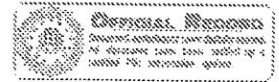


UNCLASSIFIED



FEDERAL BUREAU OF INVESTIGATION

Electronic Communication

Title: (U) Open Preliminary Investigation

Date: 01/19/2018

From: SPRINGFIELD

[Redacted]

Contact:

[Redacted]

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Approved By: SSRA

[Redacted]

SSA

[Redacted]

CDC

[Redacted]

ASAC

[Redacted]

SAC

[Redacted]

Drafted By:

[Redacted]

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Case ID #: 194B-SI-2477904

(U)

[Redacted]

TREASURER OF ATLANTA, ILLINOIS PUBLIC LIBRARY DISTRICT;
POTENTIAL CORRUPTION OF LOCAL OFFICIAL

[Redacted]

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Synopsis: (U) To open a preliminary investigation and notify the Public Corruption Unit (PCU) of the case opening.

Package Copy: (U) Letterhead memorandum for dissemination.

Enclosure(s): Enclosed are the following items:

1. (U) DL Photo of [Redacted]
2. (U) Letterhead memorandum
3. (U) Criminal history report for [Redacted]
4. (U) Statements of Economic Interests - [Redacted]
5. (U) October 2017 board meeting minutes
6. (U) Logan County State's Attorney case intake with warranty deed documents
7. (U) Chicago Title Insurance Company documents

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Details:

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Title: (U) Open Preliminary Investigation

Re: 194B-SI-2477904, 01/19/2018

Case Background:

On December 28, 2017, Special Agent (SA) [redacted] met with Logan County State's Attorney [redacted] at his office in Lincoln, Illinois. During the meeting, [redacted] requested FBI assistance to investigate the current treasurer of the Atlanta, Illinois Public Library District, [redacted]. [redacted] is also [redacted]. [redacted] provided the following background information regarding [redacted].

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While treasurer of the Atlanta Public Library District in April 2015, [redacted] applied for and obtained a \$25,000 Live & Learn Grant from the Illinois Secretary of State to make improvements to a property known as the "Union Hall Building" (114 SW Arch Street, Atlanta, IL), which is located across the street from the Atlanta Public Library. The purpose of the grant was to renovate the "Union Hall Building" (which was intended to be used as an expansion space for the library pursuant to a signed installment contract, as described below) and connect the "Union Hall Building" to the neighboring property, known as the "Downey Building" (located at 110 & 112 SW Arch Street, Atlanta, IL). The "Downey Building" houses the Palms Grill Cafe (a restaurant operated by [redacted]) and the Atlanta Museum, both of which are undertakings of the Atlanta Public Library.

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When he obtained the grant on behalf of the Atlanta Public Library District in April 2015, [redacted] failed to disclose that he was the owner of the "Union Hall" property through a Virginia-based limited liability company called Teleologic Learning, LLC, under the name of a subsidiary company called Saint Thomas Didymus Corporation, of which [redacted] is also the president.

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Of note, in late 2014 the library board voted to enter into an installment contract to purchase the "Union Hall" property from [redacted] company for \$200,000 at a rate of \$1,211.96 per month for 20 years. The library's monthly payments were supposed to begin on

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Title: (U) Open Preliminary Investigation
 Re: 194B-SI-2477904, 01/19/2018

February 1, 2015 and failure to make those payments for 60 days would result in a termination of the contract (as dictated by the contract). By the end of the 60-day period, the library had not made any of the specified monthly payments and the contract that would have otherwise qualified them for the \$25,000 Live & Learn Grant was then void.

In a letter dated October 23, 2017 from [redacted] Office of General Counsel for the Illinois Secretary of State (see attached), [redacted] was cited for violating the Public Officer Prohibited Activities Act (50 ILCS 105), which expressly prohibits elected or appointed persons from having a financial interest in any contract or performance of any work on which they may be required to act or vote. The letter further stated that the lease for the "Union Hall" property was void during the relevant time period (for the reasons described in the above paragraph), and the Atlanta Public Library District failed to achieve and maintain compliance with the terms of the grant. The letter therefore demanded the full amount of the grant to be repaid to the Office of Secretary of State within 90 days from the date of the letter.

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[NOTE: [redacted] did not know the status of the repayment as of the December 28, 2017 meeting.]

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[redacted] expressed concern about the following recent suspicious activities regarding the "Union Hall" property, especially in light of past events described above:

In a October 12, 2017 meeting, the board of trustees for the Atlanta Public Library District voted in favor of giving the treasurer, [redacted] authority to pay all bills through January 31, 2018. Following that meeting, on November 17, 2017, [redacted] (as president of Saint Thomas Didymus Corporation, member of Teleologic Learning, LLC), deeded the "Union Hall" property to [redacted]. On that same date, [redacted] then "gift deeded" the "Union Hall" property to the Atlanta Public Library District (see attached deed documents).

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Title: (U) Open Preliminary Investigation
 Re: 194B-SI-2477904, 01/19/2018

This caught the attention of concerned citizens and a local watchdog group because [redacted] (Teleologic Learning, LLC) was known to have secured indebtedness in the principal amount of \$248,000 from Heartland Bank and Trust in a mortgage dated April 24, 2014. It had also previously secured indebtedness in the principal amount of \$200,000 from Heartland Bank and Trust in a mortgage dated June 23, 2004, with mortgage modifications dated December 14, 2015 and August 23, 2016 (see attached title insurance company documents). These mortgages appear to be for the "Union Hall" property, according to [redacted]

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Concerned citizens and a local watchdog group allege that [redacted] paid off one or more of these mortgages using public funds after receiving authority to pay all Atlanta Public Library District bills in October 2017 and before "gift deeding" the "Union Hall" property to the library district in November 2017. They also allege that funds were transferred out of an Atlanta Public Library account, dba Palms Grill Cafe, to what appears to be a personal account held by [redacted]

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[redacted] Both of these accounts are maintained at the Atlanta National Bank in Atlanta, IL, according to Freedom of Information Act (FOIA) documents obtained by these concerned citizens/watchdog group.

[redacted] advised that the Illinois State Police (ISP) began investigating this matter in November 2017. ISP investigators conducted interviews of [redacted] (a concerned citizen and member of a local watchdog group) and [redacted] but are not in a position to conduct a detailed financial investigation according to [redacted]

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[redacted] therefore requested FBI assistance to investigate this matter, and SA [redacted] subsequently obtained concurrence to do so from Springfield Division and the U.S. Attorney's Office for the Central District of Illinois.

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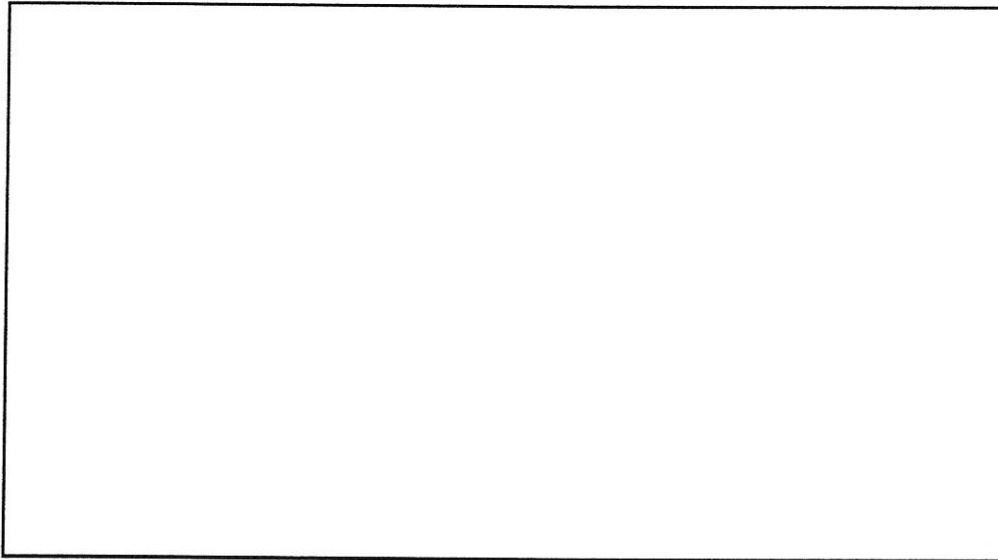
Subject Information:

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Title: (U) Open Preliminary Investigation

Re: 194B-SI-2477904, 01/19/2018



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Company: Saint Thomas Didymus Corporation, member of Teleologic Learning, LLC

[redacted] has no known prior criminal history.

