



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

November 13, 2023

*Via electronic mail*

Reed Sutman  
DecaturVote.com  
reed@decaturvote.com

*Via electronic mail*

Ms. Melissa Bradford  
FOIA Officer  
Decatur Public School District No. 61  
101 West Cerro Gordo Street  
Decatur, Illinois 62523  
mbradford@dps61.org

RE: FOIA Requests for Review – 2023 PAC 78721; 2023 PAC 78725

Dear Reed Sutman and Ms. Bradford:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022)). For the reasons explained below, the Public Access Bureau has determined that these Requests for Review are unfounded.

On August 15, 2023, Reed Sutman submitted an eight-part FOIA request to Decatur Public School District No. 61 (District) seeking various records. Relevant to this Request for Review, part one of Reed Sutman's request sought a copy of "the list described by Section 5 of FOIA,<sup>[1]</sup> as 'a reasonably current list of all types of categories of records under its control.'"<sup>2</sup> Part eight of the request sought "[a] list of meetings between District reps & union representatives between October 2022 – August 15, 2023. These should include date, time, location, and description/purpose of the meeting as well as which union is being met with."<sup>3</sup>

---

<sup>1</sup>5 ILCS 140/5 (West 2022).

<sup>2</sup>E-mail from Reed Sutman to Melissa Bradford (August 15, 2023).

<sup>3</sup>E-mail from Reed Sutman to Melissa Bradford (August 15, 2023).

Reed Sutman  
Ms. Melissa Bradford  
November 13, 2023  
Page 2

After a timely extension of five business days pursuant to sections 3(e)(ii) and 3(e)(v) of FOIA,<sup>4</sup> on August 29, 2023, the District responded that part one of the request was unduly burdensome pursuant to section 3(g) of FOIA,<sup>5</sup> and that it did not possess any records responsive to part eight. On October 24, 2023, Reed Sutman submitted a Request for Review contesting the District's response.<sup>6</sup> Specifically, their Request for Review asserted that the District is required by section 5 of FOIA to develop a list of the types of records that it maintains. Reed Sutman also appears to argue that the District should maintain the list of union meetings containing the information that was requested because "[s]ome union meetings have been discussed in the media."<sup>7</sup>

On August 29, 2023, Reed Sutman submitted a nine-part FOIA request to the District seeking various records. Relevant to this Request for Review, part one of the request referenced a news article<sup>8</sup> regarding an incident involving a school bus that occurred on August 23, 2023, and requested the video footage from that event. Part two of the request sought any reports related to that incident, and part nine sought all texts messages and e-mails from District personnel that were "summoned to the scene"<sup>9</sup> of the incident for the timeframe of 2:00 p.m. through 7:00 p.m. on August 23, 2023. On September 13, 2023, the District responded that it did not maintain any records responsive to parts one and two of the request, and provided e-mails responsive to part nine. On October 24, 2023, Reed Sutman submitted a Request for Review disputing the completeness of the District's response.<sup>10</sup>

FOIA requires a public body to make available copies of public records in its possession. 5 ILCS 140/3(a) (West 2022) ("Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act."). While FOIA requires a public body to conduct "a reasonable search tailored to the

---

<sup>4</sup>5 ILCS 140/3(e)(ii), (e)(v) (West 2022).

<sup>5</sup>5 ILCS 140/3(g) (West 2022).

<sup>6</sup>2023 PAC 78721.

<sup>7</sup>E-mail from Reed Sutman, DecaturVote.com, to Public Access [Bureau] (October 24, 2023).

<sup>8</sup>Valerie Wells, *Decatur Bus Incident Was False Alarm*, Herald & Review (August 24, 2023), [https://herald-review.com/news/local/education/decatgur-bus-incident-was-false-alarm/article\\_f2a94dbe-42b1-11ee-a2ad-2fd112c7d188.html](https://herald-review.com/news/local/education/decatgur-bus-incident-was-false-alarm/article_f2a94dbe-42b1-11ee-a2ad-2fd112c7d188.html).

