



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 15, 2020

*Via electronic mail*  
Ms. Diane Benjamin  
Bloomington Normal News  
blnnews@yahoo.com

*Via electronic mail*  
The Honorable Angela Huonker  
Town Clerk  
Town of Normal  
11 Uptown Circle  
Normal, Illinois 61761  
ahuonker@normal.org

RE: FOIA Request for Review – 2020 PAC 62248

Dear Ms. Benjamin and Ms. Huonker:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons stated below, the Public Access Bureau concludes that the response by the Town of Normal (Town) to Ms. Diane Benjamin's March 2, 2020, FOIA request did not violate FOIA.

On that date, Ms. Benjamin, on behalf of BlnNews.com, submitted a FOIA request to the Town seeking copies of any communications regarding a retirement gift given to a former trustee. On March 6, 2020, the Town responded, stating that it possessed no records that met her criteria. On March 19, 2020, Ms. Benjamin submitted the above-captioned Request for Review contesting that response. She stated that the Town's March 2, 2020, list of bills included a retirement expense of \$448.99 from the bicycle shop owned by the mayor; she questioned how the Town could have decided to make such a gift without any internal communications.

On March 25, 2020, this office forwarded a copy of the Request for Review to the Town and asked it to respond to Ms. Benjamin's allegation by providing a detailed description of

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its search for responsive records, including personnel contacted and recordkeeping systems searched. On April 3, 2020, this office received the Town's response. On April 7, 2020, this office forwarded a copy of the Town's response to Ms. Benjamin. On April 8, 2020, this office received Ms. Benjamin's reply.

### DETERMINATION

FOIA provides that "[a]ll 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 2018). When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998); *see also Steinberg v. U.S. Department of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) ("The question [whether a public body's search was sufficient] is not whether other responsive records may exist, but whether the search itself was adequate."). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). 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); *see also SafeCard Services, Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1999) ("Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them.").

In its response to this office, the Town explained that its Information Technology (IT) Department conducted a search for e-mails containing the trustee's name, the name of the bike shop, or the key words "retirement" or "gift" from October 15, 2018, to March 4, 2020.<sup>1</sup> The Town stated that this search did not produce any relevant e-mail communications. The Town also explained that the request was sent to the mayor, city manager, corporation counsel, and other relevant staff and officials to search their records for any e-mails or non-email correspondence that may have been responsive to Ms. Benjamin's request. The Town stated that this did not yield any relevant correspondence, either.

In her reply to the Town's response, Ms. Benjamin asserted that the Town's purchasing policy states that all purchases must be approved by a department head or the city manager; she alleged that the lack of documentation means the mayor violated the purchasing policy.

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<sup>1</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Jane Sternecky, Assistant Attorney General, Public Access Bureau (April 3, 2020).

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As a threshold matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2018)). See 15 ILCS 205/7 (West 2018). Therefore, this office does not have jurisdiction to review whether a Town official complied with the Town's purchasing policies.

In this instance, the Town confirmed that it used two methods to attempt to locate any correspondence regarding the gift: an IT Department search of e-mails and consultation with the relevant employees and officials who searched their own records. The search terms formulated for the IT Department search were reasonably calculated to locate the records Ms. Benjamin requested, and the available information indicates that the employees and officials whom the Town consulted would have had knowledge of any responsive records. Ms. Benjamin's claim that the Town should possess correspondence is speculative, and she did not contest or otherwise address the Town's description of its search in her reply. This office has not received information suggesting that there were additional ways for the Town to search that would have been reasonably likely to locate responsive records. Because the Town appears to have performed a reasonable search, this office concludes that the Town's response to Ms. Benjamin's March 3, 2020, 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. If you have any questions, you may contact me by mail at the Chicago address listed on the first page of this letter, by phone at (312) 814-4461, or by e-mail at [jsternecky@atg.state.il.us](mailto:jsternecky@atg.state.il.us). This letter serves to close this file.

Very truly yours,



JANE STERNECKY  
Assistant Attorney General  
Public Access Bureau

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