



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 21, 2011

**Public Access Opinion No. 11-007
(Request for Review – 2011 PAC 17220)**

FREEDOM OF INFORMATION ACT:
A Public Body's Offer to Allow the
Inspection of Public Records in Response
to a Request for Copies Constitutes a
Violation of Section 3(b) of FOIA.

Mr. Robert L. Johnson
8 Cypress Point Drive
Collinsville, Illinois 62234

Ms. Virginia Yang
Legal Counsel and FOIA Officer
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Dear Mr. Johnson and Ms. Yang:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2010), as amended by Public Act 97-579, effective August 26, 2011). The issue for our review is whether the Illinois Department of Natural Resources (Department) violated FOIA by offering to allow the inspection of public records and by refusing to provide copies of those public records. For the reasons set out below, we conclude that by offering only the option to inspect the records at the Department's headquarters, the Department violated section 3 of FOIA. 5 ILCS 140/3 (West 2010).

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BACKGROUND

On October 22, 2011, Mr. Robert L. Johnson submitted a FOIA request to the Department seeking both electronic and paper copies of the reclamation plan for "RDA 5 of the Monterey Mine 1, now Shay Mine, in Carlinville, IL."¹ On November 3, 2011, the Department responded that Mr. Johnson's request was "approved."² The Department's response indicated that the records in question were available on microfiche at the Department's Springfield office, and invited Mr. Johnson to schedule an appointment for an inspection.

On November 7, 2011, Mr. Johnson sought the Public Access Counselor's review of the Department's response. Mr. Johnson's Request for Review asserted that he is entitled to obtain a printed copy of the reclamation plan and alleged that the Department's response is "unreasonable and is * * * effectively an improper denial of my FOIA request."³

On November 8, 2011, the Public Access Bureau notified the Department that it had received the Request for Review and asked the Department to clarify its response to the FOIA request:

In particular, please indicate whether [the Department] is denying Mr. Johnson's request for copies of the records, or is willing to provide him with copies. If [the Department] is denying the request for copies, please identify the section of FOIA upon which that denial is based and provide a detailed explanation[.]⁴

The Department responded as follows:

This request was not denied. The request was approved with the option to view the records here at the Department's Springfield

¹Letter from Robert L. Johnson to Freedom of Information Officer, Illinois Department of Natural Resources (October 22, 2011).

²Letter from Virginia I. Yang, FOIA Officer, Illinois Department of Natural Resources, to Robert Johnson (November 3, 2011).

³E-mail from Robert L. Johnson to Steve Silverman (November 7, 2011).

⁴Letter from Steve Silverman, Assistant Attorney General, Office of the Attorney General, to Virginia Yang, Illinois Department of Natural Resources (November 8, 2011).

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office[;] the RDA5 Reclamation Plan for the Shay Mine in Carlinville, Illinois is part of the original Permit No. 56 materials and is currently on microfiche.⁵

On November 29, 2011, an Assistant Attorney General in the Public Access Bureau advised the Department's FOIA officer in a telephone conversation that this office had previously issued a binding opinion concluding that a public body that refused to comply with a request for copies of public records, and instead offered the requester an opportunity to inspect the records, violated the requirements of FOIA. *See Ill. Att'y Gen. Pub. Acc. Op. No. 10-001*, issued March 29, 2010. Subsequent to that conversation, we e-mailed the Department a copy of the binding opinion and also offered the Department an opportunity to supplement its previous response to our further inquiry. Although the Department acknowledged receipt of our e-mail, it did not submit a supplemental response to this office.

ANALYSIS

The issue to be determined is whether the Department complied with the requirements of FOIA when it unilaterally offered Mr. Johnson an opportunity to inspect the records he requested at the Department's office in Springfield, but denied his request to obtain paper or electronic copies of those records.⁶

Section 3 of FOIA (5 ILCS 140/3 (West 2010)) provides, in pertinent part:

(a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. Notwithstanding any other law, a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this Act.

(b) 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*

⁵Letter from Virginia I. Yang, Legal Counsel and FOIA Officer, Illinois Department of Natural Resources, to Steve Silverman, Assistant Public Access Counselor, Office of the Attorney General (November 15, 2011).

⁶It is our understanding that the records in question are not maintained in an electronic format. Therefore, the Department would not be obligated to convert the microfiche records to an electronic format to satisfy Mr. Johnson's request. *See 5 ILCS 140/6(a)* (West 2010). In the case of microfiche records, however, paper copies can be printed on standard office machines without additional conversion.

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disclosed by subsection (a) of this Section and shall certify such copy if so requested. (Emphasis added.)

The cardinal rule in interpreting statutes is to give effect to the intention of the General Assembly, and when the language of a statute is clear and unambiguous, it will be given effect without resort to other tools of construction. *Gem Electronics of Monmouth, Inc. v. Department of Revenue*, 183 Ill. 2d 470, 475 (1998). Other sources are used to construe legislative intent only if the statutory language may be reasonably interpreted in more than one way. *People ex rel. Dept. of Prof'l Regulation v. Manos*, 202 Ill. 2d 563, 570-71 (2002).

In Ill. Att'y Gen. Pub. Acc. Op. No. 10-001, the public body asserted that it was only obligated to make documents available for inspection and photocopying, and claimed that FOIA did not require the public body to make copies for the requester. The opinion concluded that:

The language of section 3(b) is clear and unambiguous: it is the duty of a public body, when requested and upon payment of applicable fees, if any, to provide the requester with a copy of any record that is not exempt from disclosure under FOIA. Section 3(b) does not provide a public body with the option to decline to provide copies when copies are requested. Although a public body may offer the requester an opportunity to inspect and make copies if he or she elects to do so, it may not properly refuse to provide copies if requested to do so.⁷

The Department's contention that it complied with Mr. Johnson's FOIA request by offering him an opportunity to inspect the records, while refusing to provide him with copies of those records, is likewise unavailing. Section 3(b) of FOIA simply does not afford a public body the unilateral option to provide a requester only an opportunity to inspect public records, when the requester has expressly sought to obtain copies of those records.

FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

1) On October 22, 2011, Mr. Robert L. Johnson submitted a FOIA request to the Illinois Department of Natural Resources for both electronic and paper copies of the reclamation plan for "RDA 5 of the Monterey Mine 1, now Shay Mine, in Carlinville, IL."

⁷Ill. Att'y Gen. Pub. Acc. Op. No. 10-001, issued March 29, 2010, at 3.

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2) On November 3, 2011, the Department responded by inviting Mr. Johnson to schedule an appointment to inspect the records at the Department's Springfield office. The Department did not provide electronic or paper copies of any records that Mr. Johnson requested.

3) On November 7, 2011, Mr. Johnson submitted to the Public Access Counselor a Request for Review alleging that the Department improperly denied his FOIA request for copies of the records. Mr. Johnson's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011). Therefore, the Attorney General may issue a binding opinion with respect to Mr. Johnson's request for copies of the records at issue.

4) On November 15, 2011, the Department responded to the Request for Review by asserting that it did not deny Mr. Johnson's request for copies of public records because the Department offered him an opportunity to inspect the records.

5) The Department, as a matter of law, violated section 3(b) of FOIA by refusing to provide copies of the records in response to Mr. Johnson's request for copies.

For the reasons addressed in detail above, it is the opinion of the Attorney General that the Department has, in violation of the requirements of the Freedom of Information Act, improperly denied Mr. Johnson's request for copies of the public records specified in his request. Accordingly, the Department is directed to take immediate and appropriate action to comply with this opinion by furnishing copies of the records to Mr. Johnson.

This opinion shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Robert L. Johnson as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General