



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 1, 2019

Via electronic mail

Via electronic mail

Ms. Donna Leonard
Executive Counsel
Illinois Secretary of State
17 North State Street, Suite 1179
Chicago, Illinois 60602
dleonard@ilsos.net

RE: FOIA Request for Review – 2018 PAC 55302

Dear [REDACTED] and Ms. Leonard:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the response by the Illinois Secretary of State (Secretary of State's Office) to [REDACTED] August 14, 2018, FOIA request violated FOIA.

In a FOIA request on that date, [REDACTED] sought:

- Refunds of "excess fees" & "overpayment of fees" from Secretary of State Corporate Franchise Tax Refund Fund pursuant to 42 Illinois Register 811, 816, & 2078;
- correspondence submitted from & received by Secretary of State Jesse White, Chief of Staff Thomas Benigno, Executive Counsel Donna Leonard, General Counsel Irene Lyons, Assistant General Counsel Terrence McConville, & Business

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Services Director Ray Cachares regarding Public Act 100-0571
& proposed amendments to 14 Illinois Administrative Code
150.315 & 178.60;

- correspondence submitted from & received by Secretary of State & Joint Committee on Administrative Rules regarding Public Act 100-0571 & proposed amendments to 14 Illinois Administrative Code 150.315 & 178.60.^[1]

On August 16, 2018, the Secretary of State's Office responded that it had located 99 pages of records responsive to [REDACTED] request and that 50 pages would be provided at no cost, and the copy fee for the remaining 49 pages was \$7.35. In a subsequent e-mail later that day, the Secretary of State's Office explained that it chose to redact certain information from the records, but that it could only perform redactions to paper copies, and therefore it was charging [REDACTED] for the cost of printing the records. On October 15, 2018, this office received [REDACTED] Request for Review in which he challenged the fees charged by the Secretary of State's Office. He stated that if the Secretary of State's Office

currently maintains any of the responsive documents in an "electronic format", I respectfully request that the Public Access Counselor direct the Secretary of State to disclose those responsive documents * * * without fee [and to] direct the Secretary of State to identify those responsive documents not currently "maintained in an electronic format" for which disclosure in an "electronic format" is technologically impossible.^[2]

On October 17, 2018, this office sent a copy of the Request for Review to the Secretary of State's Office and asked it to provide a detailed description of its handling of [REDACTED] FOIA request. This office asked the Secretary of State's Office to clarify the format in which the records sought by [REDACTED] are maintained. On December 14, 2018, this office received the Secretary of State's Office's response. The same day, this office forwarded that response to [REDACTED]; on December 23, 2018, he replied.

¹E-mail from [REDACTED] to Donna Leonard (August 14, 2018).

²E-mail from [REDACTED] to [Sarah] Pratt (October 14, 2018).

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DETERMINATION

Section 3(b) of FOIA (5 ILCS 140/3(b) (West 2016)) provides:

Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

Sections 6(a) and 6(b) of FOIA (5 ILCS 140/6(a), (b) (West 2016)) address the applicable fees for copies of electronic and paper records. Section 6(a) of FOIA provides:

When a person requests a copy of a record maintained in an electronic format, **the public body shall furnish it in the electronic format specified by the requester**, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. * * * Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format. (Emphasis added.)

Section 6(b) of FOIA (5 ILCS 140/6(b) (West 2016)) provides, in pertinent part:

Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.

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[REDACTED] FOIA request did not specify the format in which he preferred to receive records responsive to his request for certain correspondence. It was only after being informed of the cost of obtaining hard copy versions of the responsive records that [REDACTED] asserted that he would prefer any records that are maintained electronically to be provided in an electronic format. The plain language of section 6(a) of FOIA indicates that a requester must specify his or her preferred format for electronic records at the time that the request is made. If a requester does not specify that he or she wishes to obtain records in electronic format, a public body may properly furnish copies of the records in paper format and assess any applicable fee. Here, the Secretary of State's Office disclosed the first 50 pages of responsive records at no cost and the remaining 49 pages at a cost of \$0.15 per page, which is consistent with section 6(b) of FOIA. Accordingly, this office concludes that the Secretary of State's Office's fee for copies of the records responsive to [REDACTED] request did not violate FOIA.³

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 the Springfield address on the first page of this letter, (217) 524-7958, or LHarter[at]atg.state.il.us.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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³This office notes that if [REDACTED] had requested records in an electronic format, section 6(a) of FOIA permits the Secretary of State's Office to charge only the "actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium" used to record and provide the responsive records. The Public Access Bureau has previously determined that when a requester specifies that he or she is seeking electronic copies of records that a public body maintains in electronic format, the public body may not assess fees for paper copies because it must print out the records in order to redact them. Ill. Att'y Gen. PAC Req. Rev. Ltr. 54494, issued January 23, 2019, at 4.