



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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February 3, 2025

Via electronic mail
Mr. Douglas Hulme
jsbhulme@gmail.com

Via electronic mail
Ms. Corrie Becker
Chief Deputy Treasurer
Madison County Treasurer's Office
157 North Main Street, Suite 125
Edwardsville, Illinois 62025
clbecker@madisoncountyil.gov

RE: FOIA Request for Review – 2024 PAC 80012

Dear Mr. Hulme and Ms. Becker:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons discussed below, this office concludes that the Madison County Treasurer's Office (Treasurer's Office) responded improperly to Mr. Douglas Hulme's January 14, 2024, FOIA request.

On that date, Mr. Hulme submitted a FOIA request to the Treasurer's Office via its Facebook page seeking, "an electronic copy/screenshot list of anyone that has been blocked from this page."¹ On January 30, 2024, the Treasurer's Office responded that there were no longer any responsive records because upon discovering that an individual was blocked, the Treasurer's Office immediately unblocked that person.² On February 5, 2024, Mr. Hulme

¹Facebook post from Douglas Hulme to Madison County Treasurer[is Office] (January 14, 2024).

²E-mail from Patrick McRae, Chief Deputy Treasurer, Treasurer, Madison County Government, to Doug [Hulme] (January 30, 2024).

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submitted the above-referenced Request for Review alleging that the Treasurer's Office improperly denied his FOIA request.

On February 9, 2024, this office forwarded a copy of Mr. Hulme's Request for Review to the Treasurer's Office and asked for a response to the allegation that it improperly denied his request. This office also requested that the Treasurer's Office provide details of any efforts to review and preserved the block list both prior to and after the individual was unblocked. On February 20, 2024, this office received the Treasurer's Office response. On March 21, 2024, this office forwarded a copy of the Treasurer's Office response to Mr. Hulme. On March 25, 2024, this office received Mr. Hulme's reply.

DETERMINATION

"All 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 2022); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

As an initial matter, Mr. Hulme's allegation that the Treasurer's Office violated an individual's First Amendment rights by blocking him or her on social media is not subject to review by this office, because the Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2022)). *See* 15 ILCS 205/7(c)(3) (West 2022). Therefore, this determination is limited to analyzing whether the Treasurer's Office improperly withheld public records responsive to Mr. Hulme's request.

Public Records

The requirements of FOIA apply to "public records," which are:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body. 5 ILCS 140/2(c) (West 2023 Supp.).

"In this expansive definition of 'public records,' the legislature recognizes that information or documentation may be stored in a myriad of media; some physical and some not. Illinois case law has long held that electronic records may be public records subject to FOIA." *Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836, ¶ 57. Indeed, FOIA sets forth the General Assembly's intent to broadly encompass records made possible by technological developments that did not exist at the time it was drafted:

The General Assembly further recognizes that technology may advance at a rate that outpaces its ability to address those advances legislatively. To the extent that this Act may not expressly apply to those technological advances, this Act should nonetheless be interpreted to further the declared policy of this Act that public records shall be made available upon request except when denial of access furthers the public policy underlying a specific exemption. 5 ILCS 140/1 (West 2022).

This office has reviewed the instructions for viewing blocked accounts from Facebook. As the Treasurer's Office states in its response, Facebook's instructions provide that in order to view accounts that the user has blocked, the account owner can click on Settings, then Blocking.³ The Treasurer's Office, as owner of the account, chooses which accounts to block on Facebook thus creating the lists of accounts that are blocked on the site by the act of blocking them. Therefore, the lists of its blocked accounts on Facebook are under the control of the Treasurer's Office. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 63566, issued September 16, 2020, at 4 (concluding that a village's lists of blocked users on Twitter and Facebook were public records). Additionally, the Treasurer's Office plainly conducts public business via its official social media account. A review of the Treasurer's Office's Facebook account lists it as, "The Official Facebook Page of the Madison County (Illinois) Treasurer's Office,"⁴ and the site is used to share an array of information about Treasurer's Office's business. Although the Treasurer's Office claims that the list is transitory in nature, no provision of FOIA excludes records that may be transitory from its scope, nor did the Treasurer's Office provide any authority to support this assertion. Therefore, this office has determined that the Facebook block list is a public record for the purposes of FOIA.

