

**Edgar County Watchdogs, Inc
7060 Illinois Highway 1
Paris, Illinois 61944
217-808-2527**

John Kraft

May 4, 2013

**Arcola Township FOIA Officer
108 East Main Street
Arcola, Illinois 61910**

and

**Mr. Mark Petty
111 East Main Street, Box 128
Arcola, Illinois 61910**

Re: Arcola Township

Arcola Township FOIA Officer and Mr. Petty,

I think there is some misunderstanding as to what I asked for and what the requirements of the Freedom Of Information Act are.

I will attempt to clarify what I asked for, what I did not receive, and what the requirements are pursuant to FOIA:

1. In my first FOIA request dated April 23, 2013, with the Subject as: "FOIA Request #1: 4-23-2013", I asked for the following:
 - List of township trustees and their contact information – RECEIVED
 - Complete compensation package for the trustees – RECEIVED
 - Copy of the Freedom Of Information Act and Open Meetings Act Training Certificates for all of the trustees and the FOIA/OMA officer – RECEIVED
 - Name and contact information of the township FOIA and OMA officer – RECEIVED
 - List of all employees and their complete compensation package – RECEIVED
 - Copy of all bank statements since Nov 1, 2012 – **INCOMPLETE/REDACTED**
 - Copy of all credit card statements since Jan 1, 2012 – **INCOMPLETE/REDACTED**

2. In my second FOIA request dated April 23, 2013, with the Subject as: "FOIA Request

#2: 4-23-2013”, I asked for the following:

- Copy of all gas charge card statements since Jan 1, 2012 – **INCOMPLETE/REDACTED**
- Copy of all phone bills since Jan 1, 2012 – **INCOMPLETE/REDACTED**
- Copy of all cell phone bills since Jan 1, 2012 – **INCOMPLETE/REDACTED**
- Exact location of wireless internet access point – RECEIVED

3. The FOIA requests sent are two separate and distinct requests and shall be treated as such. Arcola Township does not have the authority to “treat them as one request” and neither do you.

You claimed they came at the same time, and then stated they were nine minutes apart. The point I am trying to make is that nine seconds or nine years apart, they are two separate requests and will be treated as such. Your statement that I am trying to “avoid the payment of the small expense” is a lie.

My declination of payment, pursuant to 5 ILCS 140/6(d), is simply because I did not receive what I asked for in my requests, and the combining of the two requests into a single request. I suggest Arcola Township and yourself follow the two way street and provide the requested documents and a proper invoice.

4. You stated that I received copies of what the township keeps. My response to that is who gave the authority to the township to destroy public documents; ie: the remaining pages of the statements? Since we know, 5 ILCS 140/2.5, that all records relating to the obligation, receipt, and use of public funds are public records subject to inspection (this includes every page of the statements).

5. FOIA and what constitutes public records:

Section 2(c) of FOIA defines public records as 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.”

Section 2.5 of FOIA further defines Records of Funds as “**All** records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.”

Section 3(a) of FOIA states that a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this act.

Section 6(d) of FOIA states that “The imposition of a fee not consistent with subsections (6)(a) and (b) of this act constitutes a denial of access to public records for the purposes of judicial review.”

Section 7(2) of FOIA states that “A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted ... shall be considered a public record of the public body, for the purposes of this act.

Article VIII, Section 1(c) of the Constitution of the State of Illinois states that “reports and records of the obligation, receipt, and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.”

Section 4 of the Local Records Act, 50 ILCS 205/4 states that “All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.” The procedures for disposing of records is further explained in Sections 7 and 10 of the Local Records Act.

6. In closing, the records I requested are records defined in 5 ILCS 140/2(c), 5 ILCS 140/2.5, and Article VIII (1)(c) of the Constitution of the State of Illinois. If the Arcola Township claims they did not keep all of the public records that were prepared for them (in violation of 50 ILCS 205/4 and 7), then they are required under FOIA to contact the Arcola First Bank, Phillips66, Verizon, Consolidated Communications, and any other company that holds those records, and obtain a copy pursuant to 5 ILCS 140/7(2) as they are in fact still considered public records of the public body. Failure to obtain the records in the possession of a contracted entity also violates 5 ILCS 140/3(a) by giving those companies exclusive access to the records in question.

