



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

October 9, 2018

*Via electronic mail*

Mr. John Kraft

XXXXXXXXXX

XXXXXXX

*Via electronic mail*

Mr. James D. Douglas

Director

Morgan County RPC/GIS

MCS Community Services

345 West State

Jacksonville, Illinois 62650

ddouglas@morgancounty-il.com

RE: FOIA Request for Review – 2018 PAC 54092

Dear Mr. Kraft and Mr. Douglas:

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 concludes that Morgan County (County) has not demonstrated that it conducted an adequate search for records responsive to Mr. John Kraft's July 9, 2018, FOIA request.

On that date, Mr. Kraft submitted a FOIA request to the County seeking a copy of the current ordinance, including amendments, relating to the siting of Industrial Wind Turbines (IWT), and any communications relating to IWT exchanged between County entities/employees and the corporation. On July 11, 2018, the County responded and provided responsive records. On July 19, 2018, this office received Mr. Kraft's Request for Review contesting the completeness of that response.

On July 23, 2018, this office forwarded a copy of the Request for Review to the County and asked the County to provide a written response explaining its search for responsive

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records. On July 25, 2018, this office received the County's response. This office later forwarded a copy of that response to Mr. Kraft; he did not reply.

### DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 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. 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). "At all times the burden is on the [public body] to establish the adequacy of its search." *Rugiero v. U.S. Department of Justice*, 257 F.3d 534, 547 (6th Cir. 2001).

The County response to this office stated that the County has met with developers but has yet to receive an application for a permit, adding that abundant correspondence is expected once an application is submitted. The response did not provide any description of its search for records responsive to Mr. Kraft's request, despite this office's specific request for that information. To the extent that the County's response could be construed as asserting that it did not possess additional responsive records, that explanation is conclusory. Because the County has not described the specific measures that it took to search for such records, this office is unable to conclude that the County performed a reasonable search for records responsive to Mr. Kraft's FOIA request.

Accordingly, the Public Access Bureau requests that the County perform a search of the recordkeeping systems that are reasonably likely to contain any responsive records, and then issue a supplemental response to Mr. Kraft either disclosing the non-exempt portions of any responsive records it locates, or, if it does not locate responsive records, describing its search in specific detail. If the County redacts or withholds any responsive information, it should issue a written notice of denial to Mr. Kraft that fully meets the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).

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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, you may contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



S. PIYA MUKHERJEE  
Assistant Attorney General  
Public Access Bureau

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