



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 22, 2013

Via electronic mail

[REDACTED]

Ms. Nanette Crippes
Director
Edgar County Emergency Telephone System Board
115 West Court, Room C
Paris, Illinois 61944

RE: FOIA Request for Review -- 2012 PAC 20669

Dear [REDACTED] and Ms. Crippes:

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 2012)). For the reasons that follow, the Public Access Bureau concludes that the Edgar County Emergency Telephone System Board (Board): (1) improperly redacted cell phone statements that it provided to [REDACTED] and (2) improperly attempted to charge [REDACTED] for the costs of obtaining records in the possession of a third party.

On June 30, 2012, [REDACTED] submitted a FOIA request to the Board seeking "the information requested in my October 4, 2011 FOIA request as per the Determination made by the Illinois Attorney General's Office re: 2011 PAC 17699."¹ **The October 4, 2011, request** sought "ALL cell phone statements, to include all pages for the last 5 years."²

On July 3, 2012, the Board responded by providing [REDACTED] with redacted copies of some cell phone statements and asserted that the cell phone companies charged \$5.00 per month for statements issued prior to May 20, 2011. The Board offered to obtain the

¹E-mail from [REDACTED] to FOIA Officer at 'coord911@edgarcounty-il.gov' (June 30, 2012). [REDACTED] refers to a determination letter from the Public Access Bureau, Ill. Att'y Gen. PAC Req. Rev. Ltr. 17699, issued June 20, 2012.

²E-mail from [REDACTED] to <coord911@edgarcounty-il.gov> (October 4, 2011).

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statements for ██████████ once he paid the appropriate fees. On July 16, 2012, ██████████ disputed the Board's redactions of the cell phone statements and renewed his request that the Board provide the five years of records free of charge because the Board improperly denied his FOIA request. On July 20, 2012, the Board asserted that it only redacted information concerning personal phone calls, and that its actual cost to obtain earlier records was \$5.00 per month. In his reply, ██████████ reiterates that the statements produced by the Board have been improperly redacted and challenges the Board's assertion that cell phone company fees for the records may be passed on to him.

██████████ submitted a Request for Review to the Board's most recent response to this office on July 21, 2012. On August 14, 2012, this office forwarded a copy of the Request for Review to the Board and asked it to provide a citation to and supporting explanation of the applicability of the asserted exemption(s) for redactions, as well as a representative sample of unredacted copies of responsive records. We also asked whether the Board possessed any responsive records prior to May 2011, which hadn't been provided to ██████████ and to clarify whether the phone company had provided any written correspondence regarding the cost to obtain copies of phone records. This office received the Board's response on August 28, 2012, in which the Board asserted the redacted information was exempt under sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2012)). The Board also confirmed that it did not possess any cell phone statements prior to May 2011, and stated that the actual cost of obtaining earlier statements is \$5.00 per month. The Board asserted that it is entitled to recoup that fee from ██████████ pursuant to section 6(b) of FOIA (5 ILCS 140/6(b) (West 2012)).

In his reply dated September 6, 2012, ██████████ disputed the redaction of date, time, location, and length of calls under section 7(1)(b), as well as the Board's assertion of section 7(1)(c) of FOIA. He also contended that section 6(b) of FOIA applies to copying costs for public records rather than costs for obtaining records from the phone company. Further, ██████████ asserted that the Board waived its right to impose copying fees when it improperly denied his previous FOIA request for the same records in connection with 2011 PAC 17699.

Ms. Crippes has clarified for this office that the cell phone statements concern a phone for which she privately contracts. The Board, however, paid the cell phone bills as part of her compensation package with the Edgar County Emergency Telephone System.

DETERMINATION

Redaction of Cell Phone Statements

Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as

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otherwise provided in Section 7 of this Act." 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 2012). Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)) further provides that "all records relating to the obligation, receipt and use of public funds of the State * * * are public records."

Section 7(1)(b)

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) lists among "private information" "unique identifiers, including a person's * * * home or personal telephone numbers[.]"

Thus, home and personal telephone numbers are "private information" under the plain language of the above definition. Therefore, the Board's redaction of all identifiable home or personal telephone numbers is permissible pursuant to section 7(1)(b) of FOIA. However, the date, time, rate, usage type, origination, destination or length of the call does not uniquely identify a specific individual. Accordingly, the Board has not met its burden of demonstrating that this information is exempt from disclosure under section 7(1)(b) of FOIA.

Section 7(1)(c)

Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." An "unwarranted invasion of personal privacy" is defined in the statute as the "disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2012). Excluded from the definition of "unwarranted invasion of personal privacy" is information that bears on the public duties of public employees and officials. 5 ILCS 140/7(1)(c) (West 2012).

The Board's response to this office asserted that the date, time, telephone number, rate, usage type, origination of the call, destination of the call, and the length of time for each call are exempt from disclosure under section 7(1)(c) of FOIA. This data, which may reveal information about Ms. Crippes, such as where her family members live (as revealed by the location of calls), calling patterns, and frequency of calls, is generally considered personal information and not subject to disclosure. Here, however, Ms. Crippes and the Board have transformed records that would normally constitute private, personal records (cell phone

statements related to a personal cell phone) into public records subject to disclosure under FOIA. By the Board authorizing and Ms. Crippes accepting the payment of her personal cell phone bills as a part of her compensation package, the Board and Ms. Crippes have converted her cell phone statements into a "public record" as that term is used in FOIA.