Federal Criminal Statute(s):

Potential Federal criminal statutes include:

- Title 18, U.S.C., 1343 (Wire Fraud)

On January 4, 2018, writer received concurrence from Assistant United States Attorney (AUSA) [redacted] Central District of Illinois, to pursue captioned investigation.

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Statement of [redacted]:

Since [redacted] is an elected public official, this case will be considered a [redacted] per DIOG 10.1.2.2.1.

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AUSA [redacted] was notified in writing of the [redacted] circumstances on January 12, 2018.

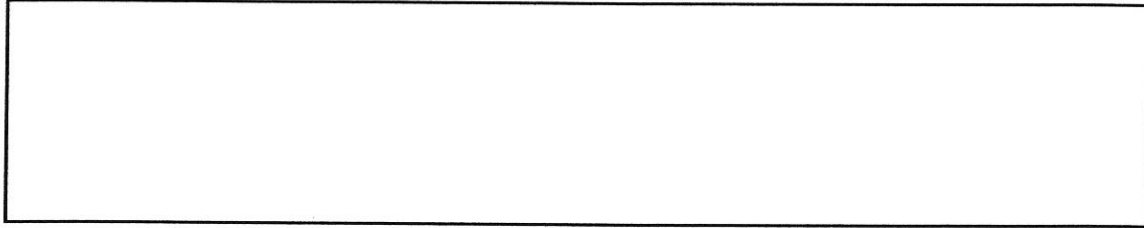
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Title: (U) Open Preliminary Investigation

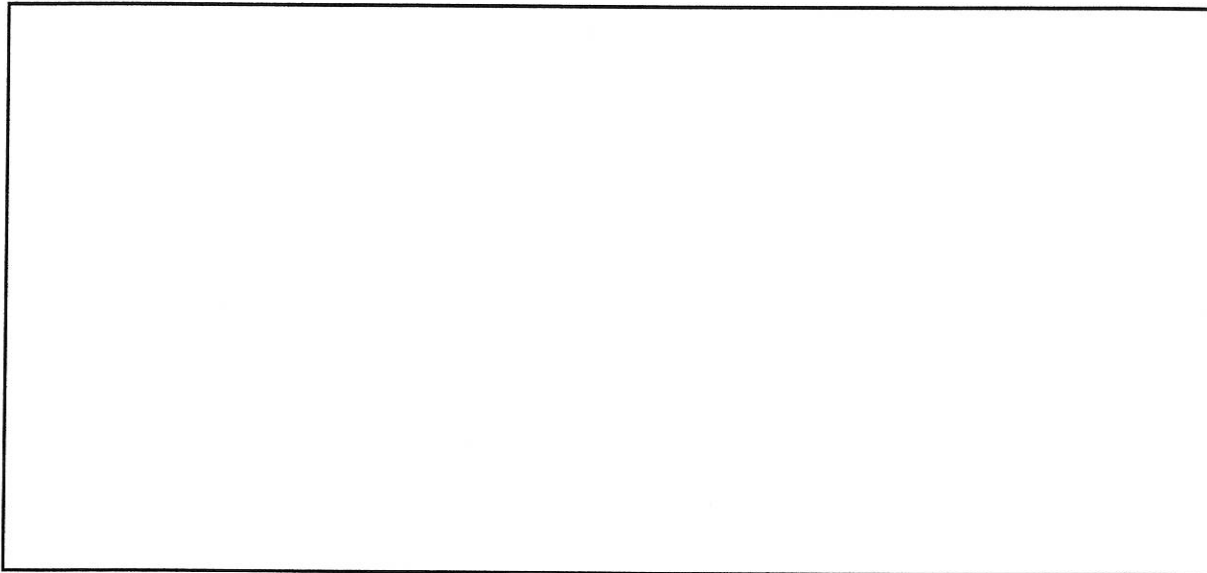
Re: 194B-SI-2477904, 01/19/2018

Case Strategy:



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Investigative/Intelligence Gaps:



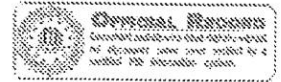
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Attachments:

Attached is an LHM for dissemination by PCU.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 05/06/2019

[REDACTED]
[REDACTED] was interviewed at the Union Hall Building located at 114 SW Arch Street, Atlanta, Illinois. After being advised of the identities of the interviewers and the nature of the interview, [REDACTED] provided the following information:

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[Note: The interview was limited in scope to the acquisition of the Union Hall Building by the Atlanta Public Library District in late 2017 (and related topics), as other matters of interest were addressed in previous interviews. Ref. serials 10 & 11.]

[REDACTED] stated that in July 2016, his company (Teleologic Learning, LLC) sold the Union Hall Building via contract for deed to [REDACTED]. However, by approximately December 2016 [REDACTED] had defaulted on the contract and the building went back to Teleologic Learning.

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Then, in October/November 2017, when [REDACTED] was going to retire from Teleologic Learning, he and [REDACTED] deeded the Union Hall Building to the Atlanta Public Library District (APLD). According to [REDACTED] there was approximately \$200,000 left on the mortgage for the Union Hall Building (held at Heartland Bank & Trust), which he paid off entirely from his retirement fund before deeding the building over to the APLD.

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[REDACTED]
[REDACTED] stated he wanted the building to be in the hands of the APLD and he wanted to be done with it.

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[REDACTED] further stated he left the APLD board in November/December 2017 and he now rents space in the Union Hall Building from the APLD. [REDACTED] is currently [REDACTED]

[REDACTED] and has been in this position for approximately four (4) years.

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[REDACTED]
[REDACTED] stated the APLD appealed to the Illinois

Investigation on 04/30/2019 at Atlanta, Illinois, United States (In Person)

File # 194B-SI-2477904Date dictated 04/30/2019

by [REDACTED]

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194B-SI-2477904

Continuation of FD-302 of (U) Interview of [redacted], On 04/30/2019, Page 2 of 2

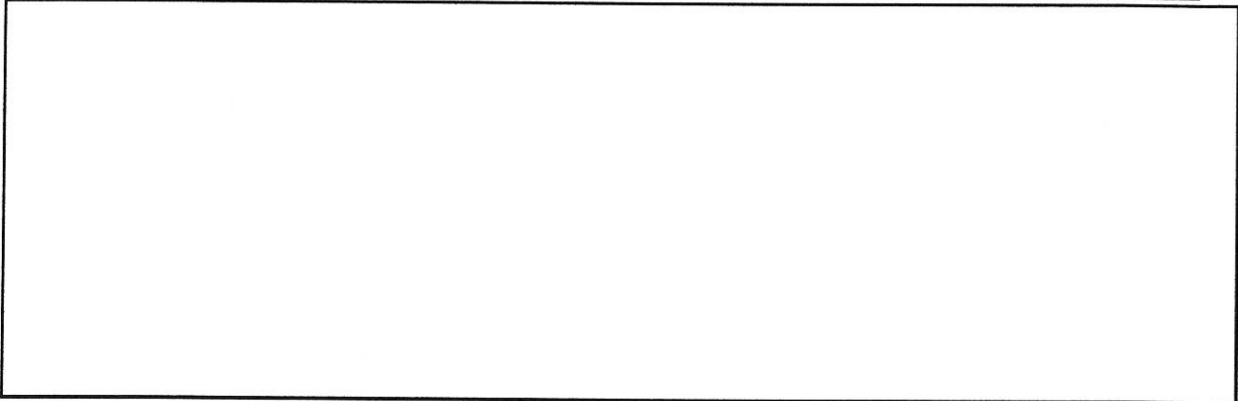
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Secretary of State and ultimately prevailed - that is, the APLD was not required to return the funds.

[Note: On May 2, 2019, [redacted] provided the attached Secretary of State Findings to SA [redacted] via e-mail.]

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When asked if he was aware of anyone in the area who did not like him (or who would view him as an enemy), [redacted]

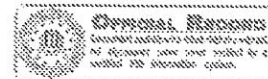


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At the conclusion of the interview, [redacted] stated he would be available to answer any additional questions the interviewers might have in the future. [redacted] further stated he just wanted to move on with his life and for the various investigations into his alleged activities to be over. [redacted] asked how he could obtain a copy of the interviewers' report once it was written. SA [redacted] stated he would likely have to submit a FOIA request, as the interviewers could not provide a copy to him directly per FBI policy.

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FEDERAL BUREAU OF INVESTIGATION

Electronic Communication

Title: (U) Closing EC

Date: 05/08/2019

From: SPRINGFIELD

[Redacted]
Contact: [Redacted]

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Approved By: SSA [Redacted]
ASAC [Redacted]
A/SAC [Redacted]

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Drafted By: [Redacted]

Case ID #: 194B-SI-2477904 (U) [Redacted]
TREASURER OF ATLANTA, ILLINOIS PUBLIC
LIBRARY DISTRICT;
POTENTIAL CORRUPTION OF LOCAL OFFICIAL
[Redacted]

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Synopsis: (U) To close a preliminary investigation and notify the Public Corruption Unit (PCU) of the case closing.