When redactions are made, a specific reference to the section and paragraph under 5 ILCS 140/7 authorizing the redactions must be made. Information that is already public knowledge should not be redacted, for instance:

Verizon Account Number: 486086166-00001
Verizon Account Number: 380306413-00001
Phillips66 Account Number: 192-767-295-4
Phillips66 Account Number: 193-450-563-5

Does Arcola Township have any FS Gas/Credit cards, or Marathon credit cards? If not, this would be the first public body I have requested information from that did not have either of those.

When contacting these outside contracted companies for copies of the records, it is important to remember that my initial requests were for electronic copies of the

public records. The companies that hold these records, presuming Arcola Township does not, holds these records in electronic format. They must likewise be provided to me in electronic format.

I consider this an improper denial of two separate FOIA requests. This is a demand for the responsive public records pursuant to those requests made on April 23, 2013. I further request an immediate communication from you advising me whether or not you will provide the requested documents. Failure to respond promptly will be considered a willful, intentional, or otherwise act in bad faith in your failure to comply with the Freedom Of Information Act, and will also result in the exercise of my rights pursuant to 5 ILCS 140/11 .

Thanks for your consideration of this matter,



John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

217-808-2527

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Exhibit A

Subject: FOIA Requests (Arcola Township)
From: woofwoof@edgarcountywatchdogs.com
Date: Wed, May 01, 2013 2:23 pm
To: arcolats@arcola-il.com
Bcc: [REDACTED]

Arcola FOIA Officer,

I received your response to my FOIA requests and they are incomplete.

The following documents are missing or have other problems with your response to the FOIA requests:

- All of the pages of the phone bills (Verizon Wireless and Consolidated Communications) were not included.
- Improper redactions on the phone bill pages provided.
- All of the pages of the Phillips 66 credit card (gas card) statements are not included. Improper redactions.
- All of the pages for the Bank Statements are not included. Do you really only have one combined fund bank account for all township monies?

- **FEES:**

I submitted 2 different FOIA requests.
The first one consisted of 55 pages of response
The second one consisted of 73 pages of response

You may charge for anything over 50 pages (for each request)

So, for the first request it is $5 \times .15 = \$0.75$

The second one is $23 \times .15 = \$3.45$

For a total of $\$0.75 + \$3.45 = \$4.20$

However; with the requested information incomplete, I decline to pay for any copies and demand a complete set of documents pursuant to both of my FOIA requests.

This is not a new request, but a demand for documents pursuant to the 2 requests submitted on April 23, 2013. Incompleted and improperly redacted documents constitutes a denial of both requests. Please respond promptly.

Thanks for your consideration,
John Kraft
Edgar County Watchdogs, Inc.
7060 Illinois Highway 1
Paris, Illinois 61944

Ph: 217-808-2527
Email: woofwoof@edgarcountywatchdogs.com

| ----- Original Message -----

Subject: FOIA Request #1: 4-23-2013
From: <woofwoof@edgarcountywatchdogs.com>
Date: Tue, April 23, 2013 9:58 am
To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

1. List of township trustees and their contact information
2. Complete compensation package for the trustees
3. Copy of the Freedom Of Information Act and Open Meetings Act Training Certificates for all of the trustees and the FOIA/OMA Officer
4. Name and contact information of the Township FOIA and OMA Officer
5. List of all employees and their complete compensation package
6. Copy of all bank statements since Nov 1, 2012
7. Copy of all credit card statements since Jan 1, 2012

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft
Edgar County Watchdogs, Inc.
7060 Illinois Highway 1
Paris, Illinois 61944

Ph: 217-808-2527
Email: woofwoof@edgarcountywatchdogs.com

----- Original Message -----
Subject: FOIA Request #2: 4-23-2013
From: <woofwoof@edgarcountywatchdogs.com>
Date: Tue, April 23, 2013 10:07 am
To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

1. Copy of all gas charge card statements since Jan 1, 2012
2. Copy of all Phone Bills since Jan 1, 2012
3. Copy of all cell phone bills since Jan 1, 2012

4. Exact location of the wireless internet access point

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft
Edgar County Watchdogs, Inc.
7060 Illinois Highway 1
Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

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P
ETTY LAW OFFICE, P.C.