³Facebook, *See the people you've blocked on Facebook*, <https://www.facebook.com/help/471563593459787> (last visited January 29, 2025).

⁴Facebook, *Madison County Treasurer*, <https://www.facebook.com/madisoncountytreasurer/> (last visited January 29, 2025).

Creation of New Records

While a public body is not required to generate new records in response to a FOIA request (*Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (1989)), exporting existing information that pertains to public business into a new format does not constitute creation of a new record. Ill. Att'y Gen. Pub. Acc. Op. No. 12-014, issued December 11, 2012, at 7 (noting that "both Illinois and federal courts have rejected claims that a public body creates a new record when it compiles information in its possession in a new format to make the information available for inspection and copying.").

In its response to this office, the Treasurer's Office contended that it was not obligated to comply with Mr. Hulme's request because FOIA does not require a public body to create a record that it does not already possess. The Treasurer's Office argued that *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427, is analogous because the court determined that a public body was not required to answer a "general inquiry question" regarding the number of initial claims received for a set of physicians. The Treasurer's Office asserted that because it does not maintain a list of the users it blocks on social media, it is similarly not obligated to create a list in order to respond to Mr. Hulme's FOIA request.

The court's decision in *Chicago Tribune* is distinguishable from this matter. As discussed above, the lists of blocked accounts were under the Treasurer's Office's control and used by the Treasurer's Office to conduct public business at the time of the request. In *Chicago Tribune*, the court held that complying with the request would have required the public body to create a record that did not exist because the requester sought statistics which had not been compiled from the underlying data. Mr. Hulme's request did not ask the Treasurer's Office to compile or tally any information, nor did he seek information about the block list as opposed to the block list itself.

This office has previously concluded that the process available from Facebook for viewing a list of blocked accounts does not describe or require the creation of a new record for purposes of FOIA; rather, the account owner is merely accessing existing information within their account. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 63566, issued September 16, 2020, at 7. This information was not incidentally created by Facebook—it is generated as a result of the Treasurer's Office taking action to block users. In order to provide Mr. Hulme with the requested record, the Treasurer's Office simply needed to copy the page from Facebook that showed the blocked accounts. Because disclosing the existing block list would not have required the creation of a new record, this office concludes that such lists are public records subject to disclosure pursuant to FOIA.

Duty to Preserve Records

A public body that receives a FOIA request has a duty to preserve the public records that were requested. *See, for example, Walloon Lake Water System, Inc. v. Melrose Twp.*, 163 Mich. App. 726, 732 (1987) ("[T]he duty to provide access to records properly requested under the [Michigan] FOIA inherently includes the duty to preserve and maintain such records until access has been provided or a court executes an order finding the record to be exempt from disclosure."). A public body violates FOIA by disposing of records that it maintains at the time the records are requested, and then responding to the requester that it possesses no responsive records.

As stated above, this office concludes that the requested list is a public record. The Treasurer's Office did not claim that it had no accounts on its block list at the time of Mr. Hulme's request. In fact, according to the Treasurer's Office's January 30, 2024, response to Mr. Hulme, "after receipt of your FOIA request, and during a search for responsive records, it was found that only one person was blocked from the Madison County Treasurer's Facebook page. Upon noticing this, our office immediately unblocked the person,"⁵ confirming a record did exist. The receipt of Mr. Hulme's FOIA request imposed a duty upon the Treasurer's Office to preserve a copy of the list of any accounts it had blocked before unblocking the user on the list. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 63566*, issued September 16, 2020, at 7. Although it appears that the Treasurer's Office no longer possesses a copy of the responsive list, this office reminds the Treasurer's Office to retain all records responsive to future FOIA requests until the resolution of any potential dispute over access to those records.⁶

⁵E-mail from Patrick McRae, Chief Deputy Treasurer, Treasurer, Madison County Government, to Doug [Hulme] (January 30, 2024).

⁶Because the Treasurer's Office stated that the record does not exist, this office will not address the Treasurer's Office's hypothetical assertion that the record would be exempt pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me by mail at the Springfield address listed on the first page of this letter, by phone at (217) 782-9054, or by e-mail at caleb.briscoe@ilag.gov. This letter serves to close this file.

Very truly yours,

Caleb L. Briscoe

CALEB L. BRISCOE
Assistant Attorney General
Public Access Bureau

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