- Reference:
- 194B-SI-2477904 Serial 8
 - 194B-SI-2477904 Serial 9
 - 194B-SI-2477904 Serial 10
 - 194B-SI-2477904 Serial 11
 - 194B-SI-2477904 Serial 12

Package Copy: (U) Letterhead memorandum for dissemination.

Enclosure(s): Enclosed are the following items:

1. (U) LHM for dissemination by the Public Corruption Unit

Details:

Case Background:

On December 28, 2017, Special Agent (SA) [Redacted] met with Logan County State's Attorney [Redacted] at his office in

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Title: (U) Closing EC
 Re: 194B-SI-2477904, 05/08/2019

Lincoln, Illinois. During the meeting, [redacted] requested FBI assistance to investigate the then-current treasurer of the Atlanta, Illinois Public Library District, [redacted]. [redacted] was also [redacted]. [redacted] provided the following background information regarding [redacted]:

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While treasurer of the Atlanta Public Library District in April 2015, [redacted] applied for and obtained a \$25,000 Live & Learn Grant from the Illinois Secretary of State to make improvements to a property known as the "Union Hall Building" (114 SW Arch Street, Atlanta, IL), which is located across the street from the Atlanta Public Library. The purpose of the grant was to renovate the "Union Hall Building" (which was intended to be used as an expansion space for the library pursuant to a signed installment contract, as described below) and connect the "Union Hall Building" to the neighboring property, known as the "Downey Building" (located at 110 & 112 SW Arch Street, Atlanta, IL). The "Downey Building" houses the Palms Grill Cafe (a restaurant operated by [redacted]) and the Atlanta Museum, both of which are undertakings of the Atlanta Public Library.

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When he obtained the grant on behalf of the Atlanta Public Library District in April 2015, [redacted] failed to disclose that he was the owner of the "Union Hall" property through a Virginia-based limited liability company called Teleologic Learning, LLC, under the name of a subsidiary company called Saint Thomas Didymus Corporation, of which [redacted] is also the president.

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In late 2014 the library board voted to enter into an installment contract to purchase the "Union Hall" property from [redacted] company for \$200,000 at a rate of \$1,211.96 per month for 20 years. The library's monthly payments were supposed to begin on February 1, 2015 and failure to make those payments for 60 days would result in a termination of the contract (as dictated by the contract). By the end of the 60-day period, the library had not made any of the specified

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Title: (U) Closing EC
 Re: 194B-SI-2477904, 05/08/2019

monthly payments and the contract that would have otherwise qualified them for the \$25,000 Live & Learn Grant was then void.

In a letter dated October 23, 2017 from [redacted] Office of General Counsel for the Illinois Secretary of State, [redacted] was cited for violating the Public Officer Prohibited Activities Act (50 ILCS 105), which expressly prohibits elected or appointed persons from having a financial interest in any contract or performance of any work on which they may be required to act or vote. The letter further stated that the lease for the "Union Hall" property was void during the relevant time period (for the reasons described in the above paragraph), and the Atlanta Public Library District failed to achieve and maintain compliance with the terms of the grant. The letter therefore demanded the full amount of the grant to be repaid to the Office of Secretary of State within 90 days from the date of the letter.

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[NOTE: [redacted] did not know the status of the repayment as of the December 28, 2017 meeting.]

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[redacted] expressed concern about the following suspicious activities regarding the "Union Hall" property in light of past events described above:

In a October 12, 2017 meeting, the board of trustees for the Atlanta Public Library District voted in favor of giving the treasurer, [redacted] authority to pay all bills through January 31, 2018. Following that meeting, on November 17, 2017, [redacted] (as president of Saint Thomas Didymus Corporation, member of Teleologic Learning, LLC), deeded the "Union Hall" property to [redacted]. On that same date, [redacted] then "gift deeded" the "Union Hall" property to the Atlanta Public Library District.

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This caught the attention of concerned citizens and a local watchdog group because [redacted] company (Teleologic Learning, LLC) was known to have secured indebtedness in the principal amount of \$248,000

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Title: (U) Closing EC
 Re: 194B-SI-2477904, 05/08/2019

from Heartland Bank and Trust in a mortgage dated April 24, 2014. It had also previously secured indebtedness in the principal amount of \$200,000 from Heartland Bank and Trust in a mortgage dated June 23, 2004, with mortgage modifications dated December 14, 2015 and August 23, 2016. These mortgages appeared to be for the "Union Hall" property, according to [REDACTED]

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Concerned citizens and a local watchdog group alleged that [REDACTED] paid off one or more of these mortgages using public funds after receiving authority to pay all Atlanta Public Library District bills in October 2017 and before "gift deeding" the "Union Hall" property to the library district in November 2017. They also alleged that funds were transferred out of an Atlanta Public Library account, d/b/a Palms Grill Cafe, to what appeared to be a personal account held by [REDACTED]

[REDACTED] advised that the Illinois State Police (ISP) began investigating this matter in November 2017. ISP investigators conducted interviews of [REDACTED] (a concerned citizen and member of a local watchdog group) and [REDACTED] but were not in a position to conduct a detailed financial investigation according to [REDACTED]

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[REDACTED] therefore requested FBI assistance to investigate this matter, and SA [REDACTED] subsequently obtained concurrence to do so from Springfield Division and the U.S. Attorney's Office for the Central District of Illinois.

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Results of Investigation:

During the course of captioned investigation, SA [REDACTED] subpoenaed and reviewed records from [REDACTED]

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[REDACTED] A review of those records did not reveal a nexus to criminal activity on the part of [REDACTED] or the Atlanta Public Library District.

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Title: (U) Closing EC
Re: 194B-SI-2477904, 05/08/2019

Based on the [redacted] subpoenaed by SA [redacted] during captioned investigation, [redacted]

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[redacted]

In addition to SA [redacted] investigation, Illinois Department of Revenue SA [redacted] conducted a detailed investigation into alleged financial violations (including possible state tax violations) committed by [redacted] and involving the Atlanta Public Library District (d/b/a Palms Grill Cafe). SA [redacted] investigation also did not reveal any criminal conduct on the part of [redacted] or the Atlanta Public Library District (ref. serial 8).

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[redacted]

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[redacted] was interviewed on at least three (3) separate occasions by investigators from the Illinois State Police, Illinois Department of Revenue (Ref. serials 10 & 11) and FBI (ref. serial 12) regarding the allegations discussed herein. Following the FBI interview on April 30, 2019, [redacted] provided SA [redacted] with official findings from the Illinois Secretary of State clearing [redacted] and the Atlanta Public Library District from any wrongdoing regarding the \$25,000 Live & Learn Grant obtained in 2015. The library district was not required to return the funds to the State of Illinois based on the findings (ref. serial 12).

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Conclusion:

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Title: (U) Closing EC

Re: 194B-SI-2477904, 05/08/2019

Sufficient personnel and resources were expended on the investigation, and a logical and reasonable investigation was completed. In addition, all investigative activities have been completed and there are no pending leads or evidentiary issues. It is therefore recommended that this matter now be closed.

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Illinois Liquor Control Commission
Enforcement Division
100 W. Randolph Street, Suite 7-801
Chicago, IL 60601
Telephone: (312) 814 -2206

Investigation Report

State License Number:

Licensee Name:

Business Name: Atlanta Public Library

Licensee Address: 100 Race Street, Atlanta, Illinois

DCN#:

Case ID #: 1-101-598-336

On 08/06/18 at 09:45 hours, I (Investigator [REDACTED]) arrived at the Atlanta Public Library, 100 Race Street, Atlanta, Illinois, in reference to a complaint follow-up investigation. When I arrived, I found the library was closed for the day, and proceeded to the Atlanta Public Golf Course to meet with the President of the library board Randy Brooks.

