



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2014

Mr. Mark T. Petty
Petty Law Office, P.C.
111 East Main Street
Box 128
Arcola, Illinois 61910

RE: FOIA Request for Review – 2013 PAC 25511

Dear Mr. Petty:

Thank you for your response dated August 16, 2013. I have reviewed your response and require additional clarification concerning records that Arcola Township (Township) asserts are not in its possession. Enclosed for your reference are copies of Mr. John Kraft's original FOIA request and your response to the Request for Review by our office.

On July 21, 2013, Mr. Kraft submitted a FOIA request to the Township seeking the names and dates that Township employees took vacation between May 28, 2011, and June 28, 2011. Mr. Kraft also requested receipts for specific purchases on the Township's gasoline card made between June 9, 2011, and June 20, 2011. On July 30, 2013, the Township denied the request explaining that it is not required to answer questions. On August 1, 2013, the Township issued a supplemental response asking Mr. Kraft to identify the specific document that he is requesting. The Township also stated that it does not possess any receipts responsive to Mr. Kraft's request. On August 7, 2013, this office forwarded Mr. Kraft's Request for Review to the Township and requested that it clarify whether the Township possesses any records of employee vacations or credit card receipts. On August 16, 2013, the Township responded that it does not have any documents that reflect when employees were on vacation because employees receive oral permission from their supervisor when requesting vacation time. The Township also stated that it had provided Mr. Kraft with the gasoline card statement from May 28, 2011, to June 28, 2011.

In order to complete this office's review of Mr. Kraft's Request for Review, I need additional clarification concerning the details of the search the Township performed to locate records reflecting the names and dates of employees who took vacation during the time period Mr. Kraft specified. In your response, please clarify the manner in which the Township records

Mr. Mark T. Petty
January 3, 2014
Page 2

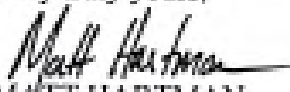
the dates that employees take vacation. In addition, please provide a detailed explanation of the search the Township performed to locate receipts for the gasoline card purchases identified by Mr. Kraft. In your response, please clarify whether company issuing the gasoline card possesses records of receipts for the purchases in question. If the Township possesses records of vacation time or gasoline card receipts and wishes to assert that those records are exempt from disclosure, please provide copies of the records for our review together with a written explanation that identifies the relevant section 7 exemption (5 ILCS 140/7 (West 2012)) and provides a detailed factual basis for its application.

As required under FOIA, please provide this information to our office within seven (7) working days after receipt of this letter (5 ILCS 140/9.5(c) (West 2012)). As we review this matter, we will advise you if we require additional information. If you believe that other documents or information would help us as we review these issues, you may submit additional records or affidavits with the requested information.

Please note that, under FOIA, we are required to forward a copy of any response from a public body to the requester and provide the requester with an opportunity to reply (5 ILCS 140/9.5(d) (West 2012)). The Act provides, however, that "[t]o the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of [the] Act, the Public Access Counselor shall not further disclose that information." 5 ILCS 140/9.5(c) (West 2012). The Act also requires that we redact "any alleged confidential information to which the request pertains" when providing a copy of your written response to the requester (5 ILCS 140/9.5(d) (West 2012)). **If your response contains information or documents you believe are confidential, you must clearly identify that specific information in your response.**

Please contact me at (217) 782-9054 if you have questions or would like to discuss this matter. Thank you.

Very truly yours,


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

Enclosure

cc: Mr. John Kraft (will receive letter only)
7060 Illinois Highway 1
Paris, Illinois 61944

PETTY LAW OFFICE, P.C.

RECEIVED
ATTORNEY GENERAL

JAN 23 2014

FOIA/OMA

ANDREW L. PETTY

25511
mtt

MARK T. PETTY

January 17, 2014

Mr. Matt Hartman
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL 62706

Re: FOIA Request for Review - 2013 PAC 25511
My Client - Arcola Township

Dear Mr. Hartman:

I am in receipt of your request. The Arcola Township secretary, Deana Shields, searched for the records requested by Mr. Kraft. She files and is in charge of all the written and electronic documents for the Arcola Township. There are no records of vacation time for the Arcola Township employees, or gasoline card receipts, other than those which have been previously produced. The only employee records, kept by the Arcola Township, are the employees payroll records. These records do not denote vacation time.

The Arcola Township has only one credit card. There are no credit card receipts in the possession of the Arcola Township, or available to the Arcola Township, which were requested by Mr. Kraft in his original FOIA request. Part of the Arcola Township's compensation agreement with Deana Shields, includes reimbursement for her fuel costs. She submits regular fuel costs reimbursement requests to the Arcola Township, but does not submit any credit card bills.

