

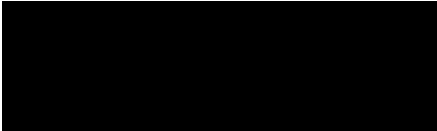


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 29, 2024

Via electronic mail
Mr. Paul Robertz



Via electronic mail
Mr. Keith Freeman
Township Administrator
Thornton Township
333 East 162nd Street
South Holland, Illinois 60473
kfreeman@thorntontwp.com

RE: FOIA Request for Review – 2024 PAC 81416

Dear Mr. Robertz and Mr. Freeman:

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), as amended by Public Act 103-069, effective January 1, 2024). For the reasons stated below, the Public Access Bureau concludes that Thornton Township (Township) failed to demonstrate that it conducted a reasonable search for the records requested by Mr. Paul Robertz.

On May 1, 2024, Mr. Robertz submitted a FOIA request to the Township seeking certain data and information pertaining to the \$1 million giveaway announced by Township Supervisor Tiffany Henyard during the month of February 2024. On May 6, 2024, the Township extended its time to respond by five business days pursuant to section 3(e) of FOIA.¹ On May 16, 2024, the Township responded by providing copies of applications for assistance that it

¹5 ILCS 140/3(e) (West 2022).

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redacted pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.² On May 20, 2024, Mr. Robertz submitted a Request for Review alleging that he did not receive the records he requested.

On May 24, 2024, this office sent a copy of the Request for Review to the e-mail address for Township Clerk Loretta C. Wells and the Township's FOIA inbox (foia@thorntontwp.com) and asked the Township to provide, for this office's confidential review, a copy of the spreadsheet or other tracking record(s) the Township used to document grants and payments under the \$1 million giveaway program. This office also asked the Township to respond in writing to the allegation that it did not provide Mr. Robertz with the records he requested, explaining how the Township construed the request and how it searched for responsive records. On that same date, Ms. Wells replied by e-mail that she is not the Township's FOIA officer. Later on that same date, an Assistant Attorney General in the Public Access Bureau responded to Ms. Wells as follows:

The Thorton Township's website indicates that the Clerk "[a]s the official custodian of Thornton Township records, *** safeguards, preserves, and manages all documents and information for the public record and public access, ensuring transparency[.]" * * *

Please advise who the FOIA officer is so that the Office of the Illinois Attorney General (PAC) can update its records. Also, I did e-mail the Thorton Township general FOIA e-mail inbox, but could you ensure that my correspondence gets delivered and addressed by the relevant person(s). Also, as the custodian of records do you know whether the records requested by Mr. Robertz exist?^[3]

The Township did not respond to that e-mail, nor did the Township respond to this office's May 24, 2024, inquiry letter concerning Mr. Robertz's Request for Review. On June 14, 2024, this office forwarded a second copy of the Request for Review to the Township's FOIA inbox, addressed to Township Administrator Keith Freeman and Trustee Gerald "Jerry" Jones, and again requested that it respond to this office's inquiry letter about Mr. Robertz's allegations. Again, the Township did not respond. On June 25, 2024, an Assistant Attorney General e-mailed Mr. Freeman's e-mail account directly and requested once more that the Township

²5 ILCS 140/7(1)(b), (1)(c) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

³E-mail from Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, to [Loretta] Wells (May 24, 2024).

respond to Mr. Robertz's Request for Review and this office's correspondence. To date, this office has not received any response from the Township.

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."⁴ A public body must perform a reasonable search for responsive records under the circumstances of each request. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. To demonstrate the adequacy of a search for responsive records, a public body generally must provide a "reasonably detailed" explanation of the type of search it performed and confirm that it searched all locations likely to contain responsive records. *Better Government Ass'n*, 2020 IL App (1st) 190038, ¶ 32.

The Township has not provided any information about the type of search it performed and has not verified that it searched all locations likely to contain responsive records. Section 9.5(c) of FOIA⁵ unambiguously requires 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." The Township neither provided this office with copies of any tracking records it used for the \$1 million giveaway program nor cooperated with this office's inquiries. Furthermore, the Township's May 16, 2024, response to Mr. Robertz consisted only of records he did not request, calling into further question how the Township construed the request and how it searched for responsive records. Because the Township has offered no information from which this office could conclude that it appropriately searched the relevant recordkeeping systems, it has failed to sustain its burden of demonstrating that it conducted a reasonable search for the records Mr. Robertz requested.

Accordingly, this office requests that the Township take immediate and appropriate action to search for the records Mr. Robertz requested. This office notes, however, that a public body is not required to answer questions or create new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (1989); *see also Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982) ("A requester is entitled only to records that an agency has in fact chosen to create and retain."). To the extent that portions of Mr. Robertz's request ask questions or seek the creation of new records, the Township is not required to craft answers or explanations, but the Township must construe the FOIA request liberally (*Better Government Ass'n*, 2020 IL App (1st) 190038, ¶ 31) and ambiguities should be resolved in favor of disclosure. *See, e.g., LaCedra v. Executive Office for U.S. Attorneys*, 317

⁴ 5 ILCS 140/1.2 (West 2022).

⁵ 5 ILCS 140/9.5(c) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

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F.3d 345, 348 (D.C. Cir. 2003) (rejecting public body's narrow construction of language used in request).

If the Township locates responsive public records, this office requests that the Township promptly provide copies of those records to Mr. Robertz, subject only to permissible redactions, if any, pursuant to section 7 of FOIA.⁶ If after a reasonable search, the Township cannot locate the records requested, the Township should provide a supplemental response to Mr. Robertz describing the measures taken to search for the requested records, and explaining how the Township 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 letter serves to close this matter. Please contact me at matthew.goodman@ilag.gov if you have questions or would like to discuss this matter. Thank you.

Very truly yours,

Matt Goodman

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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⁶5 ILCS 140/7 (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.