



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

January 5, 2023

*Via electronic mail*

Mr. John Kraft  
Edgar County Watchdogs  
john@illinoisleaks.com

*Via electronic mail*

Mr. Sean Conway  
Bond, Dickson & Conway  
400 South Knoll Street, Unit C  
Wheaton, Illinois 60187  
seanconway@bond-dickson.com

RE: FOIA Request for Review – 2018 PAC 55526

Dear Mr. Kraft and Mr. Conway:

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 October 10, 2018, Mr. John Kraft submitted two FOIA requests to the DuPage County Election Commission (Commission). He sought copies of "documents containing serial numbers of all incoming opti-scan voting machines from Liberty Systems in 2018 to replace any broken machines"<sup>1</sup> and all documents provided to this office relating to Request for Review file number 2018 PAC 53746. On October 24, 2018, the Commission denied Mr. Kraft's request for the serial numbers pursuant to section 7(1)(o) of FOIA (5 ILCS 140/7(1)(o) (West 2018)), and partially denied his request for the 2018 PAC 53746 materials by redacting information pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2018)). On October 30, 2018, Mr. Kraft submitted a Request for Review challenging the Commission's partial denial. On November 1, 2018, this office sent a copy of the Request for Review to the Commission and asked it to provide un-redacted copies of the responsive records and a detailed explanation of the factual and legal bases for its denial. On November 19, 2018, the Commission responded. On

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<sup>1</sup>E-mail from John Kraft to FOIAElectionCommission@dupageco.org (October 10, 2018).

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November 26, 2018, this office forwarded the non-confidential version of the Commission's answer to Mr. Kraft; 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. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2018). The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2018)) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

### **Section 7(1)(a) of FOIA**

In its response to Mr. Kraft, the Commission withheld the confidential portions of its written answer to this office in Request for Review 2018 PAC 53746 pursuant to section 7(1)(a) of FOIA, which exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Section 9.5 of FOIA (5 ILCS 140/9.5 (West 2018)) describes the Public Access Counselor's Request for Review process, including the requirement that a public body provide copies of any records this office requests in connection with a Request for Review. That section also provides certain safeguards to protect confidential information that public bodies are required to share with the Public Access Counselor. Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2018)) states that "[t]o the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of this Act, the Public Access Counselor shall not further disclose that information." Section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2018)) further provides that "[t]he Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."

This office has reviewed the Commission's response to Mr. Kraft and confirmed that it withheld only the portions of its answer that it submitted confidentially to this office. Had Mr. Kraft submitted his FOIA request for the unredacted answer to the Public Access Counselor, sections 9.5(c) and 9.5(d) would plainly prohibit this office from disclosing that information. These provisions are designed to enable public bodies to fully respond to Requests for Review without revealing information about the contents of records that they assert are exempt from disclosure under FOIA. It would defeat the purpose of section 9.5(c) to interpret it as excluding from its protections public bodies that are sources of confidential information. *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose or have an absurd or unjust result). Such an interpretation would

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inhibit public bodies from fully cooperating with the Request for Review process out of concern that their sensitive information would be subject to disclosure, thereby undermining this office's ability to perform its statutory duties.<sup>2</sup> Accordingly, this office concludes that the Commission did not violate FOIA by withholding the alleged confidential portions of its response to this office in 2018 PAC 53746.

### Section 7(1)(o) of FOIA

Section 7(1)(o) exempts from disclosure:

Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

The Illinois Appellate Court has explained that to meet its burden under section 7(1)(o), a public body "must demonstrate by clear and convincing evidence more than the *possibility* of a threat to the security" of the computer system. (Emphasis in original.) *Chapman v. Chicago Department of Finance*, 2022 IL App (1st) 200547, ¶36, 193 N.E.3d 950, 961 (2022).

The Public Access Bureau has previously determined that a user manual for a software program is exempt from disclosure pursuant to section 7(1)(o) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51718, issued May 7, 2018. This office determined that the manual "contains technical information about the various components of the [ ] system as well as detailed instructions on how to enter reports or make changes to information that is already in the system." Ill. Att'y Gen. PAC Req. Rev. Ltr. 51718, at 6, issued May 7, 2018; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 51475, issued September 18, 2018 (finding that disclosure of instructions and details about security features of public body's fare payment system would jeopardize the system's security). This office has also found that disclosure of a list of computer names and service tag serial numbers that identified computers used by a public body "could endanger the security of the [public body]'s computer system by providing information that could be exploited to gain access to the system." Ill. Att'y Gen. PAC Req. Rev. Ltr. 23756, at 6, issued

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<sup>2</sup>See 15 ILCS 205/7(c)(3) (West 2020) (the powers of the Public Access Counselor include, among other things, resolving "disputes involving a potential violation of the Open Meetings Act or the Freedom of Information Act in response to a request for review initiated by an aggrieved party[.]").

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August 23, 2013. By contrast, this office rejected a public body's conclusory argument that disclosure of a screen shot of its e-mail vault would make its e-mail system vulnerable to hacking. Ill. Att'y Gen. PAC Req. Rev. Ltr. 35815, at 3, issued September 10, 2018; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 42825, at 3, issued July 26, 2016 (finding that public body had not met its burden under section 7(1)(o) where it was not clear how disclosing the entry and exit data for an individual would jeopardize the security system software).

The Commission argues that the voting machine serial numbers are "unique administrative information associated with automated data processing Election Day voting equipment."<sup>3</sup> It explained that it maintains an accounting of its voting machines by serial number, as advised by the U.S. Election Assistance Commission. Because the Commission made a confidential submission to this office explaining how disclosure of the serial numbers would jeopardize the security of the voting system, section 9.5(c) of FOIA precludes this office from describing the substance of the Commission's arguments.

This office has reviewed the information submitted by the Commission and finds that the Commission has not met its burden of demonstrating that disclosure of the serial numbers of the voting machines would jeopardize the security of the election system or data. The Commission has not provided evidence to demonstrate how serial numbers could be used to access the system or its data, reveal details about the system's security, or otherwise expose the security of the election system to risk. The Commission's confidential arguments are too speculative to satisfy the Commission's burden of establishing by clear and convincing evidence that disclosure of the serial numbers would jeopardize the election system or related data. While this office recognizes the vital importance of safe and secure elections, in this instance, the Commission has not established that the disclosure of the serial numbers would endanger its election system. Accordingly, this office requests that the Commission provide Mr. Kraft with an un-redacted version of the record that reflects the responsive serial numbers.

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<sup>3</sup>Letter from Sean Conway, Bond, Dickson & Company, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (July 3, 2018), at 2.

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This letter closes this file. If you have any questions, you may contact me at [laura.harter@ilag.gov](mailto:laura.harter@ilag.gov).

Very truly yours,

A handwritten signature in cursive script that reads "Laura S. Harter".

LAURA S. HARTER  
Deputy Bureau Chief  
Public Access Bureau

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