



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

June 20, 2012

Mr. John Kraft

1060 Illinois Highway  
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."<sup>1</sup> 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.<sup>2</sup>

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

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

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

<sup>3</sup>Correspondence 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.<sup>4</sup>

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."<sup>5</sup> 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.<sup>6</sup> 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).

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2011).

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

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

<sup>6</sup>Correspondence 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"<sup>7</sup>, 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(c-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.

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<sup>7</sup>Personal 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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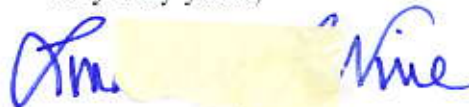
Edgar County has contracted with a carrier, Verizon Wireless (and, formerly, CellularOne), to provide cell phone service to the County. Pursuant to section 7(2), records of incoming and outgoing calls from Ms. Crippes' County-furnished cell phone maintained by Verizon Wireless (and formerly CellularOne) 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

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