OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 28, 2025

Via electronic mail
[redacted]

Via electronic mail
Mr. John E. Fester
Himes Petrarca & Fester
180 North Stetson Avenue, Suite 3100
Chicago, Illinois 60601
jfester@edlawyer.com

RE: FOIA Request for Review – 2024 PAC 84430

Dear [redacted] and Mr. Fester:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).[1] For the reasons discussed below, this office is unable to conclude that Joliet Township High School District 204 (District) failed to take adequate measures to locate records responsive to [redacted]'s December 2, 2024, FOIA request.

On that date, [redacted] submitted a FOIA request to the District seeking copies of:

> [C]ell phone activity specifically of board member Thomas Fitzpatrick from the hours of 5:00 pm through the end of the open session on [November 19, 2024]. This would include calls, texts, or any other communication by Mr. Fitzpatrick to or from any person or entity specifically regarding any school board business.[2]

[1]5 ILCS 140/9.5(f) (West 2023 Supp.).

[2]E-mail from [redacted] to [Ilandus] Hampton (December 2, 2024).

On December 17, 2024, the District responded:

> The District asked Mr. Fitzpatrick to produce his personal cell phone for inspection of text messages and emails that may have been sent or received during the Board meeting. Mr. Fitzpatrick did not produce his cell phone for inspection. Instead, Mr. Fitzpatrick responded on December 16, 2024, "I have no jths204 business per FOIA request." Accordingly, we have searched as far as we can for responsive records as we have no authority to compel Mr. Fitzpatrick to submit his cell phone for inspection by the District FOIA officer.[3]

On December 18, 2024, [redacted] submitted a Request for Review to the Public Access Bureau disputing the District's response.

On January 8, 2025, this office forwarded a copy of [redacted]'s Request for Review to the District and asked it to provide a detailed explanation of its receipt and handling of [redacted]'s FOIA request. On January 14, 2025, the District provided the requested information. On January 14, 2025, this office forwarded a copy of the District's answer to [redacted]; he replied on January 16, 2025.

DETERMINATION

The requirements of FOIA apply to "public records," which section 2(c) of the Act (5 ILCS 140/2(c) (West 2023 Supp.)) defines as "all records * * * **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." (Emphasis added.) A record pertains to the transaction of public business when it concerns "'business or community interests as opposed to private affairs.' Indeed, FOIA is not concerned with an individual's private affairs." *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶ 31. FOIA generally requires a public body to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. United States Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). The adequacy of a public body's search for responsive records is judged by a standard of reasonableness and depends upon the particular facts of the case. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31.

[3]Letter from Dr. Ilandus Hampton, FOIA Officer, [Joliet Township High School District 204], to [redacted] (December 17, 2024).

In his Request for Review, [redacted] stated that he observed Mr. Fitzpatrick "communicating on his cell phone during [the] meeting and appearing to be coached during votes."[4] He argued that the court's decision in *City of Champaign* referenced above applied to the types of records he requested, and therefore, Mr. Fitzpatrick should be compelled to submit his personal device to the District's FOIA officer for review and any nonexempt material discovered should be provided to him.

In *City of Champaign*, a FOIA requester sought electronic communications related to public business that were sent or received by individual city council members on their personal devices during city council meetings. The City of Champaign asserted that those communications were not "public records" pursuant to FOIA because the individual city council members themselves did not constitute public bodies. *City of Champaign*, 2013 IL App (4th) 120662, ¶ 33. The Illinois Appellate Court affirmed a trial court's decision to uphold a binding opinion[5] in which the Attorney General concluded that e-mails and text messages sent and received by city council members during a public meeting were "public records" subject to the requirements of FOIA. The court held that the records were in the possession of the city council because they pertained to public business and were sent or received by a city council member during council meetings when a quorum was present and acting collectively as a public body. *City of Champaign*, 2013 IL App (4th) 120662, ¶¶ 40, 42-43.

In this matter, however, the District did not assert that messages pertaining to District business that Mr. Fitzpatrick may have sent or received on his personal devices during the meeting in question were not "public records" subject to FOIA. Instead, the District argued that it made reasonable attempts to search for records responsive to [redacted]'s request. The District's answer to this office explained that it e-mailed Mr. Fitzpatrick and asked him to permit the District to inspect his personal cell phone for the requested records. The District stated that Mr. Fitzpatrick responded to that request by stating that he did not possess any records concerning the business of the District that would be responsive to the request. The District stressed that it "does not possess police powers, search warrant powers, or any other powers to compel an elected School Board member to produce his cell phone for inspection in response to a FOIA request."[6]

The Attorney General has issued a binding opinion which determined that directing an official or employee to search for and turn over responsive records from their personal accounts or devices in good faith may fulfill a public body's obligation to perform a

[4]E-mail from [redacted] to To whom it may concern (December 18, 2024).

[5]Ill. Att'y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011.

[6]E-mail from John E. Fester, Himes Petrarca & Fester, to [Shannon] Barnaby, [Senior] Assistant Attorney General (January 14, 2025).

reasonable search. Ill. Att'y Gen. Pub. Acc. Op. No. 16-006, issued August 9, 2016, at 10-11 (police department could perform reasonable search of police officers' personal e-mail accounts for public records concerning a matter of public business by directing the officers to gather and provide it with any e-mails concerning the matter in good faith); *see also Nissen v. Pierce County*, 183 Wash. 2d 863, 886-87 (Wash. 2015) ("[A]gency employees are responsible for searching their files, devices, and accounts for records responsive to a relevant [public records] request. * * * When done in good faith, this procedure allows an agency to fulfill its responsibility to search for and disclose records without unnecessarily treading on the constitutional rights of its employees.").

Further, in *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, the Illinois Appellate Court rejected the City of Chicago's argument that it would be required to search their employees' personal devices and e-mail accounts for responsive records in order to conduct a reasonable search. Rather, the court stated that the city "will merely be required to ask a limited number of officials whether their personal accounts contain responsive records. * * * If the officials in question have not used their personal accounts to conduct public business, they can so state." 2020 IL App (1st) 190038, ¶ 25.

In this instance, the measures described by the District appear to have been reasonably calculated to locate records responsive to [redacted]'s request. The District has demonstrated that it contacted Mr. Fitzpatrick to find out whether his personal device contained any responsive records and Mr. Fitzpatrick responded that he possessed no records of District business responsive to the request. Although the District itself may have searched Mr. Fitzpatrick's personal device if he had agreed to it, the District was not required to do so in order to fulfill its obligation to perform a reasonable search. [redacted] asserted that he witnessed Mr. Fitzpatrick using his personal phone during the November 19, 2024, meeting and contended that he appeared to be coached on votes, but he did not describe any specific observations supporting the claim that Mr. Fitzpatrick used his phone to communicate with other Board members or otherwise communicate about matters pertaining to public business; to the extent that Mr. Fitzpatrick may have used his phone to communicate about private affairs during the meeting, records of such communications are not subject to the requirements of FOIA. Because this office has not received any evidence that Mr. Fitzpatrick failed to perform a good faith search of his personal device or to suggest that he, or the District, withheld any responsive records, we are unable to conclude from the available information that the District improperly responded to [redacted]'s FOIA request.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have FOIA questions, my e-mail is Shannon.Barnaby@ilag.gov.

Very truly yours,

[redacted]
SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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