



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 31, 2014

Via electronic mail

Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

Mr. Jimmy Wells
Edgar County Airport
15551 Airport Road
Paris, Illinois 61944

RE: Request for Review – 2013 PAC 23491

Dear Mr. Allen and Mr. Wells:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the response by the Edgar County Airport Committee (Airport) to Mr. Kirk Allen's February 8, 2013, FOIA request **violated the requirements of FOIA.**

On that date, Mr. Allen submitted a FOIA request to the Airport seeking a: "[c]opy of all bank records for the Edgar County Airport from 2010-2012. All bank records would be any statement, contract, or other record from a banking institution for funds assigned and/or managed by the Edgar County Airport."¹ On February 21, 2013, the Airport responded: "[t]he CD you are referring to was owned by a privet [sic] donor and I do not have a copy of it."² Later that day, the Public Access Bureau received Mr. Allen's Request for Review of that response, contending that the Airport's meeting minutes from September 14, 2010, indicate that the Airport possessed a certificate of deposit (CD). Mr. Allen enclosed a copy of the minutes, which reveal that the Airport Committee voted to add Mr. Wells and the County Board Chairman to the account for the CD at First Bank.

¹E-mail from Kirk Allen, Edgar County Watchdogs, to [Jimmy Wells] (February 8, 2013).

²E-mail from Jimmy Wells to [Kirk] Allen (February 21, 2013).

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On March 5, 2013, this office forwarded a copy of Mr. Allen's Request for Review to the Airport and requested a written explanation of its response to his request. On March 13, 2013, this office received the Airport's response, claiming:

The confusion around this request is that the Edgar County Airport does not have a bank account per say [sic]. The Edgar Airport Committee had an account established by an ano[nymous] private donor for long term projects. The account has been closed and the remaining funds were turned over to the County Treasure[r] to be put in the Edgar County Treasur[y].³

On April 3, 2013, Mr. Allen replied by providing a signature card from Citizens National Bank in Paris, Illinois, for a bank account owned by the Airport, as well as pages which appear to provide its account activity and transaction history. Moreover, Mr. Allen provided a copy of a February 21, 2013, First Farmers Bank & Trust cashier's check from the Airport to Edgar County in the amount of \$1,145.22, together with an Edgar County Treasurer's record dated February 21, 2013, memorializing the receipt of the proceeds from the closing of the Airport's First Farmers Bank & Trust bank account. In addition, Mr. Allen provided a February 13, 2013, e-mail from the Edgar County Treasurer asserting that he was aware of an account at First Farmers Bank & Trust that the Airport managed.

On July 11, 2013, an Assistant Attorney General (AAG) in the Public Access Bureau contacted the Airport by e-mail and asked the Airport to clarify whether it owned or managed any bank accounts from 2010 through 2012 and whether it managed or had access to the CD account referenced by Mr. Allen. The AAG also asked the Airport to detail any efforts it made to obtain information about the CD account and to provide a brief description of how the Airport's funds are managed. On July 17, 2013, Mr. Jimmy Wells, the Airport Manager replied:

In regards to the FOIA report Mr. Allen was requesting is referring to is money that Jack Asher a Local Attorney had set aside from his personal account for projects to help the airport. Mr. Allen was requesting a copy of the CD Certificate of Deposit I requested the information from the bank and they do not keep the copy of the CD. I supplied a[n] affidavit from the bank which I will include in a letter for your inspection that the bank do not have the CD. I did obtain information from First Bank [and] am sending you a copy of what they gave me which shows a \$ 35,898.92 check

³Letter from Jimmy Wells, Airport Manager, to Tola Sobitan, Assistant Attorney General (March 13, 2013).

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that was written to the State of Illinois Treasurer PROJ. PRG-4018.
Fed PROJ. 3-17-SBGP-80-85-88-94, this check cleared out this
account. I am mailing you a copy of the documentation.⁴

The Airport enclosed copies of: (1) a cashier's check for \$35,898.92 from the Airport to the State of Illinois Treasurer; (2) an April 19, 2013, letter from First Bank & Trust, sb, concerning CD documentation; (3) an account agreement between the Edgar County Airport Committee and First Bank & Trust, sb., dated August 27, 2010; (4) a CD in the amount of \$35,689.66, dated August 27, 2010, from First Bank & Trust, sb, and; (5) a Truth in Savings Disclosure dated August 27, 2010, from First Bank & Trust, sb, pertaining to the CD that was set to mature on January 29, 2011. The letter from First Bank & Trust, sb, concerning CD documentation, stated:

In response to your request for a copy of a Certificate of Deposit, we regret to inform you that we don't retain copies nor the original Certificates. When a CD is opened, the account holder is issued a Certificate, and presents it when the account is closed, and the CD document is marked as such and returned to the account holder.⁵

Correspondingly, at the top of the first page of the copy of the CD that the Airport provided is a note dated July 15, 2013, stating that the document is a re-creation, not an original.

On August 12, 2013, Mr. Allen replied by providing: (1) a copy of a May 31, 2011, cashier's check from the Airport's account at Citizens National Bank to the State of Illinois Treasury in the amount of \$14,101.08, and; (2) Airport meeting minutes from December 9, 2008, documenting "that the Airport has come into good fortune of receiving a C.D. This money will be set aside for land acquisition."⁶ Mr. Allen alleged that the Airport has provided no accounting of where the funding for that check came from.

⁴E-mail from Jimmy Wells, Airport Manager, to Tola Sobitan, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2013).

⁵Letter from Angela Downs, Supervisor Retail Deposit Services, First Bank & Trust, sb, to whom it may concern (April 19, 2013).

⁶Edgar County Airport Committee, Meeting, December 9, 2008, Minutes 1.

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DETERMINATION

FOIA provides that "all records in the custody or possession of a public body" are open to inspection or copying. 5 ILCS 140/1.2 (West 2012). Significantly, section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)) specifies: "All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (1990).

Mr. Allen's FOIA request is clear and unambiguous; he sought "any statement, contract, or other record from a banking institution for funds assigned and/or managed by the Edgar County Airport" from 2010 through 2012.⁷ Upon receipt of Mr. Allen's request, the Airport failed to provide any responsive records. After this office inquired into Mr. Allen's Request for Review, the Airport provided limited information concerning a CD at First Bank & Trust, sb. However, as detailed above, it appears possible if not probable that the Airport possesses additional responsive records concerning that CD or one or more accounts at other banks. Further, the Airport has not provided this office with a sufficient explanation of how it maintains banking records, or an adequate description of the specific measures it took to try to locate all bank records for the Airport from 2010-2012. Accordingly, this office is unable to conclude that the Airport conducted a reasonable search for records responsive to Mr. Allen's request or provided all of the responsive records that it possesses. Therefore, we conclude that the Airport's response to Mr. Allen's FOIA request violated the requirements of FOIA.

In accordance with that conclusion, this office directs the Airport to perform a reasonable search for records responsive to Mr. Allen's request and to issue a supplemental response disclosing all of the responsive records to him. The Airport's supplemental response should provide a detailed explanation of the specific measures that were taken to search for the requested records.

⁷E-mail from Kirk Allen, Edgar County Watchdogs, to [Jimmy Wells] (February 8, 2013).

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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, please contact me at the Chicago address listed on the first page of this letter. This letter shall close this matter.

Very truly yours,



JOSH JONES
Assistant Attorney General
Public Access Bureau

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