On 08/06/18 at 10:00 hours, I arrived at the Atlanta Public Golf Course. Upon arrival I spoke with library board President Randy Brooks. I explained the reason for my visit, and the nature of the complaint. Mr. Brooks confirmed the Atlanta Public Library did not have an Illinois Liquor License, but told me that on several occasions over the last few years the board had authorized the purchase of alcoholic beverages for different civic events hosted by the Atlanta Public Library. According to Mr. Brooks, the alcohol was never sold, and was offered free of charge to attendees of the events. Mr. Brooks explained to me the events were held at different locations around the village, one being the golf course. I asked Mr. Brooks how the alcohol was purchased, and he told me most of the time it was purchased with the libraries credit card. I asked Mr. Brooks what they did with any of the left over alcohol from the events, and said they just stored it until they had another event. According to Mr. Brooks the liquor was stored in the library, and in the museum owned by the library at 112 Arch Street, Atlanta, Illinois. Mr. Brooks said Bill Thomas might have more information about how it was handled, as he had served as the treasurer for the library board for several years. I thanked Mr. Brooks for the information, and left him with my contact information in the event he had any questions.

On 08/06/18 at 10:30 hours, I arrived at the Union Building, 110 Arch Street, Atlanta, Illinois. Upon arrival I met with William Thomas the former Treasurer for the Atlanta Public Library Board. I explained the reason for my visit, and the nature of the complaint. Mr. Thomas told me he had served as the Treasurer for the library board for several years, but has since resigned. Mr.

Thomas acknowledged the Library Board over the last several years has hosted different civic events around the village. Mr. Thomas also acknowledged the Library Board did provide alcoholic beverages free of charge to those in attendance. According to Mr. Thomas, it was always done with the full knowledge and approval of the Atlanta Library Board. I asked Mr. Thomas who purchased the alcohol, and he told me it was usually one of the employees at the library. I asked him how they purchased it, and he said it was usually done with the libraries credit card. Mr. Thomas confirmed any alcohol left over was either stored in the library, or in the museum. Mr. Thomas showed me the storage areas, and there was no alcohol stored there at this time. Mr. Thomas also told me if any alcohol was consumed after any of the business meetings of the Board, it was alcohol brought by the board members, not the alcohol purchased for the civic events. I thanked Mr. Thomas for the information, and gave him my contact information in the event he had any other questions.

On 08/06/18 at 10:50 hours, I arrived at the Palms Restaurant, 110 S. Arch Street, Atlanta, Illinois. Upon my arrival I met with Racheal Neisler Co- Director of the Atlanta Public Library. I asked Racheal about the events hosted by the library, and she told me most of the time either her, or Cathy Maciariello the other Co-Director of the library would purchase the alcohol for the events. Racheal told me it was usually bought at one of the retail businesses in either Bloomington, or Lincoln. Racheal said most of the time the alcohol was purchased with the libraries credit card. Racheal said the alcohol was used at different civic events sponsored by the library, and was given away to attendees free of charge. I thanked Miss Neisler for the information, and gave her my contact information in the event she had any questions.

On 08/15/18 at 09:30 hours I spoke with Sergeant Kevin Lynn of the Atlanta Illinois Police Department. The purpose of the call was to inform them of the nature of the investigation by the Illinois Liquor Commission of purchasing and giving away alcohol by the local library board. I recommended to Sgt. Lynn the library board contact the Village Attorney for information on how to apply for, and get, any required licenses and permits for future events involving alcohol within the village.

On 08/15/18 at 10:15 hours I spoke with the village Liquor Commissioner Mayor Fred Finchem. The purpose of the call was to inform him of the nature of the investigation, and explain what I found. I told the Mayor the library board had been hosting several civic events over the last several years, and they were giving away free alcohol at most of these events. The alcohol was purchased by the library board with the full knowledge and consent of the board. I told the Mayor I had informed the Library Board President Randy Brooks he needed to contact the Mayor and the Village Attorney about obtaining any required licenses, and permits, moving forward for any of their future events involving alcohol. The Mayor agreed, and both he and Randy said they would be meeting with the Village Attorney to work it out. I thanked him for his time and gave him my contact information.

On 08/15/18 at 10:30 I spoke with the Atlanta Library Board President Randy Brooks, and explained they needed to talk to their attorney, or the Village Attorney, about obtaining the proper licenses and permits required to host events in the village where they were going to give away or serve alcoholic beverages. Mr. Brooks said he would be attending the next council

meeting, and he would be discussing it with the Mayor and the Village Attorney. I thanked Mr. Brooks for his cooperation and left him with my contact information in the event he had any questions.

There is no further investigation needed at this time.

End of report:



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 20, 2017

Via electronic mail

[REDACTED]
7060 Illinois Highway 1
Paris, Illinois 61944
[REDACTED]

Via electronic mail

The Honorable Randy Brooks
President, Board of Trustees
Atlanta Public Library
100 Race Street
Atlanta, Illinois 61723
apldinformation@gmail.com

RE: OMA Request for Review – 2017 PAC 49174

Dear [REDACTED] and Mr. Brooks:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Atlanta Public Library District Board of Trustees (Board) did not violate OMA's public recital requirement in connection with its vote to approve the Treasurer's Report at its August 10, 2017, meeting.

On August 11, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that during its August 10, 2017, meeting, the Board violated section 2(e) of OMA (5 ILCS 120/2(e) (West 2016)) by taking final action without sufficiently informing the public what it was voting on. [REDACTED] provided a link to a video recording of the meeting and pointed to the 18 minute mark, at which time the Board passed a motion to approve the Treasurer's Report. [REDACTED] stated:

[REDACTED], Atlanta IL Public Library District 8 10 2017, YouTube, 18:00 (Aug. 11, 2017), <https://www.youtube.com/watch?v=8xbLC7m49BM>.

[REDACTED]
The Honorable Randy Brooks
September 20, 2017
Page 2

The reason it was important for the public to know which bills were paid and which checks were written is because one of the library board trustees has a direct conflict of interest in receipt of \$1000 per month from the library for a lease on real estate he personally owns. The public was wrongly deprived of that information at this meeting. (Emphasis omitted.)^[2]

On August 18, 2017, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda and open session minutes of the meeting, together with a written response to [REDACTED] allegations. On August 31, 2017, the Board provided this office with a copy of the open session minutes and a written response asserting that it did not deprive the public of any information. On September 7, 2017, this office sent a copy of the Board's response to [REDACTED], he did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 2(e) of OMA provides that "[n]o final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." In *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶64, 77 N.E.3d 625, 636 (2017), the Illinois Supreme Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance."

In its response to this office, the Board stated that at the August 10, 2017, meeting:

²E-mail from [REDACTED] AG PAC (August 11, 2017).

[REDACTED]
The Honorable Randy Brooks
September 20, 2017
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[T]he action taken was not to pay bills as [REDACTED] assumes, but rather to receive the Treasurer's monthly report that specifies which bills were paid during the previous month. That report is eleven pages long, and we do not believe we were required to read it aloud in its entirety, especially since a printed copy was available to anyone who asked for it.^[3]

The Board also asserted that a copy of the Treasurer's Report was made available to the public during the meeting and that in the future the Board will post the entire Trustee packet with each meeting agenda posted on its website. Further, the Board stated:

[T]he specific item to which [REDACTED] refers---the \$1,000 in rent the Library pays for use of space in another building---is covered by a lease under which the Library has been making payments for nearly a year. Those payments are noted on the check register that is part of the Treasurer's report and thus is attached to the minutes of every monthly meeting[.]^[4]

This office has reviewed the video recording of the August 10, 2017, meeting, as well as the minutes and Treasurer's Report provided by the Board. During the meeting, after the Board President, Randy Brooks, referenced the Treasurer's Report, [REDACTED] said: "If you're paying the bills, can we get a list of the bills that you're paying, and in particular if you're paying rent, can we get the dollar amount and who you're writing it to."⁵ Board President Brooks asked whether there was a motion to accept the Treasurer's Report, and a motion was made. [REDACTED] who also represents the [REDACTED] then asked if the vote on Treasurer's Report is how the Board pays bills, or approves the payment of bills. The Board appeared unclear about how to respond, with Board members stating both "yes" and "no" after a delay.⁶ Despite objections by [REDACTED] and [REDACTED], the Board voted to approve the Treasurer's Report without providing additional information to the public.

³Letter from Randy Brooks, President, Atlanta Public Library District, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 31, 2017), at 1.

⁴Letter from Randy Brooks, President, Atlanta Public Library District, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 31, 2017), at 1.

⁵[REDACTED], Atlanta IL Public Library District 8 10 2017, YouTube, 18:10 (Aug. 11, 2017), <https://www.youtube.com/watch?v=8xbLC7m49BM>.

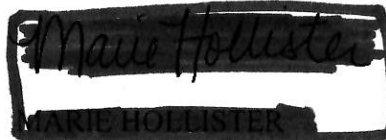
⁶[REDACTED], Atlanta IL Public Library District 8 10 2017, YouTube, 18:40 (Aug. 11, 2017), <https://www.youtube.com/watch?v=8xbLC7m49BM>.

