



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 2, 2023

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

Mr. Doug Stewart
Attorney, Stewart Law Group
P.O. Box 4291
Fairview Heights, Illinois 62208
dstewart@stewartlawgroup.co

RE: FOIA Request for Review – 2022 PAC 73487

Dear [REDACTED] and Mr. Stewart:

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)).

On June 27, 2022, [REDACTED] submitted a FOIA request to the Village of Caseyville (Village) seeking copies of "[all] sent, received[,] and deleted emails for Superintendent, Brian Rader and Zoning Administrator, Phil Little for the time period of May 15, 2022, to June 15, 2022."¹ On July 5, 2022, the Village informed [REDACTED] that it classified her FOIA request as voluminous and extended its time to respond by ten business days. On August 4, 2022, [REDACTED] contacted the Village's counsel, Doug Stewart, regarding the status of the Village's response to her FOIA request. In particular, [REDACTED] stated that Mr. Stewart reported that the Village "will be forwarding [the requested e-mails] per our agreement at 150 e-mails per week for the next weeks, and that [she] would start receiving them this week."² On

¹FOIA request submitted by [REDACTED] to [Village of Caseyville] (June 27, 2022).

²E-mail from [REDACTED] to Doug [Stewart] (August 4, 2022).

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August 8, 2022, ██████████ again reached out to Mr. Stewart regarding the status of the Village's response.

On August 22, 2022, ██████████ submitted a preceding Request for Review, 2022 PAC 73132, alleging that the Village did not respond to her FOIA request. On August 26, 2022, this office sent a copy of the Request for Review to the Village and asked it to respond to ██████████ and provide a copy of its response to this office. On September 8, 2022, the Village provided ██████████ with records.³ Because that response resolved ██████████ complaint that the Village did not respond to her request, this office closed 2022 PAC 73132. That same day, ██████████ submitted a new Request for Review, 2022 PAC 73487, contesting the completeness of the Village's response. In particular, ██████████ alleged that the Village's response pertained to another FOIA request, and she never received any of the requested e-mails.

On September 25, 2022, an Assistant Attorney General (AAG) in the Public Access Bureau e-mailed Mr. Stewart a copy of the Request for Review and asked him to address this discrepancy. The AAG also asked Mr. Stewart to provide a copy of the Village's response to ██████████ June 27, 2022, FOIA request. Mr. Stewart did not reply to the AAG's e-mail.

Therefore, on October 17, 2022, this office sent a copy of the Request for Review to the Village and asked it to provide a formal written response addressing the allegations in the Request for Review. This office also asked the Village to include in its response a detailed description of the measures taken to search for the records ██████████ sought in her FOIA request. On October 27, 2022, Mr. Stewart informed this office and ██████████ that the responsive e-mails were ready to be picked up at Village Hall. Mr. Stewart stated, however, that the provided records "includes all emails (some with redactions) except those exempt from disclosure pursuant to the act."⁴ He further stated: "By providing the requested responsive documents, I believe this matter is resolved."⁵ In an e-mailed reply to Mr. Stewart, ██████████ asserted that the matter was not resolved because the Village indicated it had withheld some e-mails.⁶

On December 7, 2022, the AAG spoke with ██████████ to discuss if she ever received a copy of the responsive records. ██████████ explained that she did not retrieve these records from Village Hall because she believed her Request for Review would be closed if she

³The Village redacted some information pursuant to section 7(1)(m) of FOIA (5 ILCS 140/7(1)(m) (West 2020), as amended by Public Act 102-038, effective June 25, 2021).

⁴E-mail from Doug Stewart, Stewart Law Group, to ██████████ and Christina Lucente-McCullough] (October 28, 2023).

⁵E-mail from Doug Stewart, Stewart Law Group, to ██████████ and Christina Lucente-McCullough] (October 28, 2023).

⁶E-mail from ██████████ to Doug Stewart (October 28, 2022).

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did so when she still challenged the withholding of any e-mails. On that same date, the AAG asked Mr. Stewart to provide this office with redacted and unredacted copies of the responsive records, as well as the Village's written response to this office's October 17, 2022, letter.

On January 3, 2023, the AAG again e-mailed Mr. Stewart for an update on the Village's formal response. On January 4, 2023, Mr. Stewart informed the AAG that she should receive the Village's response by January 6, 2023. Having received no response by that date, the AAG left voicemails for Mr. Stewart on January 9, 2023, and January 18, 2023, once more inquiring about the Village's response; he did not call back. This office also sent another letter to the Village on January 31, 2023, seeking the same information.

To date, this office has received from the Village neither the requested records nor any other communication about this matter.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Further, the procedures for a public body to respond to the Public Access Counselor in connection with a Request for Review of the denial of a FOIA request are clear. Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2020)) unambiguously provides that "[w]ithin 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor."

It is undisputed that the Village did not cooperate with the Public Access Bureau as expressly required by section 9.5(c) of FOIA. The Village has provided this office with neither copies of the responsive records nor a written explanation supporting its partial denial of ██████████ request. Indeed, the Village failed to identify in its October 27, 2022, e-mail to ██████████ the specific exemptions that applied to the redacted or withheld e-mails and explain the factual bases for the applicability of those exemptions, as required by section 9(b) of FOIA (5 ILCS 140/9(b) (West 2020)) ("When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority."). Without any of the records to review or an explanation for the partial denial, this office concludes that the Village did not

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meet its burden of demonstrating by clear and convincing evidence that any of the responsive e-mails are exempt from disclosure pursuant to an exemption under section 7 of FOIA.⁷ Accordingly, this office requests that the Village provide [REDACTED] with copies of all the e-mails responsive to her June 27, 2022, request.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at c.lucentemccullough@ilag.gov or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,

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

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cc: *Via electronic mail*
The Honorable Cynthia Miller
Village Clerk
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232
cmiller@caseyville.org

⁷5 ILCS 140/7 (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021; 102-694, effective January 1, 2022; 102-791, effective May 13, 2022.