

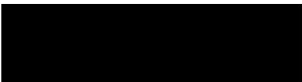


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 28, 2025

Via electronic mail



RE: FOIA Request for Review – 2025 PAC 84615

Dear [REDACTED]:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2023 Supp.)). For the reasons set forth below, the Public Access Bureau has determined that this Request for Review is unfounded.

On December 12, 2024, you submitted a FOIA request to the City of West Frankfort (City) seeking the following:

1. " All records of communications between any official, employee, agent, or representative of the City of West Frankfort and Judge Weber, or any representative of the court, pertaining to Case No. 2024LM54."
2. "Clarification of the nature and content of any discussions, statements, or representations made during these communications."
3. "Identification of the party who initiated contact, whether it was a City official, employee, or representative, or if the court reached out first."¹

On December 17, 2024, the City's attorney responded to your request by stating that the City did not possess records responsive to your request. On January 10, 2025, this office received your Request for Review contesting the response. You asserted:

¹E-mail from [REDACTED] to FOIA Officer, City of West Frankfort (December 12, 2024).

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"On December 5, 2024, during a Circuit Court hearing, Judge Weber stated on the record: *'I have been in contact with the City of West Frankfort about this case.'*"² (Emphasis in original.) You also asked this office to review whether there was a potential conflict of interest in the City's attorney assisting the City in responding to your FOIA requests because the attorney is also "responsible for representing the City in court[.]"³

As an initial matter, 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). FOIA governs the disclosure of existing public records created and retained by a public body. To that end, section 3.5(a) of FOIA (5 ILCS 140/3.5(a) (West 2022)) requires that public bodies designate one or more officials or employees to serve as its FOIA officer(s), and "[e]xcept in instances when records are furnished immediately, Freedom of Information officers, **or their designees**, shall receive requests submitted to the public body under this Act, ensure that the public body responds to requests in a timely fashion, and issue responses under this Act." (Emphasis added.) FOIA does not contain restrictions on who may act as designees or assist FOIA officers in responding to a request and does not govern conflict of interest issues. Accordingly, this office does not have authority to review your claim that there was a potential conflict of interest involving the City's attorney.

Addressing the City's response to your request, FOIA provides that "[a]ll 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). However, "[a] request to inspect or copy must reasonably identify a public record and not general data, information, or statistics." *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, 2014 IL App (4th) 130427, ¶ 33. Further, 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).

Based on this office's review, the second and third parts of your request did not reasonably describe records. Instead, those parts asked the City to explain the nature of any communications it had with a court pertaining to a specific case and to identify the individuals who were involved in those communications. Because FOIA does not require a public body to answer questions or compile general information (or pieces of information) into a new record in response to a request, the City did not improperly respond to those parts.

On January 17, 2025, this office inquired with the City regarding how it determined that it did not possess records responsive to the first part of your request. The City's City Clerk and FOIA officer, Andrea Bolen, explained that she asked the City's mayor, codes

²Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (January 1, 2025).

³Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (January 1, 2025).

officer, and city attorney whether they had any dealings with Judge Weber, and each responded that they did not. She further explained that those individuals are the City representatives who would have appeared in court for cases concerning the City. Ms. Bolen also checked her e-mails as she receives communications related to City business in her capacity as City Clerk and did not locate any responsive records. Additionally, she clarified that the City was not a party to the case specified in your request, 2024LM54.

When presented with a FOIA request, a public body must perform a reasonable search under the particular circumstances of the matter. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. Whether a particular search is reasonable depends on the specific facts and is judged on a case-by-case basis. *Better Gov't Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. The crucial issue is whether the search was reasonably calculated to discover the requested documents. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. Thus, "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

The City's search appears reasonably calculated to have located records responsive to the first part of your request. Although you state that Judge Weber made a comment about having been in contact with the City, this office has reviewed the public docket for case no. 2024LM54. In the the history section of this case's public docket, the court noted "it never said it was going to speak to anyone at the City of West Frankfort" and that it "did not speak with anyone at the City of West Frankfort as that would be an ex parte communication."⁴ Accordingly, this office has no basis to conclude that the City possesses any responsive communications, and this office has determined that this Request for Review is unfounded.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

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⁴*Rose v. Trone*, Docket No. 24-LM-54 (Circuit Court, Franklin County, January 2, 2025), available at https://www.judici.com/courts/cases/case_search.jsp?court=IL028015J.

January 28, 2025

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cc: *Via electronic mail*
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