Mr. [REDACTED]
The Honorable Randy Brooks
September 20, 2017
Page 4

The Treasurer's Report that the Board voted to approve at its August 10, 2017, meeting reflects account balances and various deposits and payments along with the dates of those transactions during July 2017. As indicated in the Board's response, the Board's vote to approve the Treasurer's Report was not a vote to pay bills, but to accept a report of bills already paid and other transactions. Thus the Board's motion to approve the Treasurer's Report adequately informed the public of the nature of the matter being considered and the business being conducted within the meaning of section 2(e) of OMA. The Board was not required to explain the specific content of the Treasurer's Report or its significance. Accordingly, this office concludes that the Board did not violate section 2(e) of OMA during its August 10, 2017, meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 793-0865 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,


MARIE HOLLISTER

Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 4, 2018

Via electronic mail

Ms. Janice Begolka
607 South Martin Street
Atlanta, Illinois 61723
mb0769@yahoo.com

Via electronic mail

Ms. Rachel Neisler
FOIA Officer
Atlanta Public Library District
100 Race Street
P.O. Box 568
Atlanta, Illinois 61723
apldinformation@gmail.com

RE: FOIA Request for Review – 2018 PAC 52047

Dear Ms. Begolka and Ms. Neisler:

This determination 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 Atlanta Public Library District (District) to Ms. Janice Begolka's February 19, 2018, FOIA request did not violate the requirements of FOIA.

On that date, Ms. Begolka sought an un-redacted copy of the resignation letter submitted by the District's former attorney. On March 6, 2018, the District denied Ms. Begolka's request pursuant to sections 7(1)(f) and 7(1)(m) of FOIA (5 ILCS 140/7(1)(f), (1)(m) (West 2017 Supp.)). In a Request for Review received by this office on March 7, 2018, Ms. Begolka challenged the District's response.

On March 12, 2018, this office sent a copy of the Request for Review to the District and asked it to provide the Public Access Bureau with an un-redacted copy of the record

Ms. Rachel Neisler
October 4, 2018
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responsive to [REDACTED] request, together with a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(f) and 7(1)(m) exemptions to the information that was withheld. On March 20, 2018, the District provided the requested record and an answer to the Request for Review. On April 3, 2018, this office forwarded a copy of the District's response to [REDACTED] she did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further provides: "Each 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." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2016)) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney
* * * representing the public body that would not be subject to
discovery in litigation, and materials prepared or compiled by or
for a public body in anticipation of a criminal, civil or
administrative proceeding upon the request of an attorney advising
the public body[.]

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *See People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1st Dist. 1997). A party asserting that a confidential communication is protected by the attorney-client privilege must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2d Dist. 2006); *see also In re General Instrument Corp. Securities Litigation*, 190 F.R.D. 527, 531 (N.D. Ill. 2000), quoting *United States v. Evans*, 113 F.3d 1457, 1461 (7th Cir. 1997) ("To be privileged, the documents must not only exhibit attorney involvement, but must involve a 'legal adviser acting in his capacity as such.'"). Moreover, "[t]he privilege applies not only to the communications of a client to his attorney, but also to the advice of an attorney to his client." *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (5th Dist. 1990); *see also People v. Radojcic*, 2013 IL 114197, ¶40, 998 N.E.2d 1212, 1221-22 (2013) ("[T]he modern view is that the

privilege is a two-way street, protecting both the client's communications to the attorney and the attorney's advice to the client."). "The attorney-client privilege belongs to the client, rather than the attorney, although the attorney asserts the privilege on behalf of the client. [Citation.] Only the client may waive the privilege." *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶35, 981 N.E.2d 345, 356 (2012). Further, "[t]he privilege protects communications, not facts." *Specht v. Google, Inc.*, 268 F.R.D. 596, 601 (N.D. Ill. 2010).

This office has reviewed the District's attorney's un-redacted letter of resignation, which was in e-mail format. The portion of the e-mail that the District redacted contains the attorney's summary of information provided confidentially by the District for the purpose of obtaining legal advice.¹ The letter also references legal advice provided by the attorney to the District. Both the District's communications to the attorney and the attorney's advice to the District occurred while the attorney was still representing the District. There is no indication that the District has shared the substance of the un-redacted portion of the letter with outside parties or otherwise waived the attorney-client privilege. Although [REDACTED] stated in her Request for Review that the letter was cited and identified by the District Board of Trustees (Board) Chairman at the November 16, 2017, Board meeting, she did not allege that the Board revealed the specific content of the letter. This office has reviewed the minutes of the November 16, 2017, Board meeting and found no indication that the Board disclosed the letter's details.² Accordingly, the substance of the attorney's letter was protected by the attorney-client privilege.

The privileged nature of the communications is not destroyed by the fact that those communications were summarized and referenced in the attorney's resignation letter, even if that letter terminated the attorney-client relationship. *See People v. Ryan*, 30 Ill. 2d 456, 461, 197 N.E.2d 15, 17 (1964) ("It is well settled that the privilege against disclosure of confidential communications made by a client to an attorney is personal to the client and does not cease upon a termination of the relationship."). The redactions include some factual material, but "the facts and the privileged information are 'too intertwined to make redaction possible.'" *In re Testosterone Replacement Therapy Products Liability Litigation*, 301 F. Supp. 3d 917, 923-24 (N.D. Ill. 2018) (citation omitted)). Accordingly, this office concludes that the District has sustained its burden of demonstrating that portions of the letter are exempt from disclosure pursuant to section 7(1)(m) of FOIA.³

¹Because the District provided the letter to this office confidentially, section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2016)) precludes this office from further identifying the substance of the letter.

²Atlanta Public Library District Board of Trustees, Meeting, November 16, 2017, Minutes 2, available at <https://static1.squarespace.com/static/56c35581ab48ded5412d9291/t/5a3419809140b76437ac3bd8/1513363840549/12.14.17+November+Minutes.pdf> (last visited September 6, 2018).

³Because this office has concluded that the District's redactions made pursuant to section 7(1)(m) did not violate FOIA, we will not address the District's 7(1)(f) argument.

[Redacted]

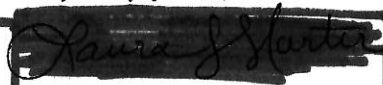
Ms. Rachel Neisler

October 4, 2018

Page 4

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, please contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958.

Very truly yours,


[Redacted]

AURA S. HARTER
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 2, 2017

Via electronic mail

The Honorable Jonathan C. Wright
Logan County State's Attorney
Logan County Courthouse
601 Broadway Street - Room 31
Lincoln, Illinois 62656
statesattorney@logancountyl.gov

RE: OMA Request for Review – 2017 PAC 50238

Dear **Mr. Wright**

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted on this matter.

On October 27, 2017, you filed a Request for Review questioning whether the Atlanta Public Library Board of Trustees (Board) violated OMA by authorizing the Treasurer to pay bills instead of approving the payment of bills at open meetings that comply with the requirements of OMA. Your Request for Review states that at its October 12, 2017, meeting, the Board "authoriz[ed] the Treasurer to pay all bills from October 13, 2017 through January 2018 – prospectively."¹ You state that the bills to be paid "have not come before the Board at an open meeting or perhaps even accrued without taking a final vote on those bills."² Your submission included a link to a video recording of the Board's October 12, 2017, meeting, which—consistent with your description—shows that the Board authorized the Treasurer to pay the bills of the Library for the specific time period you referenced.

¹E-mail from **Jonathan C. Wright**, Logan County State's Attorney, Logan County State's Attorney's Office to Public Access Bureau, Office of the Attorney General (October 27, 2017).

²E-mail from **Jonathan C. Wright**, Logan County State's Attorney, Logan County State's Attorney's Office to Public Access Bureau, Office of the Attorney General (October 27, 2017).

The Honorable Jonathan C. Weight

November 2, 2017


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OMA is intended to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). To that end, OMA requires public bodies to inform the public of final actions under consideration both before and during meetings. Specifically, OMA requires a public body to post an agenda at least 48 hours before each meeting which identifies the general subject matter of all final actions. 5 ILCS 120/2.02(a), (c) (West 2016). In addition, section 2(e) of OMA (5 ILCS 120/2(e) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

The Board's vote to authorize the Treasurer to pay bills does not provide any basis from which this office could conclude the Board has violated these or any other provisions of OMA. "[T]he requirement that a public body take action openly does not govern whether or not a public body takes final action or require it to take any particular type of action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 34115, issued March 23, 2015, at 1-2. Nor does OMA prohibit a public body from delegating authority that the public body has exercised itself to an individual public official. Because your Request for Review does not include facts from which this office could conclude that the Board violated OMA, we have determined that no further action is warranted as to this matter. See 5 ILCS 120/3.5(a) (West 2016) (requiring a Request for Review to "include a summary of facts supporting the allegation[]" that the public body violated OMA).

