



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 28, 2018

Via electronic mail

Mr. Cal Skinner
275 Meridian Street
Crystal Lake, Illinois 60014
calskinner2@gmail.com

Via electronic mail

Ms. Natalie Pesin
Matuszewich & Kelly, LLP
101 North Virginia Street, Suite 150
Crystal Lake, Illinois 60014
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RE: FOIA Request for Review – 2018 PAC 54625

Dear Mr. Skinner and Ms. Pesin:

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 Algonquin Township (Township) improperly withheld information responsive to Mr. Cal Skinner's August 20, 2018, FOIA request.

On that date, Mr. Skinner submitted a FOIA request to the Township seeking records showing Township Clerk Karen Lukasik's entry into the Township Hall and her office, as shown by records created from her key fob. On August 27, 2018, the Township denied the request pursuant to section 7(1)(v) of FOIA (5 ILCS 140/7(1)(v) (West 2017 Supp.)), as amended by Public Act 100-732, effective August 3, 2018). On August 27, 2018, this office received Mr. Skinner's Request for Review contesting that denial.

On August 30, 2018, this office forwarded a copy of the Request for Review to the Township and asked it to provide a copy of the withheld records for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(v) exemption to those records. On September 11, 2018, the Township provided a written response and a copy of the withheld records, which list the location of the door Ms.

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Lukasik entered and the date and time of her entries. The Township's written response stated, in pertinent part:

The basis for denial was that the Township was concerned about various security issues with releasing this information. The known comings and goings of various elected officials puts those elected officials at risk * * *. The key fob is a security measure of the Township in that if something occurs at the Township facilities, the Supervisor is able to trace who gained entry at that time. These are security measures that the Township believes should remain with the Township.^[1]

The Township provided additional information to this office on a confidential basis.² On September 12, 2018, this office forwarded a copy of the Township's non-confidential response letter to Mr. Skinner; 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); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). 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 2016).

Section 7(1)(v) of FOIA exempts from disclosure:

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization

¹Letter from Natalie L. Pesin, Matuszewich & Kelly, LLP, to Leo Draws, Assistant Attorney General, Public Access Bureau (September 11, 2018).

²This office is prohibited from disclosing that information in this determination. *See* 5 ILCS 140/9.5(d) (West 2016).

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or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

The Township's non-confidential response noted that the Township is currently involved in contentious litigation and asserted that disclosing the key fob records would endanger elected officials by revealing information about their schedules that could lead to stalking. The Township provided additional information confidentially. None of the information, however, provides clear and convincing evidence from which this office could conclude that the records are exempt from disclosure pursuant to section 7(1)(v) of FOIA. The Public Access Bureau has previously determined that merely disclosing information documenting when and where a specific individual swipes an access card, absent more information such as an access code, would not jeopardize the effectiveness of the system for the purposes of section 7(1)(v), as the risk is speculative. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 42825, issued July 26, 2016, at 3. The Township's assertion that releasing the requested records could lead to stalking also is speculative, as information regarding the comings and goings of Ms. Lukasik could be obtained by observation of the Township Hall. Accordingly, this office concludes that the Township improperly denied the records under section 7(1)(v) of FOIA.

This office also considered a separate reason and explanation for withholding the records that the Township provided confidentially. While this office is prohibited from describing the Township's confidential reasoning, we conclude that it does not provide a valid basis for withholding the requested records.

In accordance with the conclusions in this letter, this office requests that the Township disclose the responsive records to Mr. Skinner. 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 by phone at (217) 782-1699. This letter shall serve to close this matter.

Very truly yours,



LEO DRAWS
Assistant Attorney General
Public Access Bureau

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