Exhibit B

MARK T. PETTY

ANDREW L. PETTY

May 3, 2013

Mr. John Kraft
7060 Illinois Highway 1
Paris, IL 61944

Re: Arcola Township

Dear Mr. Kraft:

First of all, your email has been referred to me for response.

1. You have received copies of what the township keeps, the only portion of the bill or statement that reflects the balance paid. They do not have every page of every credit card or phone bills.

2. You have not indicated what is an improper redaction on the phone bill so we can't respond to that.

3. The only thing that is redacted is account and pin numbers which are not appropriate for disclosure.

Your FOIA requests are being treated as one request. They came at the same time. You cannot avoid the payment of the small expense by breaking up the request the way you did. Your claim that there are two separate requests, one of which is dated April 23, 2013 at 9:58 a.m. and one of which is dated April 23, 2013 at 10:07 a.m., nine minutes later, does not constitute two requests but are one request. If you decline to pay for any copies and demand a complete set of copies, nothing further will be provided until the two way street is followed by you. It is interesting that you have not even provided what you claim is the amount due. Your speculation about what is required for the requirements for the Freedom of Information Act are just that, your views.

Thank you very much for your attention to this matter.

Very truly yours,


Mark T. Petty

MTP/lr

p.c. Bill Coombe



Exhibit C

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 20, 2012

Mr. John Kraft

[REDACTED]
Paris, Illinois 61944

Ms. Nanette Crippes
FOIA Officer
Edgar County Emergency Telephone System Board
115 W. Court, Rm. C
Paris, Illinois 61944

RE: FOIA Request for Review – 2011 PAC 17699

Dear Mr. Kraft and Ms. Crippes:

Pursuant to section 9.5 of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5 (West 2010), as amended by Public Act 97-579, effective August 26, 2011), we have received a Request for Review of the Edgar County Emergency Telephone System Board's (Board) response to a FOIA request by Mr. John Kraft. We have reviewed the Board's response to the allegations as well as Mr. Kraft's reply to that response.

On October 4, 2011, Mr. John Kraft submitted a FOIA request to the Board seeking copies of, among other things, "all cell phone statements, to include all pages for the last 5 years."¹ On October 5, 2011, the Board responded by providing a list of payments from Cellular One and the first page of bills from Verizon Wireless.²

On December 7, 2011, the Public Access Counselor received Mr. Kraft's Request for Review of the Board's response.³ On January 3, 2012, this office sent a letter to the Board

¹Correspondence from Mr. John Kraft to 911 Coordinator, Edgar County (October 4, 2011).

²Correspondence from Ms. Nanette Crippes, FOIA Officer, Edgar County Emergency Telephone System Board to Mr. John Kraft (October 5, 2011).

³Correspondence from Mr. John Kraft to Public Access Counselor, State of Illinois (December 7,

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asking for a written response to Mr. Kraft's Request for Review, including whether the Board had any other documents in its possession or custody that are responsive to Mr. Kraft's request and, to the extent the Board relied on a FOIA exemption to redact information, provide a detailed factual basis in support of its assertion.⁴

On January 6, 2012, the Board responded with a letter stating that the only information that was redacted from the documents was personal information, and asserting that the cell phone records were "a personal cell phone account * * * the contract for the account is [Ms. Crippes'], not the ETSB. This payment was part of [Ms. Crippes'] compensation package."⁵ The Board also asserted that it did not possess any other documents responsive to Mr. Kraft's FOIA request.