This letter will serve to close this matter. If you have any questions, please contact me at mhartman@atg.state.il.us, (217) 782-9054, or the Springfield address on the first page.

Very truly yours,



Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Randy Brooks
President, Board of Trustees
Atlanta Public Library
100 Race Street
Atlanta, Illinois 61723
apldinformation@gmail.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 2, 2018

Via electronic mail

Mr. George F. Menken
2072 2100th Street
Atlanta, Illinois 61723
menkengorge@yahoo.com

Via electronic mail

Ms. Rachel Neisler
FOIA Officer
Atlanta Public Library District
100 Race Street
P.O. Box 568
Atlanta, Illinois 61723
aplinformation@gmail.com

RE: FOIA Request for Review – 2017 PAC 50840

Dear **Mr. Menken** and Ms. Neisler:

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 is unable to conclude that the Atlanta Public Library District's (District) response to **Mr. George Menken** December 5, 2017, FOIA request violated FOIA.

On that date, **Mr. Menken** submitted a FOIA request to the District seeking copies of any and all adjustments to cash register sales reports, copies of cash register receipts for 10 specified invoices, and copies of deposit slips for four identified invoices and another transaction. On December 13, 2017, the District provided records responsive to some parts of the request and notified **Mr. Menken** that it does not possess cash register adjustments, six of the requested cash register receipts, and three of the requested deposit slips. On December 18, 2017, **Mr. Menken** submitted this Request for Review contesting the District's response.

On December 26, 2017, this office forwarded a copy of the Request for Review to the District and asked it to provide a detailed description of the measures it took to identify records responsive to the request. On January 9, 2018, the District submitted its response. Mr.

Mr. George E. Morke

Ms. Rachel Neisler

May 2, 2018

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Mr. Morke did not submit a written reply but spoke by telephone with an Assistant Attorney General (AAG) in the Public Access Bureau on January 12, 2018.

DETERMINATION

When presented with a FOIA request, a public body must 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). 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).

By way of background, the District explained to an AAG that a café named Palms Grill operated out of the District's building during the time period discussed in the FOIA request, and payments for sales at that café were handled by District employees. Therefore, the money collected in the District's cash register was not limited to traditional library activities such as DVD rental and overdue fees, and the FOIA request primarily concerns sales related to the Palms Grill.

With respect to the first part of the FOIA request, Mr. Morke argues that it is "standard business practice[] to record Cash Register drawer shorts and/or overage amounts in order to balance deposits with sales receipts, as a means to identify theft and to maintain the integrity of the beginning days change balance."¹ In its response to this office, the District explained that District employees count and reconcile the cash register on a daily basis but that it is not the District's practice to create a "running record describing any discrepancies between the cash in the drawer and the receipts,"² and that contrary to the allegation in the Request for Review, the District is not required to do so. The District further asserted that it has previously provided Mr. Morke with copies of daily register reports. During a telephone conversation with an AAG, Mr. Morke said he had no information indicating that District employees in fact created the record he was seeking but questioned the District's cash handling practices.

With respect to the second part of the FOIA request, which sought copies of "cash register receipts" related to certain invoices, the District explained that the six invoices for which it did not locate cash register receipts were all paid by check, and that it is the District's practice

¹FOIA—Request for Review by Public Access Counselor (PAC) (December 18, 2017).

²Letter from Rachel Neisler, FOIA Officer, Atlanta Public Library District, to Leah Bartlett [sic], Assistant Attorney General, Public Access Bureau, at 1 (January 9, 2018).

[REDACTED]
Ms. Rachel Neisler

May 2, 2018

Page 3

to deposit checks directly into its bank account instead of first entering those payments onto its cash register log. The District's FOIA Officer stated that she confirmed that these events were not entered into the cash register by reviewing all the cash register receipts, and failing to locate receipts for these six invoices. [REDACTED] alleges in his Request for Review that the District should have either a cash register receipt or evidence of a bank deposit for every invoiced event, but the District correctly noted that the FOIA request sought only cash register receipts for these six events, not copies of bank deposit slips.

Finally, part three of the FOIA request sought copies of deposit slips for four invoices, and the District responded that it possessed a deposit slip for only one of the identified invoices. In its response to this office, the District stated that the other three events were paid by credit card, and that its practice is to process credit card payments through the cash register, which are then automatically deposited into its bank account. The District further explained that it normally creates copies of deposit slips prior to making deposits at its bank, and maintains those copies, but that because it does not manually deposit credit card receipts, it does not create deposit slips for sales paid for by credit cards and processed through its cash register. Finally, the District noted that it had furnished to [REDACTED] copies of the cash register receipts for these three events, which demonstrated that each event was paid for by credit card, in response to the FOIA request. Indeed, [REDACTED] FOIA request sought copies of both the cash register receipts (under part two) and the deposit slips (under part three) for these three events, and the District's response indicates that it furnished to him copies of the cash register receipts.

Because the District's response explained why it is not in the practice of creating the records that were not furnished to [REDACTED], there is insufficient evidence from which this office could determine that the District's response to [REDACTED] violated FOIA. *See American-Arab Anti-Discrimination Committee v. United States Dep't of Homeland Security*, 516 F. Supp. 2d 83 (D.D.C. 2007) (agency's explanation of why it did not maintain the type of records requested was sufficient to demonstrate that its response to the request did not violate FOIA). Further, with respect to part two of the request, the District's review of the cash register receipts to search for additional receipts appears to have been reasonably calculated to locate any receipts that may have been created for those invoices. This office has not received evidence indicating that the District possesses additional responsive records that were not furnished to [REDACTED]. Because the available information indicates that the District performed a reasonable search for responsive records or provided a sufficient explanation indicating that it never created the requested records, this office is not able to conclude that the District's response violated FOIA.

[REDACTED]

Ms. Rachel Neisler

May 2, 2018

Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (312) 814-6473 or the Chicago address listed on the first page of this letter.

Very truly yours,


LEAH BARTELT

Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 18, 2018

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

Mr. Randy Brooks, President
Board of Trustees of the
Atlanta Public Library District
100 Race Street
Atlanta, Illinois 61723
apldinformation@gmail.com

RE: OMA Request for Review – 2018 PAC 51623

Dear [REDACTED] and Mr. Brooks:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Trustees (Board) of the Atlanta Public Library District (District) did not violate section 2.06(g) of OMA during its December 14, 2017, meeting.

On February 7, 2018, [REDACTED] submitted a Request for Review alleging that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) during the public comment portion of its December 14, 2017, meeting by interrupting his comments and signaling for the police. As part of his Request for Review, [REDACTED] provided a link to the video and audio recording of the December 14, 2017, meeting.¹ On February 15, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide a detailed written response to [REDACTED] allegations, along with a copy of the agenda, minutes, rules regarding public comment, and any recordings. On February 16, 2018, the Board president

¹Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at <https://www.youtube.com/watch?v=9UX1NHG3IRQ> (last visited April 23, 2018).

██████████
Mr. Randy Brooks
May 18, 2018
Page 2

responded on behalf of the Board and provided the requested agenda, minutes, and rules.² On February 28, 2018, this office forwarded a copy of the Board's response to ██████████. On March 2, 2018, ██████████ submitted his reply.

DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public *to address public officials at open meetings*." (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Additionally, an interruption of a public speaker by a member of a public body such as a question or comment that does not preclude a speaker from completing his or her public comment does not constitute an improper restriction on public comment. *See* Ill. Att'y Gen. PAC Rev. Ltr. 37496, issued December 11, 2015, at 3.

In his Request for Review, ██████████ contends that during his public comment the Board's attorney interrupted him repeatedly, causing him to lose his train of thought and, as a result, preventing him from fully addressing the Board. ██████████ also states that the Board's attorney motioned to police officers in the back of the room as if to have him arrested when he did not agree with his presentation, and "attempted to tell me I was not allowed to ask questions."³

In its response, the Board asserts that (1) its "rules for public comment clearly state that the public comment period is reserved for comments and that the Board does not typically respond to questions at its meetings," and that its attorney reminded ██████████ of those rules in a calm and respectful manner; (2) ██████████ grew increasingly threatening and shouted at its attorney and Board, but went on to make "his points clearly and even vehemently, without becoming confused and without losing track of what he intended to say;" (3) the Board "remained calm at all times, and any disruption during ██████████ comment time was caused by his own aggressiveness and the shouts of those who followed his lead in the meeting;" and (4) the Board did not move to have ██████████ arrested, but acknowledged that police officers have

²The Board also informed an Assistant Attorney General in the Public Access Bureau that it had no recording of the December 14, 2017, meeting. E-mail from Cathy Maciariello, [Atlanta Public Library District] to ██████████, [Assistant Attorney General, Public Access Bureau] (February 20, 2018).

