



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 10, 2022

Via electronic mail

Ms. Keely Wathan
Project Manager and FOIA Officer
Madison County
157 North Main Street, Suite 29
Edwardsville, Illinois 62025
kwathan@madisoncountyil.gov

Via electronic mail

Ms. Kotomi Matsuda Dorman
[REDACTED]

RE: FOIA Request for Review – 2022 PAC 70085

Dear Ms. Wathan and Ms. Dorman:

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)). For the reasons stated below, the Public Access Bureau concludes that Madison County (County) has not sustained its burden of demonstrating that it conducted a reasonable search for the records requested by Ms. Kotomi Matsuda Dorman.

On February 1, 2022, Ms. Dorman submitted a FOIA request to the County seeking "electronic copies of any and all email sent and/or received from <mailto:mjwalters@co.madison.il.us> mjwalters@co.madison.il.us containing "SIEA", "Southwestern Illinois Employers Association" and/or any part of the word "lobby".¹ On February 15, 2022, the County responded that it possessed no responsive records. On February 23, 2022, Ms. Dorman submitted a Request for Review contesting the County's response.

On March 8, 2022, this office sent a copy of the Request for Review to the County and asked it to provide this office with a detailed written response to the allegations in

¹E-mail from Kotomi Matsuda Dorman to Ms. Keely A. Wathan, [Project Manager and FOIA Officer, Madison County] (February 1, 2022).

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the Request for Review. This office also asked the County to include in its response a detailed description of the measures taken to search for the records Ms. Dorman sought in her FOIA request and an explanation of whether the County searched the e-mail account mjwalters@co.madison.il.us for responsive records. The County did not respond. On April 12, 2022, an Assistant Attorney General (AAG) in the Public Access Bureau spoke with the County's FOIA officer who confirmed receipt of the March 8, 2022, letter, explaining that it had not yet responded because there was a change in personnel. On April 22, 2022, this office sent an additional letter to the County seeking the same information. The County did not respond.

"FOIA provides that "[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). 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). Whether a particular search is reasonable depends on the specific facts and is judged on a case-by-case basis. *Better Gov't Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶31, 169 N.E.3d 1066, 1076 (2020) (the crucial issue is whether the search was reasonably calculated to discover the requested documents). To demonstrate the adequacy of a search, a public body must provide a "reasonably detailed" explanation that "denote[s] which files were searched and reflect[s] a systematic approach to document location in order to enable the [requester] to challenge the procedures utilized." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

The procedures for a public body to respond to the Public Access Counselor in connection with a Request for Review of the denial of 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 County did not cooperate with the Public Access Bureau as expressly required by section 9.5(c) of FOIA. Moreover, because the County has not cooperated with this office's review of this matter, it has failed to sustain its burden of demonstrating that it conducted a reasonable search for the records Ms. Dorman requested.

In accordance with the conclusions expressed in this determination, this office requests that the County take immediate and appropriate action to search for the records Ms. Dorman requested, including a search of the e-mail account mjwalters@co.madison.il.us. If the County locates responsive public records, this office requests that the County provide responsive records to Ms. Dorman, subject only to permissible redactions pursuant to section 7 of FOIA (5 ILCS 140/7 (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021), within seven day of receipt of this letter. If after a reasonable search, the County cannot locate the records requested, the County should provide a response to Ms.

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Dorman describing the measures taken to search for the requested records, and explaining how the County concluded that it does not possess the requested records.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at 312-814-5201 or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,


EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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