



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 23, 2013

Via electronic mail
Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944
john@heirloomvideography.net

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

RE: FOIA Request for Review - 2013 PAC 18624

Dear Mr. Kraft 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) improperly denied Mr. John Kraft's FOIA request.**

On February 10, 2012, Mr. Kraft requested from the Board a recording of all radio traffic to and from Deputy Dee Burgin's official vehicle on December 10, 2011, between 3:45 p.m. and 4:45 p.m. The Board responded that, "I gave a copy of the recording containing the radio traffic that you requested to Sheriff Motley. The radio traffic was on his frequency and it involved his employee. **You will need to contact the sheriff or his FOIA officer for a copy of this recording. I have no authority to give this out.**"¹ This office received a Request for Review from Mr. Kraft on February 22, 2013.

¹Letter from Nanette Crippes, Edgar County 9-1-1 Director, FOIA Officer, Edgar County Emergency Telephone System Board, to John Kraft (February 21, 2012).

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On March 19, 2012, in response to this office's inquiries, the Board stated that the record in question had since been provided to Mr. Kraft by the Sheriff's Department. It further stated:

We did not feel that the FOIA request that Mr. Kraft made pertained to the business of our public body, the Emergency Telephone System Board. He was asking for records pertaining to the business of the Edgar County Sheriff Department. They merely use our recorder to record their phone lines and radio frequencies. **I am the administrator of that piece of equipment and can produce copies of recordings, but have no authority over their phone lines or radio frequencies.** I typically only give these recordings out when presented with a subpoena. I did give a copy of that recording to Sheriff Motley and told Mr. Kraft that he would need to contact the Sheriff for a copy of this. This FOIA request did not pertain to business of the ETSB.²

On April 4, 2012, Mr. Kraft replied to the Board's response and contended that the failure to deliver the record, under FOIA, was a *de facto* denial. He further noted that he had originally sought the recording from the Sheriff's Department but was told to seek it from the Board.

DETERMINATION

Section 2(c) FOIA (5 ILCS 140/2(c) (West 2012)) defines "public records" as "all records * * * pertaining to the transaction of public business * * * in the possession of, or under the control of *any* public body." (Emphasis added.) **Police radio transmissions document the performance of police during the course of their public duties and therefore are public records. That the record in question documented the performance of another public body besides the one that received the request is irrelevant. Because the Board possesses the requested recording, which is a public record, the Board it is subject to FOIA's requirement to provide a requester with that record, unless a valid exemption is asserted and proven.**

Additionally, section 3(e)(vii) of FOIA (5 ILCS 140/3(e)(vii) (West 2012)) contemplates that a public body may need to confer with another public body having a substantial interest in a requested record, and it gives the responding body an additional 5 business days to do so, provided an extension is made within the initial 5 day response period.

²Letter from Nanette Crippes, Edgar County 9-1-1 Director, ETSB FOIA & OMA Officer, to Rebecca Riddick, Assistant Attorney General, Public Access Bureau (March 19, 2013).

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Thus, if the Board felt it needed the Sheriff's Department's input on whether the record was exempt, it was entitled to consult with the Sheriff's Department, but still bore the ultimate responsibility for releasing the record or invoking an applicable exemption. By not providing the requested record within 5 business days or citing a proper exemption, the Board violated section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012), which provides that a public body "shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act."

Because the requester already possesses the record in question, no remedial action is required in this matter. However, the Public Access Bureau instructs the Board to comply with all future FOIA requests in accordance with this determination letter.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-8413. This letter shall serve to close this matter.

Very truly yours,



ROB OLMSTEAD
Assistant Attorney General
Public Access Bureau

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