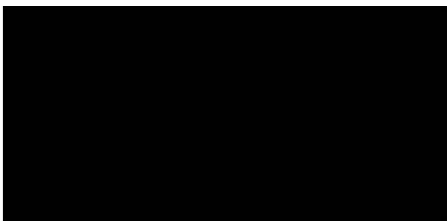




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 24, 2024



Via electronic mail
Ms. Laura Godette
Deputy Village Clerk
Village of Tinley Park
lgodette@tinleypark.org

RE: FOIA Request for Review – 2020 PAC 62182

Dear [REDACTED] and Ms. Godette:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons that follow, the Public Access Bureau concludes that the response by the Village of Tinley Park (Village) to [REDACTED] [REDACTED] February 21, 2020, request did not violate FOIA.

On February 21, 2020, [REDACTED] submitted a FOIA request to the Village seeking a copy of the video of the February 18, 2020 Village Board meeting. On February 28, 2020, the Village denied the video pursuant to section 8.5 of FOIA (5 ILCS 140/8.5 (West 2018)) and directed him to a recording of the meeting on the Village's YouTube page.

On March 4, 2020, [REDACTED] submitted a follow-up request to the Village, noting that he was unable to copy the video from the referenced web page and requested a copy of the recording. On March 12, 2020, the Village denied this request, stating that it was a

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repeated request for a record that was properly denied and thus unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2018), as amended by Public Act 101-081, effective July 12, 2019).

On March 13, 2020, Mr. [REDACTED] submitted the above-referenced Request for Review disputing the Village's denial of his request. He argued that the Village's "failure to provide a copy of the video denies [him] reasonable access to the document as required by FOIA[,] as it would require him to have an "internet capable device as well as access to the internet and the Village's web page at any time [he] and others need to access and review the meeting for various purposes."¹

On March 19, 2024, this office forwarded a copy of this Request for Review to Village, requesting an explanation of the legal and factual bases for section 8.5 and section 3(g). While this office never received a formal response, this office and the Village exchanged correspondence over the next two years. Within these communications involved questions regarding whether the issue had been incorporated into a lawsuit and as a result, would render this matter moot under section 11 of FOIA. 5 ILCS 140/11 (West 2018). This office withdraws its request that the Village address the merits of the Request for Review as we have determined it is unnecessary for the reasons explained below.

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 2018). Section 8.5(a) of FOIA (5 ILCS 140/8.5(a)) (West 2018)) 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." (Emphasis added.) Section 8.5(b) of FOIA (5 ILCS 140/8.5(b) (West 2018)) 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.

¹Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (March 13, 2020), at 2-3.

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 (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. A reviewing body "has a duty to avoid a construction of the statute that would defeat the statute's purpose[.]" *People v. Latona*, 184 Ill. 2d 260, 269 (1998).

The information provided to this office and a viewing of the Village's website demonstrates that the recording of the February 18, 2020, meeting can be accessed on the Village's YouTube channel through an internet link posted on the Village's website.^{2 3} The plain language of section 8.5 of FOIA relieves a public body of the obligation to provide copies of records if the requester can reasonably access the records on the public body's website.

[REDACTED] contends that the requested recording was not reasonably accessible because he was unable to download and save a copy of the recording and because he and others who may wish to review the recording do not have continuous and uninterrupted access to the internet. Construing section 8.5 in that manner would establish an impossible standard that would defeat its purpose and be contrary to its plain language. "Access" is defined as "to open or load (a computer file, an Internet site, etc.)[.]"⁴ "Copy" is defined as "[t]o make a * * * duplicate of[.]"⁵ If the General Assembly had intended to require public bodies to publish records on their websites in formats that may be copied and saved, it would have said so expressly. Instead, section 8.5 provides merely provides that a requester must be able to "reasonably access the record online[.]" [REDACTED] did not assert that he is unable to use a computer or access the Village's website, and the Village has no means or obligation to ensure

²Village of Tinley Park, Village Board Meetings and Agendas, https://tinleypark.org/government/minutes_and_agendas/village_board_minutes_and_agendas.php (last visited June 22, 2024).

³This office has previously determined that recording that may be accessed clicking on an internet link on a public body's website to recordings posted on another website such as Youtube are "published" on the public body's website for purposes of section 8.5(a) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 55627, issued December 13, 2021, at 3) ("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.").

⁴Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/access> (last visited June 22, 2024).

⁵Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/access> (last visited June 22, 2024).

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that he has continuous and uninterrupted access to the internet. Accordingly, this office concludes that the Village did not improperly deny [REDACTED] request for a copy of the recording.⁶

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, you may contact me at (312) 814-3180 or at Matthew.Rogina@ilag.gov

Very truly yours,

[REDACTED]
MATTHEW C. ROGINA
Senior Assistant Attorney General
Public Access Bureau

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⁶As a result, this office does not need to address section 3(g) nor the Village's assertion that this matter has is moot due to litigation.