



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 3, 2014

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

Mr. Larson B. Dunn III
Assistant State's Attorney
DeWitt County State's Attorney's Office
201 West Washington Street
Clinton, Illinois 61727

RE: FOIA Request for Review – 2013 PAC 26053

Dear Mr. Kraft and Mr. Dunn:

This determination 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 DeWitt County's (County) response to Mr. John Kraft's FOIA request complied with the requirements of FOIA.

On August 27, 2013, Mr. Kraft submitted a FOIA request to the County seeking all supporting documents including receipts, memos, claim forms, and credit card statements related to a credit card payment in the amount of \$6,282.99 to Capitol One Bank. On August 30, 2013, the County provided a copy of a credit card statement with information redacted pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013). Mr. Kraft alleges in his Request for Review, that the County's response was incomplete and improper for the following reasons:

1. I did not receive any receipts associated with the charges to the credit card.
2. Improper redactions were made and are inconsistent with 5 ILCS 140/7(1)(c) for:
 - a. Improper redaction of where the purchase on 30 July was made.

Mr. John Kraft
Mr. Larson B. Dunn III
March 3, 2014
Page 2

- b. Improper redaction of the name, address, etc[.] (mailing address) on the first page of the statement (it should list who the statement is sent to)[.]¹

Mr. Kraft also alleged that the County failed to provide copies of a claim form and an approval of the expenditures issued by a circuit court judge.

On September 30, 2014, this office forwarded a copy of Mr. Kraft's Request for Review to the County and asked it to describe its efforts to locate the requested records, as well as to provide a detailed factual basis for the assertion of section 7(1)(c). On October 8, 2013, the District responded:

Mr. Kraft has not been supplied with associated receipts because they are not maintained by a public body. The DeWitt County Treasurer does not maintain receipts in her office for the requested transaction. Being a Probation Department transaction, the transaction in question is reviewed by the judiciary, which is not a public body. * * * The DeWitt County State's Attorney's Office has no authority to require the judiciary to produce documents.

The County of DeWitt has previously supplied an unredacted copy of the requested record to Mr. Kraft containing the line item previously removed, along with the other member of his group, the Edgar County Watchdogs, making one of his other claims moot. The second claimed improper redaction is for name and address. This is not present in the original document supplied from the Treasurer's Office. The Freedom of Information Act does not require adding information to requested documents, and this office shall not be adding home addresses to documents that are released.²

On October 29, 2013, Mr. Kraft replied that Article VIII, section 1(c) of the Illinois Constitution (Ill. Const. 1970, Article VIII, §1(c)) and Section 3a of the Local Records Act (50 ILCS 205/3a (West 2012)) require the County to maintain the requested receipts. Mr. Kraft also claims that during a recorded County Board meeting, the County's treasurer read the name and address of the card holder from the credit card statement.

¹Request submitted by John Kraft, to the Public Access Bureau, Office of the Illinois Attorney General (September 13, 2013).

²Letter from Larson B. Dunn III, Asst. State's Attorney, DeWitt County State's Attorney's Office, to Assistant Attorney General Dushyanth Reddivari[, Public Access Bureau] (October 8, 2013).

Mr. John Kraft
Mr. Larson B. Dunn III
March 3, 2014
Page 3

On February 26, 2014, Assistant State's Attorney Larson B. Dunn III stated in a telephone conversation with an Assistant Attorney General in the Public Access Bureau that he was present at the Board meeting at which the requester claims the Treasurer read the name and address listed on the credit card statement. Mr. Dunn stated that the name and address were contained on the tear-off portion of the statement that was submitted with payment, and that the County did not retain a copy of this tear-off portion. Mr. Dunn confirmed that the County has provided Mr. Kraft with copies of the only responsive records that it possesses, and that it did not redact the name and address of the credit card holder. Mr. Dunn also confirmed that the credit card at issue is a personal credit card.

On February 28, 2014, Mr. Dunn also confirmed by telephone with an Assistant Attorney General in the Public Access Bureau that on September 18, 2013, the County e-mailed Mr. Kraft an un-redacted copy of the credit card statement, which included the previously redacted July 30, 2013, transaction. That supplemental response resolves the allegation that the County improperly redacted certain information from the credit card statement in its initial response. See *Duncan Publishing Inc., v. City of Chicago*, 304 Ill. App. 3d 778, 782 (5th Dist. 1999) ("Once an agency produces all records related to a plaintiff's request, the merits of a plaintiff's claim for relief, in the form of production of information, becomes moot.").

DETERMINATION

FOIA provides that "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 2012). However, "a requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982). The County has confirmed that it does not possess receipts relating to items purchased using a Probation Department employee's personal credit card, explaining that the judiciary rather than the County reviews the transactions. The Illinois Appellate Court has determined that FOIA is not applicable to the judiciary or its agents. *Newman, Raiz & Shelmadine, LLC v. Brown*, 394 Ill. App. 3d 602 (2009); *Copley Press, Inc. v. Administrative Office of the Courts*, 271 Ill. App. 3d 548 (2d Dist. 1995). Because the County does not possess the receipts, we conclude that the County's failure to provide copies of those receipts did not violate the requirements of FOIA.

The County has stated that it did not redact the name and address of the card holder from the credit card statements as alleged by Mr. Kraft; the County has explained that the name and address were located on the tear-off portion of the statement that was mailed to the credit card company along with payment, and that the County did not maintain a copy of this tear-off portion. FOIA does not directly require a public body to maintain records. The retention and disposal of a county's public records is governed by the Local Records Act (50 ILCS 205/1 *et seq.* (West 2012)) rather than FOIA. Pursuant to section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2012)), the Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West

Mr. John Kraft
Mr. Larson B. Dunn III
March 3, 2014
Page 4

2012)). Based on the available information, we conclude that the County did not violate FOIA by not providing that information to Mr. Kraft.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at (312) 814-5206 or the Chicago address listed below. This correspondence shall serve to close the matter.

Very truly yours,



DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

26053 f 3d response complete 71c improper county