



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan

ATTORNEY GENERAL

April 12, 2018

Via electronic mail

Via electronic mail

Mr. Samuel Borders
Operations Manager/FOIA Officer
Madison County Treasurer's Office
157 North Main Street, Suite 125
Edwardsville, Illinois 62025-1963
ssborders@co.madison.il.us

Via electronic mail

Mr. Philip J. Lading
Assistant State's Attorney, Madison County
Sandberg, Phoenix & Von Gontard, P.C.
101 West Vandalia Street, 3rd Floor
Edwardsville, Illinois 62025
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RE: FOIA Request for Review – 2014 PAC 32068

Dear [REDACTED], Mr. Borders, and Mr. Lading:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the response by the Madison County Treasurer's Office (Treasurer's Office) to [REDACTED] FOIA request did not violate FOIA.

On October 22, 2014, [REDACTED] submitted a FOIA request to the Treasurer's Office seeking:

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[T]he number of page views and the length of time any computer located in the Madison County Treasurer's office (this does not have to be county computer) spent on the following websites between June 1, 2014 and Oct. 2, 2014.

- 1) <http://www.suarezchemetco.com/> (any page beginning with this URL)
- 2) <https://www.godaddy.com/> (any page beginning with this URL)

If the information is available (entry time/exit time?), I don't need a sum of time spent on the various sites, an ugly download, in a CSV or text file or etc., of relevant information will work for me. I can do the math.¹

On October 29, 2014, the Treasurer's Office denied [REDACTED] request, asserting that the request was not for a public record pertaining to the transaction of public business. In his Request for Review, [REDACTED] contested the denial.

On November 5, 2014, this office forwarded a copy of [REDACTED] Request for Review to the Treasurer's Office and asked it to provide a detailed explanation of its denial. On November 25, 2014, Mr. Philip J. Lading, Assistant State's Attorney for Madison County, responded on behalf of the Treasurer's Office. On December 29, 2014, this office forwarded a copy of the response by the Treasurer's Office's to [REDACTED]. On January 6, 2015, [REDACTED] replied.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014). The requirements of FOIA apply to "public records," which means:

records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials ***pertaining to the transaction of public business, regardless of***

¹E-mail from [REDACTED] to Timothy Renick, Samuel S. Borders, Cynthia M. Ellis (October 22, 2014).

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physical form or characteristics, 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 2014).

However, "[a] request to inspect or copy must reasonably identify a public record and not general data, information, or statistics." *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427, ¶33, 8 N.E.3d 11, 19 (2014). "FOIA was not designed to compel the compilation of data not ordinarily kept by the public body." *Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836, ¶75, 56 N.E.3d 1049, 1065 (2016). Further, FOIA does not require a public body to answer questions or generate new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).

████████ FOIA request asked the Treasurer's Office for the number of page views and the length of time any computer located in the Treasurer's Office spent on two websites. In his FOIA request, ██████ stated he would accept a download of the information, and did not need a sum of the time spent on the sites. In its response to this office, the Treasurer's Office contends that ██████ did not request public records within the meaning of FOIA, but rather requested "web searches or time spent on certain websites."² The Treasurer's Office also asserts that ██████ request requires the Treasurer's Office to "affirmatively create documents" but that FOIA does not obligate it to "create any document which does not already exist."³ ██████ asserts that "[t]he fact that the computers, servers and all other equipment used to facilitate the connection to the internet are public property make the recorded electronic data public record."⁴

In *Martinez v. Cook County State's Attorney's Office*, 2018 IL App (1st) 163153, __ N.E.3d __ (2018), the plaintiff sought records related to "each instance in which information obtained using a cell site simulator * * * was used in a criminal prosecution[.]" The court held that such a request did not reasonably describe records under FOIA, but instead "generally describes 'instances,' in which information was 'used,' as scattered throughout records." *Martinez*, 2018 IL App (1st) 163153, ¶25, __ N.E.3d at __. The court added: "FOIA does not

²Letter from Phillip J. Lading, Assistant State's Attorney, Madison County, Illinois to Timothy O'Brien, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 25, 2014).

³Letter from Phillip J. Lading, Assistant State's Attorney, Madison County, Illinois to Timothy O'Brien, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 25, 2014).

⁴E-mail from ██████ to [Timothy] O'Brien, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (January 6, 2015).

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compel the compilation of data defendant does not ordinarily keep." *Martinez*, 2018 IL App (1st) 163153, ¶25, ___ N.E.3d at ___.

Similarly, [REDACTED] FOIA request seeks general data concerning internet usage rather than an existing record maintained in the ordinary course of business. This is not an instance in which a requester seeks raw data that a public body previously compiled and may access by searching a database; such requests are for records subject to disclosure under FOIA. *See Hites*, 2016 IL App (2d) 150836, ¶¶ 75-80, 56 N.E.3d at 1065-66 (raw data that was previously compiled and available through computerized searches of a database are subject to disclosure, but a public body is not required to create a listing of a database search or the tallying of numbers). Instead, [REDACTED] request would require the Treasurer's Office to compile data from all computers in its offices regarding the use of certain websites. Because [REDACTED] request seeks data scattered in various computers rather than reasonably describing a record that the Treasurer's Office maintains in the ordinary course of business, this office concludes that the Treasurer's Office response to [REDACTED] request did not violate FOIA.

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 312-814-5201 or at the Chicago address listed on the first page of this letter.

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
EDIE STEINBERG
Assistant Attorney General
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