



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 28, 2020

Via electronic mail
Ms. Kirk Allen

Via electronic mail
Ms. Barbara Mitchell
FOIA Officer
College of DuPage
Glen Ellyn, Illinois 60137
Mitchell@cod.edu

RE: FOIA Request for Review – 2014 PAC 30665

Dear Mr. Allen and Ms. Mitchell:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)).¹

On August 4, 2014, Mr. Kirk Allen submitted the above-captioned Request for Review contesting the College of DuPage's (College) partial denial of his July 11, 2014, Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2014)) request. Specifically, Mr. Allen contested the College's response to item 3 of the request, which sought copies of all membership documents related to Max McGraw's Wildlife Foundation (Foundation) for the previous five years. He asserted that the College "[has] not provided any material for item #3 however public funds have been used for the membership in question."² He argued that records

¹In issuing this letter, we recognize that it is coming long after the FOIA dispute took place. Because it raises a legal question that may reoccur, however, this letter is intended to provide guidance to the public body and requester.

²E-mail from Kirk Allen to [Public Access Bureau] (August 4, 2014).

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pertaining to Foundation membership constituted public records because membership dues were paid for with public funds.

On August 14, 2014, this office forwarded a copy of Mr. Allen's Request for Review to the College and asked it provide an unredacted copy of the records at issue, together with a written response to Mr. Allen's allegations. On August 27, 2014, this office received the requested materials. In its response, the College disputed Mr. Allen's claim that it did not provide records responsive to item 3 of his request, asserting that the "the 'annual individual contribution' referenced in the responsive records is evidence of [then-President] Dr. [Robert] Breuder's membership with the Max McGraws Wildlife Foundation."³ The College further contended that Dr. Breuder was a member of the Foundation in his individual capacity rather than in his capacity as President and "[a]ny charges and portions of an invoice that was not paid for by the College are not only non-responsive to Mr. Allen's request, but do not pertain to the transaction of the College's public business[.]"⁴ On September 2, 2014, this office forwarded a copy of the written response to Mr. Allen; he replied on September 9, 2014. Mr. Allen maintained that the College had paid for Dr. Breuder's Foundation membership fees and thus documents related to his membership to the Foundation constituted public records; he directed this office to certain reimbursement and payment records indicating the College's payment of Dr. Breuder's membership dues in 2013.

On May 12, 2016, this office requested additional information from the College concerning Dr. Breuder's membership to the Foundation. In particular, this office asked whether the College maintained any records reflecting dues payments made in 2013 by the College to the Foundation or 2013 invoices regarding the Foundation. On June 13, 2016, this office received the requested supplemental information that included additional details and documents for this office's confidential review.

DETERMINATION

Under FOIA, "[a]ll 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 2014); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds a requested record "has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014).

³Letter from Kenneth M. Florey, Robbins Schwartz, to Shari L. West, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (August 2014), at 2.

⁴Letter from Kenneth M. Florey, Robbins Schwartz, to Shari L. West, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (August 2014), at 3.

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In its supplemental response to this office, the College stated that its FOIA Officer, Ms. Barbara Mitchell, had forwarded a copy of Mr. Allen's request to Ms. Jill Mosher, the College's Supervisor of Accounts Payable, who performed a search of the College's accounts payable system, "ERP Datatel Colleague," using variations of "Max McGraw" as a search term.⁵ According to the College, ERP Datatel Colleague "allows users to search accounts payable records using the vendor's name" and maintains records of purchase orders, check payments, and other financial records associated with each vendor.⁶ The College stated that Ms. Mosher compiled 29 pages of responsive records based on her search, which were then passed to additional personnel for review. The College stated that it eventually furnished Mr. Allen with 15 pages of records. The College asserted that "Ms. Mitchell does not believe she was the one who culled the number of documents down from 29 to 15" and that "[t]ypically, such decisions would be made by the department(s) where the potentially responsive documents were located" with additional determinations potentially made by the College's outside counsel or the President's Office.⁷ The College further asserted: "At this time, the College takes no position regarding the identity of the person(s) who made the decision(s) to withhold any or all of 14 documents."⁸ According to the College, the withheld records included "a check payable to Max McGraw in the amount of \$2,500 for the fiscal year 2013 membership dues and a purchase order for the \$2,500 membership dues owed for fiscal year 2013."⁹ The College also stated that although the President's Office initially advised Ms. Mitchell that it did not possess any responsive membership documents, litigation filed by the *Chicago Tribune* led to the discovery "that the President's Office did, in fact, have Max McGraw membership documents. Such membership documents were subsequently produced to the Chicago Tribune and Mr. Allen in the summer of 2015."¹⁰

⁵Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 2.

⁶Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 3.

⁷Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 3.

⁸Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 4.

⁹Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 2.

¹⁰Letter from Timothy D. Elliott, Rathje Woodward, to Shari L. West, Assistant Attorney General, Office of the Attorney General (June 10, 2016), at 5.

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Based on this office's review of the information submitted by both parties, the College did not demonstrate that it fully responded to Mr. Allen's request. The College acknowledged that it had located 29 pages of payment and expense records pertaining to Dr. Breuder's membership the Foundation, but did not assert or demonstrate that the 14 pages that it withheld are exempt from disclosure under FOIA. In addition, this office's confidential review of those pages did not reveal any basis for withholding those records in their entireties. Indeed, two of those records directly related to the payment of membership dues by the College. This office requests that the College disclose to Mr. Allen the remaining 14 pages of records related to Foundation expenses and payments.

If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

A black rectangular redaction box covers the signature of the sender.

TERESA LIM
Assistant Attorney General
Public Access Bureau

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