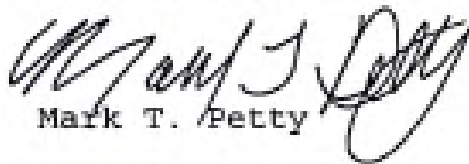
Mr. Kraft has in his possession all of the information that the Arcola Township has on these issues, pertaining to his FOIA requests. His conclusions on what he thinks the Township has or

Mr. Matt Hartman
January 17, 2014
Page 2

does not have are just that, his conclusions. He has previously filed suit against the Township (Douglas County Case No. 13-MR-31) and has recently filed another lawsuit (Douglas County Case No. 13-MR-53). Although, the expense is great, the Township is prepared to defend it's compliance with the act as it is with the pending lawsuit (the first lawsuit that he filed was dismissed by the court).

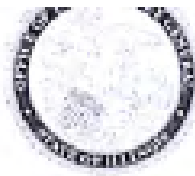
If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark T. Petty". The signature is stylized and cursive, with a large loop at the end.

Mark T. Petty

MTP/al



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 27, 2014

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

RE: FOIA Request for Review – 2013 PAC 25511

Dear Mr. Kraft:

The Public Access Bureau has received the enclosed response to your Request for Review from the Attorneys for Arcola Township.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2012). Please send a copy of your reply to the Township, as well.

If you have questions about this matter, please contact me at (217) 782-9054.

Very truly yours,

A handwritten signature in blue ink that reads "Matt Hartman".

MATTHEW HARTMAN *MH*
Assistant Attorney General
Public Access Bureau

Enclosure

cc: Mr. Mark Petty
Petty Law Office
OBO Arcola Township
111 East Main Street
Arcola, Illinois 61910

From: John Kraft [mailto:john@heirloomvideography.net]
Sent: Sunday, February 02, 2014 11:40 PM
To: 'Hartman, Matthew'
Subject: re: 2013 PAC 25511 (Arcola Township)

February 2, 2014

Mr. Matt Hartman
 Assistant Attorney General
 Public Access Bureau
 500 South Second Street
 Springfield, Illinois 62706

Re: FOIA Request for Review – 2013 PAC 25511

Mr. Hartman,

I am writing this in response to Mr. Petty's letter dated January 17, 2014 and forwarded to my on January 27, 2014.

Section 2(c) of the FOIA [5 ILCS 140/2(c)] defines "Public records" as:

"Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

Section 2.5 of the FOIA [5 ILCS 140/2.5] provides that: "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 the FOIA [5 ILCS 140/3(a)] states in part: "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 7 (2) states "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". The requested records; a) Meet the definition of "public records" as defined in Section 2 (c) of the Act, and, b) The requested records are "records of funds" generally, and in

particular relate to the use of public funds as explained in Section 2.5 of the Act.

For the purposes of the credit card receipts:

Credit card receipts are public records as defined in the Act, They are also records relating to the use of public funds. If the Township chose not to keep copies of the receipts, they can simply go to the credit card company and get copies from them. Additionally, the Township, by its failure to obtain the records from third parties, has granted those third parties the exclusive right to access and disseminate public records. Since they have produced no "Applications for Authority to Dispose of Local Records" or "Record Disposal Certificates" for these particular public records, they must have chosen to allow the credit card companies to store these records on behalf of the Township.

The Attorney General has recently determined, in 2011 PAC 17699, that public records not kept in the possession of a public body, but with a 3rd party (cell phone company) were considered public records of the public body, and directed the public body to contact the cell phone company and obtain those requested records.

For the purposes of the vacation days:

As far as the vacation days only being verbal approval, I will state the mental records fall under the definition of Public Records as "*having been used by*" and "*in the possession of*" and "*under the control of*" a public body since Section 2(c) specifically states "regardless of the physical form or characteristics". They are also records pertaining to the use of public funds.

Section 6 of the Act states that: "*When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.*"

Now, since the records cannot be produced in an electronic format, and they obviously cannot be produced in the format in which they are maintained by the public body, I am hereby exercising my option, according to Section 6 of the Act, that the requested public records be produced in paper format.

Attorney General Opinion 12-014 addressed the issue of putting records in a different format and determined it would not be considered "creation of a new record". I am not requesting records they don't normally keep; I am simply asking they be provided in a paper format.

For the purposes of the last paragraph of his letter:

Whether or not I filed a lawsuit to enforce my right to access public records, for FOIA denials not related to this request for review, is immaterial. However, I will note what Mr. Petty failed to note, and that is the first lawsuit was

dismissed only because the paperwork was served improperly, not because of any defect in the pleadings.

Thanks for your consideration,
John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944
xxxxxxxxxxxxxxxxxxxx