



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2018

Via electronic mail

Mr. Tim Grant
tim7191@hotmail.com

Via electronic mail

Ms. JoAnn Quigley
Supervisor
Wesley Township
21333 West Ballou Road
Wilmington, Illinois 60481
Wesleysuper2017@outlook.com

RE: FOIA Request for Review – 2018 PAC 53880

Dear Mr. Grant and Ms. Quigley:

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 Wesley Township (Township) has not demonstrated that it conducted an adequate search for records responsive to Mr. Tim Grant's June 2, 2018, FOIA request.**

On that date, Mr. Grant submitted a three-part FOIA request to the Township seeking copies of: (1) bills that the Township paid late and the amount incurred for late payments from May 2017 through June 2018; (2) records relating to Joe Rodawald collecting \$200 per residence for tar and chip services, including receipts; and (3) records relating to entrance fees and culvert fees for the time period in which Joe Rodawald has served as road commissioner. On June 4, 2018, the Township responded that it did not possess responsive records and stated that Mr. Grant should direct the second and third parts of the request to the road commissioner. On July 5, 2018, Mr. Grant submitted this Request for Review contesting the completeness of that response.

On July 17, 2018, this office forwarded a copy of the Request for Review to the Township and asked the Township to provide a written response explaining its search for

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responsive records. On July 23, 2018, this office received the Township's response. This office later forwarded a copy of that response to Mr. Grant; 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). When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). "At all times the burden is on the [public body] to establish the adequacy of its search." *Rugiero v. U.S. Department of Justice*, 257 F.3d 534, 547 (6th Cir. 2001).

The Township's e-mail response to this office stated that providing records responsive to the first part of the request would require the creation of new records because the FOIA officer would have to review billing information that reflects late charges, other than bills that were later amended for reasons such as documentation errors. **A public body does not create new records by reviewing and identifying records in its possession which are responsive to a request**—as noted above, section 1.2 of FOIA provides that all records in the possession or custody of a public body are presumed to be open to inspection and copying. Because there is no indication that the District searched recordkeeping systems likely to contain records responsive to the first part of Mr. Grant's request and because doing so would not constitute creating records, **this office concludes that the Township did not conduct a reasonable search for those records.**

The Township also responded that it did not locate records "in the hall which address [parts two and three of] these requests. If the documents exist they would be in the road district records which neither the supervisor nor clerk have a key to the door between the hall and road district to access the files."¹ The Township stated that it advised the requester to seek the records from the road commissioner.

Mr. Grant appears to have submitted his request to the e-mail addresses for the Township, the Township supervisor, and the Township road commissioner. The Township is a public body subject to the requirements of FOIA, and the road commissioner is one of its individual officials. If the Township's FOIA officer does not have direct access to the road commissioner's recordkeeping systems that are likely to contain responsive records, the FOIA

¹E-mail from JoAnn Quigley, Wesley Township Supervisor, to [S. Piya] Mukherjee (July 23, 2018).

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officer is obligated to contact the road commissioner and arrange for a search to be conducted. Instead, the Township suggested that Mr. Grant directly contact the road commissioner. Because the Township has not described the specific measures that it took to search for records responsive to parts two and three of Mr. Grant's request, this office is unable to conclude that the Township performed a reasonable search for those records.

Accordingly, the Public Access Bureau requests that the Township perform a search of the Township recordkeeping systems—including those maintained by the road commissioner—that are reasonably likely to contain any responsive records, and then issue a supplemental response to Mr. Grant. The response should either disclose the non-exempt portions of any responsive records it locates, or, if it does not locate responsive records, describe its search in specific detail. If the Township redacts or withholds any responsive information, it should issue a written notice of denial to Mr. Grant that fully meets the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).

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, you may contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

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