



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 13, 2023

Via electronic mail

Mr. Brian K. Anderson
2398 County Road 0E
Mansfield, Illinois 61854
bka57@hotmail.com

Via electronic mail

Mr. James G. Fahey
Attorney
Sorling Northrup
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Springfield, Illinois 62705
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RE: FOIA Requests for Review – 2023 PAC 78223

Dear Mr. Anderson and Mr. Fahey:

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) Road District (Road District) improperly designated Mr. Brian K. Anderson's September 14, 2023, FOIA request as a request by a recurrent requester.

On that date, Mr. Anderson addressed a FOIA request to the Township seeking copies of records concerning the Township and Road District, such as monthly billings, invoices, payroll records, minutes, levies, and audio and video recordings of the Township's September 13, 2023, meeting. On September 19, 2023, counsel for the Road District 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 Road District claimed that Mr. Anderson exceeded one or more of the three thresholds in

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section 2(g), but did not identify which threshold(s). Later on that same date, Mr. Anderson submitted a Request for Review contesting the recurrent requester designation.

On October 3, 2023, this office sent a copy of Mr. Anderson's Request for Review to the Road District and asked it to provide evidence that Mr. Anderson's September 14, 2023, request constituted a request from a recurrent requester. On October 10, 2023, the Road District provided a written response and various exhibits. On October 11, 2023, this office forwarded a copy of the Township's response to Mr. Anderson. On that same date, 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." Thus, each time a requester who at one time met the definition "recurrent 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. 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, and the time may be extended longer based on the "size and complexity of the request." 5 ILCS 140/3.2(a), (c) (West 2022).

The Road District's response to this office provided a summary of requests submitted by Mr. Anderson and certain other individuals and conceded that on September 14, 2023, Mr. Anderson no longer qualified as a recurrent requester.¹ The summary included an August 10, 2023, request that Mr. Anderson separately complained the Road District had treated as a request by a recurrent requester.² Accordingly, the Public Access Bureau concludes that the Road District improperly applied the recurrent requester designation to Mr. Anderson.

This office takes notice of the Road District's assertions concerning "the full-scale harassment campaign promulgated by Anderson," such as allegedly frivolous court filings, as well as the Road District's request that this office "exercise its discretion and take whatever steps are within its power to curtail Anderson's conduct under the 'unduly burdensome repeated

¹This determination does not address whether Mr. Anderson was still acting as a group comprising one "person" because the Township conceded Mr. Anderson is no longer a recurrent requester on the date of his FOIA submission at issue.

²2023 PAC 78735.

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requests' standard or 'abuse of process' standard."³ While this office has certain discretion in resolving Requests for Review,⁴ abuse of process is a tort that "involves an act in the use of the legal process that is improper in the regular conduct of legal proceedings and that is committed for an illegal purpose." *Selby v. O'Dea*, 2020 IL App (1st) 181951, ¶ 112. The Public Access Bureau does not have jurisdiction to review tort claims.⁵ Further, this office cannot determine a request to be an unduly burdensome repeated request unless the request meets that standard under the plain language of section 3(g) of FOIA.⁶ Nonetheless, this office notes that FOIA "is not intended to cause an unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information."⁷

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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³Letter from James G. Fahey, Sorling Northrup, to Matt Goodman, Assistant Attorney General, Illinois Attorney General's Office, Public Access Bureau (October 10, 2023), at 2-3.

⁴See 5 ILCS 140/9.5(f) (West 2022).

⁵See 15 ILCS 205/7(c) (West 2022) (delineating the scope of the Public Access Counselor's authority).

⁶5 ILCS 140/3(g) (West 2022) ("Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision.").

⁷5 ILCS 140/1 (West 2022).