

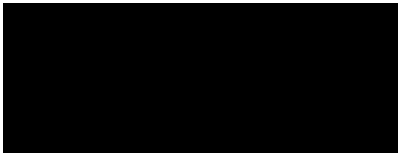


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 18, 2023

Via electronic mail



Via electronic mail

Mr. Michael A Kraft
Attorney
Quinn Johnston
227 Northeast Jefferson Avenue
Peoria, Illinois 61602
mkraft@quinnjohnston.com

RE: FOIA Requests for Review – 2023 PAC 77350
2023 PAC 77529

Dear Mr. Anderson and Mr. Kraft:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that Mahomet Township (Township) improperly designated Mr. Brian K. Anderson's July 13, 2023, and July 23, 2023, FOIA requests as requests by a recurrent requester.

On July 13, 2023, Mr. Anderson submitted a FOIA request to the Township seeking copies of records concerning monthly billings, invoices, payroll records, and documents establishing a Decennial Committee for the Township. On July 14, 2023, counsel for the Township notified Mr. Anderson that it was treating his request as a request from a "recurrent requester" as defined in section 2(g) of FOIA (5 ILCS 140/2(g) (West 2022)) under section 3.2 of FOIA (5 ILCS 140/3.2 (West 2022)). The Township claimed that Mr. Anderson exceeded one or more of the three thresholds in section 2(g), but did not identify which threshold(s). Also, the Township implied that Mr. Anderson was still acting with other requesters as a group that thus

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constituted one "person" under section 2(b) of FOIA (5 ILCS 140/2(b) (West 2022) ("Person' means any individual, corporation, partnership, firm, organization or association, acting individually or as a group."). Later on that same date, Mr. Anderson submitted a Request for Review (2023 PAC 77350) contesting the recurrent requester designation. He argued that (1) all his FOIA requests made before July 13, 2022, should be excluded when calculating his recurrent requester status, (2) he is no longer acting as a group with others, and (3) he has not exceeded the number of FOIA requests designated within any category of 2(g).

On July 23, 2023, Mr. Anderson submitted a FOIA request to the Township seeking copies of audio and video recordings of any and all Township meetings since March 1, 2022. On July 28, 2023, counsel for the Township similarly notified Mr. Anderson that it was treating his request as a request from a "recurrent requester" as defined in section 2(g) of FOIA and under section 3.2 of FOIA. The Township claimed that Mr. Anderson was still acting with other requesters as a group that had collectively submitted over 50 FOIA requests since July 23, 2022. On July 30, 2023, Mr. Anderson submitted the other Request for Review at issue in this matter (2023 PAC 77529) contesting the recurrent requester designation for the same reasons as the other file.

On July 26, 2023, this office sent a copy of Request for Review 2023 PAC 77350 to the Township and asked it to provide this office with a detailed written response to the allegations in the Request for Review, including the bases for designating Mr. Anderson as a recurrent requester. Similarly, on August 4, 2023, this office sent a copy of Request for Review 2023 PAC 77529 to the Township and asked it to provide this office with a detailed written response to the allegations in the Request for Review, including the bases for designating Mr. Anderson as a recurrent requester. On August 7, 2023, the Township provided a consolidated response explaining the factual and legal bases for treating Mr. Anderson as a recurrent requester. On that same date, this office forwarded a copy of the Township's response to Mr. Anderson. On August 8, 2023, Mr. Anderson submitted a written reply.

DETERMINATION

Section 2(g) of FOIA defines a "recurrent requester" as a "person" who, "in the 12 months **immediately** preceding the request, has submitted to the same public body "(i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period." (Emphasis added.) A public body's time to respond to a request by a recurrent requester is extended to 21 business days after receipt of the request. 5 ILCS 140/3.2(a) (West 2022). Thus, each time a requester submits a FOIA request to a public body, the public body "may look back 52 weeks prior to the date" the request was received to determine whether the requester continues to qualify as a "recurrent requester." Ill. Att'y Gen. PAC Req. Rev. Ltr. 29472, issued October 23, 2014, at 2.

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The Township's response to this office asserted that Mr. Anderson had submitted 50 requests to the Township since July 1, 2022. The Township argued that the language "in the 12 months immediately preceding the request" means that the Township correctly looked back to July 1, 2022, when calculating the number of requests Mr. Anderson submitted, rather than the 12-month time period from July 13, 2022, to July 13, 2023. The term "immediately" means "without interval of time." Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/immediately>. The Township's interpretation would add an interval of time beyond 12 months; if a request was submitted on July 31, 2023, the Township's interpretation would allow the Township to look back nearly 13 months. The Illinois Supreme Court, however, has explained that "FOIA is to be liberally construed to achieve the goal of providing the public with easy access to government information." *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 25, 129 N.E.3d 1181, 1188; *see also Rushton v. Department of Corrections*, 2019 IL 124552, ¶ 39, 160 N.E.3d 929, 942 ("The statute is to be construed broadly in favor of disclosure."). In light of the purpose of FOIA and the common understanding of the meaning of "immediately," this office again concludes that the language "in the 12 months immediately preceding the request" means the 52 weeks prior to the date of submission.

This office reviewed the number of FOIA requests that the Township relied upon in support of its assertion that Mr. Anderson was a recurrent requester, and even assuming Mr. Anderson was acting with other requesters as a group that constituted one "person," there is no indication that he qualified as a recurrent requester at the time of the two FOIA requests at issue here.¹ Looking back 52 weeks from Mr. Anderson's FOIA request submitted on July 13, 2023, (2023 PAC 77350) yields a total of 43 FOIA requests. Similarly, Mr. Anderson's FOIA request submitted on July 23, 2023 (2023 PAC 77529) yields 39 FOIA requests. Thus, Mr. Anderson did not meet the 50 request threshold in either instance.

Accordingly, the Public Access Bureau concludes that as of July 13, 2023, and July 23, 2023, respectively, the Township improperly designated Mr. Anderson as a "recurrent requester." This office notes that the Township has acknowledged that Mr. Anderson no longer qualified as a recurrent requester as of August 2023. This office requests that the Township refrain from treating him as a "recurrent requester" unless he submits the requisite number of requests to qualify under the definition of that term in section 2(g) of FOIA.

¹This determination does not address whether Mr. Anderson was still acting as a group comprising one "person" because the insufficient number of requests used by the Township to calculate Mr. Anderson's recurrent requester designation is dispositive of this matter.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (773) 590-6840 or matthew.goodman@ilag.gov.

Very truly yours,

Matt Goodman

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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