



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 7, 2022

*Via electronic mail*  
Ms. Kotomi Dorman

*Via electronic mail*  
Mr. John Hanson  
Assistant State's Attorney  
Madison County State's Attorney's Office  
157 North Main Street, Suite 402  
Edwardsville, Illinois 62025  
jchanson@co.madison.il.us

RE: FOIA Requests for Review – 2021 PAC 68720; 2021 PAC 69165

Dear Ms. Dorman and Mr. Hanson:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)).

On November 9, 2021, Ms. Kotomi Dorman submitted a FOIA request to the Madison County Board (Board) seeking copies of "the allegations, evidence, what is believed to be misconduct, notice, actions and conduct taken by Doug Hulme and Rob Dorman described in the termination resolution passed by the County Board[.]"<sup>1</sup> Ms. Dorman quoted a portion of the board resolution at issue and specifically requested digital copies of:

1. The prior notice provided to Doug Hulme and Rob Dorman
2. The allegations
3. The evidence
4. What the misuse of powers were

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<sup>1</sup>E-mail from Kotomi Matsuda Dorman to Kelly A. Wathan (November 9, 2021).

Ms. Kotomi Dorman  
Mr. John Hanson  
April 7, 2022  
Page 2

5. The name of the allegations advisor and list of the advised in attendance, and time and location of the review<sup>[2]</sup>

That same day, Ms. Dorman submitted an identical FOIA request to the Madison County State's Attorney's Office (State's Attorney's Office). On November 24, 2021, the Board responded by asserting that it had no responsive documents. On November 29, 2021, the State's Attorney's Office responded by providing one document responsive to the request for any prior notices and by asserting that it did not maintain records responsive to the remaining parts of the request.

On November 29, 2021, and December 8, 2021, Ms. Dorman submitted two Requests for Review to the Public Access Bureau contesting the adequacy of the searches by the State's Attorney's Office (2021 PAC 68720) and Board (2021 PAC 69165) in response to her requests. Ms. Dorman explained that the resolution at issue was passed by the Board at an April 16, 2020, meeting, which the State's Attorney also attended and participated in. On December 7, 2021, and January 5, 2022, this office forwarded copies of the Requests for Review to the State's Attorney's Office and Board, respectively, and asked them to provide a detailed description of their searches for responsive records.

Having received no response from the State's Attorney's Office, this office forwarded another copy of 2021 PAC 68720 to it on January 7, 2022, and again asked it to respond. Also having received no response from the Board, this office forwarded another copy of 2021 PAC 69165 to the Board on January 27, 2022, and likewise asked it to respond.

This office inquired once more with the State's Attorney's Office and Board regarding their responses to the Requests for Review on February 16, 2022. On February 17, 2022, the State's Attorney's Office confirmed receipt of 2022 PAC 68720 and stated it would be forwarded to the appropriate party for processing. On February 28, 2022, the State's Attorney's Office notified this office that it would provide a response to 2021 PAC 69165 on behalf of the Board.

To date, this office has not received any substantive written responses from the State's Attorney's Office in response to 2021 PAC 68720 or 2021 PAC 69165.

### **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 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). The adequacy of

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<sup>2</sup>E-mail from Kotomi Matsuda Dorman to Kelly A. Wathan (November 9, 2021).

Ms. Kotomi Dorman  
Mr. John Hanson  
April 7, 2022  
Page 3

a public body's search for responsive records is judged by a standard of reasonableness and depends upon the particular facts of the case. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶31, 169 N.E.3d 1066, 1076 (2020). "Although a public body is not required to perform an exhaustive search of every possible location, the body must construe FOIA requests liberally and search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n*, 2020 IL App (1st) 190038, ¶31, 169 N.E.3d at 1076 (quoting *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)). 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); *see also Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989) (a public body is not required to answer questions or create new records in response to a FOIA request).

As an initial matter, the procedures for a public body to respond to the Public Access Counselor in connection with a Request for Review of a public body's response to a FOIA request are clear. Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2020)) unambiguously provides that "[w]ithin 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor." It is undisputed that the State's Attorney's Office did not provide this office with the requested written explanations of the searches that were performed in response to the two requests at issue, even though it confirmed receipt of both Requests for Review and this office's request for written explanations. The State's Attorney's Office should be mindful of its obligation to fully cooperate with this office in all future Requests for Review.

Upon review of Ms. Dorman's FOIA requests, this office concludes that the parts of her requests asking "what the misuse of powers were" and for "the name of the allegations advisor and list of the advised in attendance, and time and location of the review," posed questions rather than sought public records.<sup>3</sup> Accordingly, the Board and State's Attorney's Office were not required to answer those questions.

In the absence of the requested explanations, this office is unable to determine that the State's Attorney's Office or Board performed searches that were reasonably calculated to have located records responsive to the first three portions of Ms. Dorman's requests. Accordingly, this office has no basis from which it could conclude that either public body performed adequate searches. This office requests that the State's Attorney's Office and Board perform supplemental searches of any recordkeeping systems that would be expected to maintain records of the responsive notices, descriptions of the relevant allegations, or the evidence reviewed in connection with the board resolution. It should also consult with members of the

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<sup>3</sup>E-mail from Kotomi Matsuda Dorman to Kelly A. Wathan (November 9, 2021); e-mail from Kotomi Matsuda Dorman to John C. Hanson (November 9, 2021).

Ms. Kotomi Dorman  
Mr. John Hanson  
April 7, 2022  
Page 4

Board who attended the April 16, 2020, meeting, as well as the State's Attorney, regarding any communications they possess concerning responsive notices, allegations, or evidence. If the supplemental searches do not yield any responsive records, this office requests that the State's Attorney's Office provide Ms. Dorman with a supplemental response letter that explains the particular recordkeeping systems that were searched and individuals who were consulted. If the State's Attorney's Office or Board locate any responsive records, the State's Attorney's Office should provide copies of them to Ms. Dorman or otherwise provide a supplemental response letter to Ms. Dorman that fully complies with section 9(a) of FOIA (5 ILCS 140/9(a) (West 2020)).

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

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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