³E-mail from ██████████ to Public Access [Bureau] (February 7, 2018).

Mr. Kirk Allen
Mr. Randy Brooks
May 18, 2018
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been present at its meetings since October because the public comment period has become increasingly disruptive and threatening towards the members of the Board.⁴

In his reply, ██████████ repeats four times that the Board's attorney told him that he cannot "ask questions," asserts that the Board's conduct was an "attempt to chill my right to speak," and states that "[t]he video speaks for itself."⁵ This office has reviewed the portion of the video in which ██████████ comments. The video establishes that at no point during ██████████ public comment did the Board's attorney tell him that he can't ask questions.

The video depicts the members of the Board and its attorney sitting at a table; the video does not depict ██████████, the public, or police officers. The video establishes that ██████████ asked the Board a question and paused, as if waiting for an answer. The President shook his head from side to side and gestured with his hand. ██████████ then made a comment, proceeded to ask another question, and paused again, as if waiting for an answer. The Board's attorney who was seated next to the President said "it's your time to comment. The Board," but could not finish his sentence because ██████████ loudly stated that "it's my time to do anything I wish, verbalizing. It's not yours for interjection, you are not a Board member." The Board's attorney, the Board President and ██████████ made additional comments concerning public comment and how the meeting was being run, and another member of the public loudly interjected additional comments. After a pause, ██████████ asked another question, to which the President responded, "I don't think I have to answer the question."⁶ The Board's attorney and ██████████ then had the following exchange:

ATTORNEY: The Board does not have to answer questions. It is your time to comment.

██████████: It's my time to ask questions and or comment.

ATTORNEY: You can ask questions but the Board is not legally obligated to [inaudible, as ██████████ loudly spoke over him].⁷

⁴Letter from Randy Brooks, President, Board of Trustees, Atlanta Public Library District to ██████████, Assistant Attorney General, Public Access Bureau (February 16, 2018).

⁵E-mail from ██████████ to Public Access [Bureau] (March 2, 2018).

⁶Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at <https://www.youtube.com/watch?v=9UX1NHG3IRQ>; Mr. Allen's comment time can be heard listened to between 5:54 and 10:25.

⁷Atlanta Public Library District Board of Trustees, Meeting, December 14, 2017, available at <https://www.youtube.com/watch?v=9UX1NHG3IRQ> at 6:58.

██████████
Mr. Randy Brooks
May 18, 2018
Page 4

Speaking in a raised voice, ██████████ told the attorney "you can sit down." The attorney asked for civility, but members of the public and ██████████ kept yelling. Both the Board President and its attorney tried to regain order during this interlude. The meeting quieted down after a short period of time, and ██████████ completed his public comment.

The Board's rules for public comment provide that "[t]he public forum part of the agenda is not designed as a discussion or a question and answer session, but rather as a means for the APLD Board to receive comments from the public. The board typically does not respond to questions."⁸ Indeed, section 2.06(g) does not mandate that public bodies conduct a question and answer session; rather, a public body must allow an opportunity during open meetings for "any person * * * to address" the public officials present. "Address" used as a verb is defined as "to speak or write directly to."⁹ Thus, the plain language of section 2.06(g) of OMA contemplates the opportunity for citizens to express their views to members of a public body. OMA does not require any response by or answers from public officials. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7.

██████████ cited "AG PAC Opinion 3703" to support his contention that the Board infringed on his right to address it by allowing its attorney to interrupt his public comment. ██████████ appears to be referring to this office's determination in Ill. Att'y Gen. PAC Rev. Ltr. 37503, issued April 8, 2016. That determination is inapposite. In that matter, the Board repeatedly interrupted the speaker to attempt to enforce an unreasonable rule that required speakers to limit their comments to topics listed on public comment forms submitted before the meeting. Ill. Att'y Gen. PAC Rev. Ltr. 37503 at 4. That is not the situation here. OMA does not require silence when speakers choose to pose questions to public bodies rather than making comments. When a speaker demands an answer to a question, the public body does not infringe on the speaker's statutory right to public comment by responding to the question or, as in this matter, by its attorney replying that the public body will not answer questions.

Based on our review of the recording that ██████████ provided, this office is unable to conclude that ██████████ was deprived of an opportunity to address the Board or prevented from commenting or asking questioning pursuant to its established and recorded public comment rules. The recording demonstrates that ██████████ was recognized, and allowed to ask questions and comment. The interruptions by the Board's attorney, to explain the Board's rules and regain order, were not unreasonable under the circumstances. To the extent that members of the public interrupted ██████████ by interjecting comments, apparently in support of his position,

⁸Atlanta Public Library District, Rules Of Order for Public Comment (undated).

⁹Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/address> (last visited April 23, 2018).

[REDACTED]

Mr. Randy Brooks

May 18, 2018

Page 5

the Board did not cause or encourage those comments and it permitted [REDACTED] to complete his public comment after the disruption subsided. In addition, the available information does not indicate that the police presence interfered with or caused a chilling effect on public comment. The recording established that the Board allowed [REDACTED] to finish his comments, and that he did so in a cohesive fashion. Accordingly, the Public Access Bureau concludes that the Board did not violate section 2.06(g) of OMA during its December 14, 2017, meeting.

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, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED SIGNATURE]

Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 11, 2018

Via electronic mail

Mr. George Menken
2072 2100th Street
Box 636
Atlanta, Illinois 61723
menkengorge@yahoo.com

RE: FOIA Request for Review – 2018 PAC 53449

Dear **Mr. Menken**:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted on this matter.

On May 15, 2018, you submitted a FOIA request to the Atlanta Public Library District (District) seeking "[c]opies of all pages of bank account #701653 from inception of account to current. Copy of bank signature card for account #701653."¹ On May 22, 2018, the District responded by stating that it did not possess records responsive to your request. In particular, the District stated "[p]er the Atlanta National Bank[,] this is not an account that is overseen by the Atlanta Public Library."² On June 5, 2018, this office received your Request for Review contesting the District's denial of your FOIA request.

Section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)) provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 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). FOIA does not "create an obligation on the part of any public body to maintain or prepare any public record * * * except as otherwise required by applicable local, State or federal law." 5 ILCS 140/1 (West 2016).

¹FOIA Request from **George Menken** to FOIA Public Liaison, Atlanta Public Library District (May 15, 2018).

²Letter from Rachel Neisler, FOIA Officer, Atlanta Public Library District, to [George] Menken (May 22, 2018).

Mr. George Menke

June 11, 2018

Page 2

In your Request for Review, you state that "public funds were transferred to a private account."³ The transfer of public funds to a private account does not transform records of the private account which are not maintained by the District into public records subject to the requirements of FOIA. The available information indicates that the requested signature card and account statements are not in the District's possession and concern a nonpublic bank account maintained by another party. Such records are not public records of the District. Accordingly, this office concludes that the District's response to your request did not violate FOIA, and that no further action is warranted as to this matter.

If you have any questions, you may contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address listed on the first page of this letter. This letter serves to close this matter.

Very truly yours,




MATT HARTMAN

Assistant Attorney General
Public Access Bureau

53449 f no fi war lib

cc: *Via electronic mail*
Ms. Rachel Neisler, FOIA Officer
Atlanta Public Library District
100 Race Street
P.O. Box 568
Atlanta, Illinois 61723
aplinformation@gmail.com

³Letter from  to Public Access Counselor, Illinois Attorney General (June 2, 2018).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 9, 2018

Via electronic mail

Ms. Janice Begolka
607 South Martin Street
Atlanta, Illinois 61723
jnb0569@yahoo.com

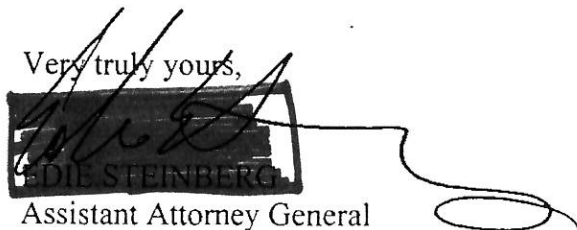
RE: FOIA Request for Review - 2018 PAC 53703

Dear Mr. Begolka:

You filed the above-captioned Request for Review with this office alleging that the Atlanta Public Library District (Library) response to your June 14, 2018, Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)) request was incomplete. This office has received confirmation that the Library has since provided you with a supplemental response containing copies of page six of the May 2018 statement for bank account 100013 and the general ledger requested. (A copy of the Library's supplemental response e-mail is enclosed.) The supplemental response from the Library resolves the allegation that its original response was incomplete. Accordingly, this file is closed.

