



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 20, 2017

PUBLIC ACCESS OPINION 17-014
(Request for Review 2017 PAC 49554)

FREEDOM OF INFORMATION ACT:
Purpose of Request Invalid Basis
On Which to Withhold Public Records

Ms. Diane Benjamin
Bloomington Normal News
27248 E 1100 North Rd
Ellsworth, Illinois 61737

Ms. Samantha Walley
Assistant State's Attorney, Civil Division
McLean County State's Attorney's Office
115 East Washington Street
Bloomington, Illinois 61701

Dear Ms. Benjamin and Ms. Walley:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that McLean County (County) violated the requirements of FOIA by improperly denying Ms. Diane Benjamin's FOIA request.

On September 6, 2017,¹ Ms. Benjamin, on behalf of Bloomington Normal News, submitted a FOIA request to the County seeking "[a]ll FOIA requests filed and the County responses for information from the County Clerk[']s office in the last 8 weeks. (from yesterday)."² Later that same day, Assistant State's Attorney Samantha Walley, responding on behalf of the County, denied the request in its entirety, stating that the request did "not meet the

¹Ms. Benjamin's Request for Review states she filed her FOIA request on September 9, 2017, and that it was denied hours later. However, the County's response is dated September 6, 2017, and Ms. Benjamin's Request for Review was sent via e-mail to the Public Access Bureau on September 7, 2017. Accordingly, it appears that Ms. Benjamin's reference to September 9 was a scrivener's error.

²E-mail to McLean County FOIA Requests from blnnews@yahoo.com (September 6, 2017).

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purpose and intent of [FOIA]."³ On September 7, 2017, Ms. Benjamin submitted a Request for Review to the Public Access Bureau, asserting that the denial was improper.⁴

On September 14, 2017, the Public Access Bureau forwarded a copy of the Request for Review to the County. The letter noted that the County denied the FOIA request in its entirety because it did not believe that the request met the purpose and intent of FOIA. The letter also explained that, pursuant to section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2016)), the County could provide an answer to the allegations set out in the Request for Review.⁵ On September 22, 2017, the Public Access Bureau received the County's answer to the allegation that its denial was improper.⁶ Citing section 1 of FOIA (5 ILCS 140/1 (2016)) and *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188 (2004), the County argued that the public policy underlying FOIA is to provide citizens with information concerning government, not to allow persons to obtain information about private individuals seeking access to government information.⁷ The County also asserted that "Ms. Benjamin is attempting to manipulate the Act in an effort to obtain information about her fellow citizens that her neighbors may not wish her to have."⁸

On September 27, 2017, the Public Access Bureau sent a copy of the County's answer to Ms. Benjamin and provided her with an opportunity to reply to the County's response.⁹ Ms. Benjamin did not reply. On November 3, 2017, this office extended the time within which

³E-mail to Diane Benjamin from Samantha Walley, Assistant State's Attorney – Civil Division, McLean County State's Attorney's Office (September 6, 2017).

⁴E-mail from Diane Benjamin, Bloomington Normal News, to Public Access [Bureau, Office of the Attorney General] (September 7, 2017).

⁵Letter from Sarah L. Pratt, Public Access Counselor, Office of the Attorney General, to Samantha Walley, Assistant State's Attorney, Civil Division, McLean County State's Attorney's Office (September 14, 2017).

⁶Letter from Samantha M. Walley, Assistant State's Attorney – Civil Division, McLean County State's Attorney's Office, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 20, 2017).

⁷Letter from Samantha M. Walley, Assistant State's Attorney – Civil Division, McLean County State's Attorney's Office, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 20, 2017), at 1-2.

⁸Letter from Samantha M. Walley, Assistant State's Attorney – Civil Division, McLean County State's Attorney's Office, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (September 20, 2017), at 2.

⁹Letter from Sarah L. Pratt, Public Access Counselor, Office of the Attorney General, to Diane Benjamin (September 27, 2017).

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to issue a binding opinion by 30 business days, to December 20, 2017, pursuant to section 9.5(f) of FOIA.¹⁰

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act."

As noted above, the County did not rely on a specific exemption in section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017) as a basis for its denial of the request. Instead, the County denied the request on the basis that the purpose of the request does not comport with the public policy behind FOIA.

The public policy behind FOIA is stated in section 1 of the statute, which provides, in part:

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle.

The language in section 1 of FOIA is broad and provides, as cited above, that "*all records* are presumed to be open to inspection and copying" and a public body must make public records available to "*any person*." (Emphasis added.) Further, section 3(c) of FOIA (5 ILCS 140/3(c) (West 2016)) expressly provides that "[a] public body may not * * * require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver." Neither a fee waiver nor a request for a commercial purpose are at issue here. Just as FOIA prohibits a public

¹⁰Letter from Sarah L. Pratt, Public Access Counselor, Office of the Attorney General, to Diane Benjamin and Samantha Walley, Assistant State's Attorney; Civil Division, McLean County State's Attorney's Office (November 3, 2017).

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body from requiring a requester to specify a reason for requesting records, except in the limited circumstances involving a fee request or a commercial request, the statute does not contain a provision allowing a public body to deny a FOIA request based on what it believes the underlying purpose of the request to be.

Under FOIA, all "public records" are presumed to be open. The records requested by Ms. Benjamin, FOIA requests filed with the County and the County's responses related thereto, fall within the definition of public records in section 2(c) of FOIA (5 ILCS 140/2(c) (West 2016)):

"Public records" means all 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 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.