Mr. Kraft responded to the Board's letter on January 20, 2012.⁶ Mr. Kraft asserted that the documents provided by the Board were missing pages and were improperly redacted. Mr. Kraft also provided a request form dated August 30, 2011, purportedly from Ms. Crippes, requesting payment from the Edgar County treasurer to Verizon Wireless for Ms. Crippes' cell phone bill.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection and copying" and a public body has the burden of proving by "clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2010). "Public records" include "all records * * * pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c-5) (West 2010). Section 2.5 of FOIA further states that "all records relating to the obligation, receipt and use of public funds of the State * * * are public records." 5 ILCS 140/2.5 (West 2010).

2011).

⁴Correspondence from Lindsay LaVine, Assistant Attorney General, Public Access Bureau to Ms. Nanette Crippes, FOIA Officer, Edgar County Emergency Telephone System Board (January 3, 2012).

⁵Correspondence from Ms. Nanette Crippes, FOIA Officer, Edgar County Emergency Telephone System Board to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (January 6, 2012).

⁶Correspondence from Mr. John Kraft to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (January 20, 2012).

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The Board asserts that the only redactions it made was of "personal information"⁷, but failed to specifically state what information it redacted. Section 7(1)(b) of FOIA exempts private information from disclosure. 5 ILCS 140/7(1)(b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011. "Private information" is defined as unique identifiers, such as "a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses * * *." 5 ILCS 140/2(e-5) (West 2010).

Section 7(2) of FOIA provides that:

[a] public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for the purposes of this Act. 5 ILCS 140/7(2) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011.

This office has previously concluded that cell phone records for devices and services paid for with public funds are subject to disclosure under FOIA. See Ill. Att'y. Gen. PAC Req. Rev. Ltr. 14293, issued November 7, 2011; Ill. Att'y. Gen. PAC Req. Rev. Ltr. 8224, issued June 23, 2011; and Ill. Att'y. Gen. PAC Req. Rev. Ltr. 12535, issued May 4, 2011. In her response, Ms. Crippes asserts that the cell phone is in her name, not the Board's, and that the cell phone is part of her "compensation package." A review of the materials provided by the Board show an address on cell phone bills of the Edgar County Emergency Telephone System Board's office. In addition, Mr. Kraft provided a copy of a request for payment of Ms. Crippes' cell phone bill to the Edgar County Treasurer dated August 30, 2011 as well as a copy of a cell phone bill with the account name "Edgar County 911[telephone number]." The Board has not disputed these statements.

⁷Personal information is exempt under FOIA to the extent that the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011. The release of an individual's home telephone number or address is not classified as personal information under FOIA, but may be withheld under section 7(1)(b), which exempts from disclosure certain private information.

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Edgar County has contracted with a carrier, Verizon Wireless (and, formerly, CellularOne), to provide cell phone service to the County. Pursuant to section 7(2), records of incoming and outgoing calls from Ms. Crippes' County-furnished cell phone maintained by Verizon Wireless (and formerly CellularOne) are public records that are deemed to be in the custody of the County/Board. Therefore, pursuant to section 7(2) of FOIA, the Board must take appropriate steps to obtain copies of these records from Verizon Wireless and CellularOne in order to satisfy this request.

Further, the Board has not met its burden of demonstrating that section 7(1)(b) exempts from disclosure all telephone numbers contained in the cell phone records. Section 7(1)(b) exempts only "home or personal telephone numbers." Therefore, the Board must provide a list of all incoming and outgoing cell phone calls that pertain to this request. The Board may, pursuant to section 7(1)(b), redact from that list all home or personal telephone numbers. We direct the Board to immediately provide these records to Mr. Kraft.

We conclude that the Board's denial of Mr. Kraft's FOIA request failed to comply with section 9(a) of FOIA (5 ILCS 140/9(a) (West 2010)) by not providing written notice of the right to submit a request for review to the Public Access Counselor or to file suit under section 11 of FOIA. We remind the Board of its obligation under section 9(a) to include this notice in future denial letters.

If you have any questions, please contact me at (312) 814-5201. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Accordingly, this correspondence shall serve to close this matter.

Very truly yours,



LINDSAY LAVINE
Assistant Attorney General
Public Access Bureau