If you wish to file a Request for Review of the Library's response to your FOIA request, you may do so "not later than 60 days after the date" of that response. 5 ILCS 140/9.5(a) (West 2016). Please contact me at 312-814-5201 or at the Chicago address below if you have questions.

Very truly yours,


EDIE STEINBERG

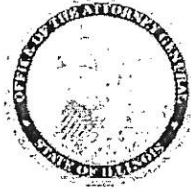
Assistant Attorney General
Public Access Bureau

Enclosure

53703 f inf r lib

~~Atlanta Public Library~~
August 9, 2018
Page 2

cc: *Via electronic mail*
Ms. Rachel Neisler
FOIA Officer
Atlanta Public Library District
P.O. Box 568
Atlanta, Illinois 61723
apldinformation@gmail.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 31, 2018

Via electronic mail

Mr. Eric Hill
eric.hill.00@yahoo.com

Via electronic mail

Ms. Rachel Neisler
FOIA Officer
Atlanta Public Library District
100 Race Street
P.O. Box 568
Atlanta, Illinois 61723
apldinformation@gmail.com

RE: FOIA Request for Review – 2018 PAC 54303

Dear Mr. Hill and Ms. Neisler:

This determination 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 Atlanta Public Library District (District) to Mr. Hill's July 27, 2018, FOIA request did not violate FOIA.

On that date, Mr. Hill submitted a FOIA request to the District seeking copies of all subpoenas received by the District from any local, county, state, or federal entities or agencies. On July 31, 2018, the District responded that it did not possess any records responsive to Mr. Hill's request. In his August 3, 2018, Request for Review, Mr. Hill challenged the completeness of the District's response.

On August 9, 2018, this office sent a copy of the Request for Review to the District and asked it to describe its efforts to search for responsive records. On August 14, 2018, the District responded. The same day, this office forwarded the District's response to Mr. Hill; he did not submit a reply.

[REDACTED]
Ms. Rachel Neisler
August 31, 2018
Page 2

DETERMINATION

The requirements of FOIA apply to records "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 2016). 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. United States Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). 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. United States 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 Workmann v. Illinois State Board of Education*, 229 Ill. App. 3d 459, 463-64 (2d Dist. 1992) (a public body does not violate FOIA when it does not disclose a record that it does not possess). FOIA does not require a public body to conduct a search that would be futile. *See American-Arab Anti-Discrimination Committee v. United States Department of Homeland Security*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007) (affidavit explaining why a federal agency does not collect the type of records requested was sufficient to demonstrate that a search would be futile and was therefore unnecessary).

The District explained in its response to this office that it searched the District Board of Trustees' (Board) records and minute books for the past ten years and contacted all current and recent Board Trustees to inquire if they had received subpoenas; they each indicated that they had not. The Library's Director also confirmed that she had not received any subpoenas on behalf of the District.

The District's search efforts appear to have been reasonably calculated to locate responsive records. The District contacted the individuals who appeared most likely to know whether the District possessed subpoenas and searched locations likely to contain subpoenas. This office has not received any facts from which it can conclude that the District possesses any responsive records. Accordingly, this office concludes that the District's response to [REDACTED] request did not violate FOIA.

[REDACTED]

Ms. Rachel Neisler

August 31, 2018

Page 3

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, please contact me at the Springfield address on the first page of this letter, (217) 524-7958, or LHarter[atg.state.il.us.

Very truly yours,


[REDACTED]
LAURA HARTER

Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 8, 2019

Via electronic mail

Ms. Melanis Blankenship
[Redacted]

RE: OMA Request for Review – 2019 PAC 58497

Dear Ms. Blankenship:

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that this Request for Review is unfounded.

On June 18, 2019, you submitted this Request for Review to the Public Access Bureau alleging that the Atlanta Public Library Board (Board) potentially violated the requirements of OMA during a closed session of its April 18, 2019, regular meeting. Specifically, you alleged that the Board held a closed session without having provided advance notice on the meeting agenda, and made a decision in closed session concerning the next steps in a pending lawsuit. In addition, you questioned whether the Board had approved the services of its attorney in a properly noticed open meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a **summary of the facts supporting the allegation.**" (Emphasis added.)

As an initial matter, section 2a of OMA (5 ILCS 120/2a (West 2016)) provides that "[a]ny open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act." Therefore, the Board did not violate OMA by entering closed session without having a closed session agenda item. *See Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1107 (4th Dist. 2008) ("The plain language of section 2a allows a public body to decide during a properly noticed open meeting to go into closed session without any additional notice.").

Ms. Melanie Blankenship

July 8, 2019

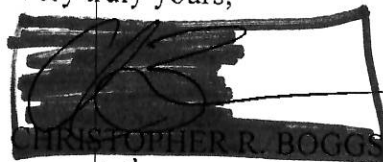
Page 2

Similarly, your allegation that the Board made a decision regarding next steps for a lawsuit in closed session does not set forth facts indicating that the Board violated OMA. Although a public body is not permitted to take final action in closed session,¹ the term "final action" generally does not encompass intermediate steps taken by a public body. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (5th Dist. 1989) (a public body's closed session decision to pursue mediation of a collective bargaining dispute was not final action because it was merely part of the process of reaching a final action with the union). Rather, final action generally must bring a matter to a resolution. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 53511, issued November 15, 2018, at 4-5 (voting to narrow field of school principal candidates to three during closed session was not final action because it did not resolve the matter of selecting a principal). The available information indicates that the Board took final action on the lawsuit when it voted in open session during its June 20, 2019, regular meeting to settle the lawsuit.²

Your allegation that there was no meeting where the Board approved its attorneys to handle the lawsuit also does not set forth facts indicating that the Board violated OMA. On June 28, 2019, an Assistant Attorney General in the Public Access Bureau contacted Library Director Catherine Maciariello, who stated that Board has a law firm on retainer and does not hold a vote each time it seeks legal services from the firm.³ There is no indication that the Board held a private vote to retain the firm for this lawsuit. Because your Request for Review did not provide a factual basis from which this office could conclude that the Board violated OMA, the Public Access Bureau has determined that your Request for Review is unfounded.

This letter closes this file. Please contact me at (217) 785-7438 or the Springfield address listed on the first page of this letter if you have questions.

Very truly yours,



Supervising Attorney
Public Access Bureau

¹ 5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018 ("No final action may be taken at a closed meeting.").

² This action item was listed on the Board's agenda for the June 20, 2019, meeting. Atlanta Public Library District Board, Agenda Item (unnumbered), Settlement of Edgar County Watchdogs Lawsuit (June 20, 2019), available at <http://www.atlantapld.org/board-of-trustees> (last visited June 28, 2019).

³ She also clarified that the meeting was held on April 25, 2019.

[REDACTED]

July 8, 2019

Page 3

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cc: *Via electronic mail*
Ms. Catherine Maciariello
Library Director
Atlanta Public Library District
100 Race Street
Atlanta, Illinois 61732
apldinformation@gmail.com

**JESSE WHITE
SECRETARY OF STATE
STATE OF ILLINOIS**

**IN THE MATTER OF THE RECOVERY OF
GRANT FUNDS FROM THE ATLANTIC PUBLIC
LIBRARY DISTRICT**

FILE NO. S-LH-18

ORDER

WHEREAS, the Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, **TIMOTHY J. FORMAN** in the above captioned case have been read and examined; and,

WHEREAS, the record has been reviewed; and,

WHEREAS, the Findings of Fact and Conclusions of Law are correct and are hereby adopted as the Findings of Fact and Conclusions of Law of the Secretary of State ("Secretary"); and,

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions were correct and are hereby concurred in by the Secretary; and,

WHEREAS, the Secretary adopts the recommendations of the Hearing Officer;

NOW THEREFORE, IT IS HEREBY ORDERED: That pursuant to the Findings of Fact, Conclusions of Law, and the Recommendations of the Hearing Officer, the Petition to contest The recovery of certain funds provided to the Atlanta Public Library through the "Live and Learn" Construction grant is hereby allowed. The Atlanta Public Library is not required to return any funds received from the State of Illinois program.

This Order is final and subject to appeal within thirty-five (35) days pursuant to the Administrative Review Law.