Further, section 3.5(a)(4) of FOIA (5 ILCS 140/3.5(a)(4) (West 2016)) requires Freedom of Information officers to maintain records of FOIA requests. Specifically, section 3.5(a)(4) requires Freedom of Information officers to "create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications." The County has not asserted that the requested records are not "public records." Indeed, in compliance with the provisions of FOIA, the County's website provides a method for requesting records online and the link provides, under the heading "Submit a FOIA Request," that "[a]ny request for information is considered a public record and your request may be made public."¹¹ As public records, FOIA requests and the County's responses thereto are required to be made available to any person for inspection or copying, subject only to any statutory exemptions that might apply or to their availability online as specified in section 8.5 of FOIA (5 ILCS 140/8.5 (West 2016)).

The County cites *Chicago Alliance* to support its position that Ms. Benjamin's FOIA request falls outside the purpose of FOIA. In *Chicago Alliance*, the City of Chicago and the Chicago Police Department provided the plaintiff with copies of redacted FOIA requests and responses. *Chicago Alliance*, 348 Ill. App. 3d at 193. Among other issues, the Appellate Court addressed whether the City and the police department could properly redact the names and addresses of the FOIA requesters when disclosing the FOIA requests and responses.¹² *Chicago*

¹¹McLEAN COUNTY FOIA REQUESTS,
<http://webapp.mcleancountyil.gov/webapps/FOIA/FOIARequests.aspx>, (last visited November 20, 2017).

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Alliance, 348 Ill. App. 3d at 194. The court held that names and addresses could be redacted because disclosure "would constitute a clearly unwarranted invasion of personal privacy."¹³ *Chicago Alliance*, 348 Ill. App. 3d at 213. Based on the specific issue that the Court was addressing, the language from *Chicago Alliance* on which the County relies¹⁴ pertained to whether redactions of requesters' names and addresses was proper.

Under the reasoning of *Chicago Alliance*, the County could appropriately protect the privacy of individual requesters by redacting identifying information. *Chicago Alliance* does not provide support for the County's position that FOIA requests and responses are exempt from disclosure in their entirety.

Based on the foregoing, this office concludes that the County violated FOIA by improperly denying Ms. Benjamin's September 6, 2017, FOIA request in its entirety.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On September 6, 2017, Ms. Diane Benjamin, on behalf of Bloomington Normal News, submitted a FOIA request to McLean County seeking "[a]ll FOIA requests filed and the County responses for information from the County Clerk[']s office in the last 8 weeks. (from yesterday)."
- 2) The County denied Ms. Benjamin's FOIA request in its entirety on September 6, 2017, asserting that the request did not fit within the purpose and intent of FOIA.
- 3) On September 7, 2017, Ms. Benjamin submitted a Request for Review to the Public Access Bureau, asserting that the denial was improper. Ms. Benjamin's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)).

¹²5 ILCS 140/1 *et seq.* (West 2000).

¹³The specific exemption applied to "[i]nformation that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(b) (West 2000). The current version of that provision exempts "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017.

¹⁴"[T]he core purpose of the FOIA is to expose what the government is doing, not what its private citizens are up to." *Chicago Alliance*, 348 Ill. App. 3d at 212 (quoting *Lakin Law Firm, P.C., v. Federal Trade Commission*, 352 F.3d 1122, 1124 (7th Cir. 2003)).

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4) On September 14, 2017, the Public Access Bureau forwarded a copy of the Request for Review to the County and explained that, pursuant to section 9.5(d) of FOIA, the County could answer the allegations set out in the Request for Review.

5) On September 22, 2017, the Public Access Bureau received the County's answer. In its answer, the County argued that Ms. Benjamin's request was properly denied because the public policy underlying FOIA is to provide citizens with information concerning government, not to allow persons to obtain information about private individuals seeking access to government information.

6) On September 27, 2017, the Public Access Bureau sent a copy of the County's answer to Ms. Benjamin. Ms. Benjamin did not reply.

7) On November 3, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to December 20, 2017, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Section 3(a) of FOIA provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act."

9) It is undisputed that the records sought by Ms. Benjamin in her September 6, 2017, FOIA request to the County are "public records."

10) The County did not assert a statutory exemption as the basis for denying the FOIA request.

11) The *Chicago Alliance* case, cited by the County, provides support for the County to redact information identifying the FOIA requesters, such as their names and addresses. *Chicago Alliance*, however, does not support the County's decision to withhold the FOIA requests and responses in their entireties.

Therefore, it is the opinion of the Attorney General that McLean County violated section 3(a) of FOIA by not providing copies of the requested public records. Accordingly, the County is directed to take immediate and appropriate action to comply with this opinion by furnishing Ms. Benjamin with all records responsive to her September 6, 2017, FOIA request, subject only to permissible redactions under section 7 of FOIA. If the County determines that any portion of the responsive records is exempt from disclosure under section 7, the County is

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directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).¹⁵

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Diane Benjamin as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

¹⁵Because the County did not comply with the statutory requirements for responding to Ms. Benjamin's FOIA request, section 3(d) of FOIA precludes the County from treating the request as unduly burdensome or imposing copying fees for responsive records.

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 17-014) upon:

Ms. Diane Benjamin
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27248 East 1100 North Road
Ellsworth, Illinois 61737
blnnews@yahoo.com

Ms. Samantha Walley
Assistant State's Attorney, Civil Division
McLean County State's Attorney's Office
115 East Washington Street, Room 401
Bloomington, Illinois 61702
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 20, 2017.


SARAH L. PRATT
Public Access Counselor

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