Presumably, Ms. Crippes' is compensated out of emergency telephone system funds, which are public funds. The cell phone statements are "used by" the Board in determining and providing Ms. Crippes' compensation, this bears on both the Board's and Ms. Crippes' public duties. Further, when balancing under section 7(1)(c) of FOIA, Ms. Crippes' right to privacy and the public's interest in obtaining the information, the public interest in disclosure of such information outweighs Ms. Crippes' right to privacy. The call dates and times provide information regarding whether Ms. Crippes was making personal calls during her work hours with the emergency telephone system. The length of time spent on personal calls also relates to whether Ms. Crippes was properly performing her public duties. The rate information (peak vs. non-peak hours) and usage type address the expenditure of public funds and the costs of including Ms. Crippes' cell phone usage in her compensation package. Consequently, the Board has not met its burden of demonstrating that date, time, telephone number, usage type, origination of call, destination of call, and the length of time for each call are exempt from disclosure under section 7(1)(c) of FOIA.

The Board may, therefore, only redact from Ms. Crippes' cell phone statements identifiable home or personal telephone numbers pursuant to section 7(1)(b) of FOIA. The Board may not redact additional information under section 7(1)(c).

Costs of Obtaining Cell Phone Statements

Sections 3(d) and 6(b)

Section 3(d) of FOIA states that if a public body fails to comply with a written FOIA request, issue an extension, or deny the request within 5 business days, the failure to comply is considered a denial of the request. Section 3(d) further states that "a public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies." 5 ILCS 140/3(d) (West 2012).

Section 6(b) of FOIA (5 ILCS 140/6(b) (West 2012)) provides, in pertinent part, that "[e]xcept when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records".

asserts that the Board cannot pass along its actual costs of obtaining the

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cell phone statements from the phone company because the Board improperly denied his FOIA request. We agree that [REDACTED] should not be charged for the costs of obtaining the responsive records, but on a different basis. Section 3(d) of FOIA states that a public body must respond to a FOIA request within the statutory deadline or it may not charge for copying fees. Based on the information provided to this office, [REDACTED] submitted his original FOIA request (2011 PAC 17699), to the Board on October 4, 2011, and the Board issued its response on October 5, 2011. [REDACTED] filed a Request for Review with this office on December 7, 2011, and on June 20, 2012, we concluded that the Board improperly withheld responsive records that were not exempt under FOIA. On June 30, 2012, [REDACTED] submitted a FOIA request seeking the information he requested that was the subject of the Public Access Bureau's June 20, 2012, determination letter, and the Board responded on July 3, 2012. Therefore, we conclude that the Board responded within the requisite time period under FOIA and is not precluded from assessing costs under section 3(d).

Article VIII, §1(c) of the Illinois Constitution of 1970 provides, in pertinent part:

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.

This constitutional mandate has been implemented in section 2.5 of FOIA and in section 3a of the Local Records Act (50 ILCS 205/3a (West 2012)), which provides:

Reports and records of the obligation, receipt and use of public funds of the units of local government * * * and presented to the corporate authorities or boards of units of local government, are public records available for inspection by the public. These records shall be kept at the official place of business of each unit of local government and school district or at a designated place of business of the unit or district.

Again, the Board's offer to pay Ms. Crippes' cell phone bills as part of her compensation package and Ms. Crippes' acceptance of that offer, have transformed records that would normally be private and personal into "public records" under Illinois law. Based on the Board's response, it appears that Ms. Crippes received monthly cell phone statements from her cell phone provider, presumably she submitted documentation to the Board for payment or reimbursement of her cell phone bills. The cell phone statements provide documentation regarding the use of public funds of an agency of a unit of local government, the Edgar County Emergency Telephone System. As such, the cell phone statements are subject to retention and

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public inspection. If Ms. Crippes failed to retain copies of the statements in the Board's records or if the Board failed to obtain a copy of the statements from Ms. Crippes, then [REDACTED] should not be required to pay the additional costs incurred by the Board to obtain copies of the statements that should already have been a part of its records. Accordingly, the Board may not require [REDACTED] to pay the cell phone company fees in order to obtain copies of the requested records. The Board may, however, assess fees for copying the records in accordance with section 6(b) of FOIA (5 ILCS 140/6(b) (West 2012)), if the requested records exceed 50 pages.

In accordance with the conclusions expressed in this letter, we instruct the Board to provide the responsive records to [REDACTED] subject only to appropriate redactions of identifiable home and personal phone numbers, under section 7(1)(b) of FOIA. Should the Board not possess copies of the cell phone statements, it must obtain the requested records from the phone company. The costs of doing so may not be passed on to [REDACTED]

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 (877) 299-3642.

Very truly yours,

[REDACTED]
LINDSAY LAVINE
Assistant Attorney General
Public Access Bureau

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