township Supervisor
Algonquin Township
3702 U.S. Highway 14
Crystal Lake, Illinois 60014
rfunk@algonquintownship.com

RE: FOIA Request for Review – 2018 PAC 55627

Dear [REDACTED] and Mr. Funk:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that Algonquin Township (Township) responded improperly to a portion of [REDACTED]'s October 20, 2018, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Township seeking, in relevant part, copies of audio and video recordings from the October 19, 2018, special meeting of the Township Board of Trustees (Board). On October 31, 2018, the Township informed [REDACTED] that he could download the meeting recording on its website, but that it did not possess audio or video recordings from after the closed session. On November 1, 2018, this office received [REDACTED] Request for Review claiming that the recording of the meeting is not available on the Township's website because the link on the website goes to YouTube. [REDACTED] also questioned whether the Township possesses a full recording of the meeting that was [REDACTED]

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made by the Township Supervisor, as he alleged that the Township Supervisor had previously made his own recordings of Board meetings in addition to the Township Clerk's recordings.

On November 13, 2018, this office sent a copy of the Request for Review to the Township and asked it to provide a detailed description of its search for responsive records, including the specific recordkeeping systems searched, how they were searched, and the specific individuals who were consulted. This office specifically asked the Township to respond to [REDACTED] allegation that the Township possesses a recording of the October 19, 2018, special meeting that was made by the Township Supervisor.

On November 19, 2018, the Township provided this office with its written response. On November 21, 2018, this office forwarded a copy of the Township's response to [REDACTED] he replied later that afternoon. In his reply, [REDACTED] argued that Township failed to address any "search for the recording typically made by the Supervisor[.]"¹

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 2020).

Section 8.5 of FOIA

Section 8.5(a) of FOIA (5 ILCS 140/8.5(a) (West 2020)) provides that "a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed." Section 8.5(b) of FOIA (5 ILCS 140/8.5(b) (West 2020)) further provides:

If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this Section, the requester may resubmit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection and copying as provided in Section 3 of this Act.

¹E-mail from [REDACTED] to [Jodi Carnes] (November 21, 2018).

In its response to this office, the Township described the process of how to access the recording of its October 19, 2018, special meeting from the Township's website: a link on the website led directly to a recording of the meeting on YouTube.² Although [REDACTED] argued that YouTube is not the Township's website, he did not claim that he was unable to reasonably access the recording from the link on the Township's website. It would be unreasonable to construe FOIA as requiring a public body to embed a video on its website in order to rely on section 8.5(a), rather than allowing a website link directly to a video hosting service such as YouTube. "It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results." *People v. Garcia*, 241 Ill. 2d 416, 421 (2011). Accordingly, this office concludes that the Township properly directed Mr. Allen to the link on its website pursuant to section 8.5(a) of FOIA.

Search for Records

The requirements of FOIA apply to 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 2020). A public body must conduct a reasonable search for records responsive to a FOIA request. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶31, ___ N.E.3d ___ (2020). "Although a public body is not required to perform an exhaustive search of every possible location, the body must construe FOIA requests liberally and search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n*, 2020 IL App (1st) 190038, ¶31, ___ N.E.3d ___ (2020) (quoting *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)). "At all times the burden is on the [public body] to establish the adequacy of its search." *Rugiero v. U.S. Dep't of Justice*, 257 F.3d 534, 547 (6th Cir. 2001). However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982).

In the Township's response to this office, the Township's attorney addressed only the video recording on the Township's website, explaining that "[t]he video ended after [the] Board went into closed session. The internet connection was lost and there was no video for the remainder of the meeting."³

Despite this office's unambiguous request for a written explanation of how the Township searched for responsive recordings, the Township provided this office with no

²Algtownship Clerk, *Algonquin Township Special Board Meeting 10/19/2018*, YouTube (Oct. 19, 2018), <https://www.youtube.com/watch?v=1JNskmFiPc0>.

³Letter from James P. Kelly, Matuszewich & Kelly, LLP, to Leo Draws, Assistant Attorney General, Public Access Bureau (November 19, 2018).

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information in that regard. In particular, the Township did not address whether it consulted with the Supervisor, despite this office's request that it respond to [REDACTED] allegation that the Supervisor may have made an additional recording of the special meeting based on his past practice. Because the Township did not provide this office with any explanation of how it searched for recordings responsive to [REDACTED] request, the Public Access Bureau is unable to conclude that the Township performed a reasonable search. This office asks the Township to conduct a search that includes any recordings made by the Supervisor and issue a supplemental response to [REDACTED] that fully complies with section 9 of FOIA (5 ILCS 140/9 (West 2020)). If no records are located, the Township should provide [REDACTED] with a detailed description of the measures that were taken to search for records.

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 file. Please contact me at c.lucentemccullough@ilag.gov or the Chicago address on the first page of this letter if you have any questions.

Very truly yours,

[REDACTED]
CHRISTINA M. LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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