<sup>9</sup>E-mail from Reed Sutman to Melissa Bradford (August 29, 2023).

<sup>10</sup>2023 PAC 78725.

Reed Sutman  
Ms. Melissa Bradford  
November 13, 2023  
Page 3

nature of a particular request[.]"<sup>11</sup> mere speculation that additional records may exist "does not undermine the reasonableness of the [public body's] search[.]"<sup>12</sup> Further, FOIA does not require a public body to answer questions or create new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989); *see also Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982) ("A requester is entitled only to records that an agency has in fact chosen to create and retain.").

On November 8, 2023, an Assistant Attorney General (AAG) in the Public Access Bureau spoke by telephone with Ms. Melissa Bradford, the District's FOIA officer, regarding the District's responses to Reed Sutman's requests. Ms. Bradford indicated that she is a person knowledgeable of records responsive to the August 15, 2023, FOIA request and that she also conferred with the District's Administration. She confirmed that the District does not maintain any lists responsive to parts one and eight of that request.

Additionally, Ms. Bradford informed the AAG that when the District received Reed Sutman's August 29, 2023, FOIA request, it forwarded the request to the District's Administration and Transportation Departments, as the individuals in those departments would be knowledgeable of any records responsive to parts one and two of that request. Those individuals confirmed for Ms. Bradford that they had performed a search, but that no records were discovered. Ms. Bradford stated that as a part of the Transportation Coordinator's search, she reached out to a representative with Alltown Bus Service, the company that provides busing service for the District, and verified that it also does not maintain any responsive video footage. Ms. Bradford indicated that a member of the public posted a video of the incident on social media, but that the footage belongs to that person and is not within the possession of the District. Additionally, Ms. Bradford stated she forwarded the August 29, 2023, request to the District personnel who may have sent or received e-mail or text messages responsive to part nine of the request, and asked them to perform a search and provide her with any responsive records. Moreover, she requested that the District's Information Technology director perform a search of the District's e-mail boxes for any responsive records. Ms. Bradford confirmed that Reed Sutman was provided the only e-mail chain regarding the incident in question, and that there are no responsive text messages.

In this instance, the measures described by the District appear to be reasonably calculated to locate records responsive to Reed Sutman's FOIA requests, and the District has confirmed for this office that it provided Reed Sutman with all of the responsive records within its possession. Reed Sutman's contention that the District should be able to provide other records is speculative. For example, while Reed Sutman argues that section 5 of FOIA requires the

---

<sup>11</sup>*Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998).

<sup>12</sup>*Moore v. F.B.I.*, 366 Fed. Appx. 659, 661 (7th Cir. 2010).

Reed Sutman  
Ms. Melissa Bradford  
November 13, 2023  
Page 4

District to provide them with the requested list, they provide no support for the assertion that the District has created and retained a document containing that information. Likewise, Reed Sutman argues that the District should be able to disclose information regarding union meetings for the specified time period, but there is no indication that the District maintains a record that lists all of the information referenced in Reed Sutman's request and FOIA does not require the District to create such a list in response to a request. Because this office has not received information suggesting that the District possesses additional records responsive to Reed Sutman's requests, or that that the District improperly withheld information or failed to conduct an adequate search, this office has determined that Reed Sutman's Requests for Review are unfounded.

The Public Access Bureau, however, is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7(a), (b), (c) (West 2022). In that capacity, this office notes that section 5 of FOIA provides, in pertinent part:

[E]ach public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act.

Based on the plain language of this provision, a public body is required to create a list that includes the types, or categories, of records that the public body generally keeps in its possession, and must make that list available to the public in response to a FOIA request. In the event that a public body chooses to display this information on its website, it may elect to inform a FOIA requester that such information was available on its website and give directions for the requester to find the information in accordance with section 8.5 of FOIA<sup>13</sup>

---

<sup>13</sup>Section 8.5 of FOIA (5 ILCS 140/8.5 (West 2022)) provides:

(a) Notwithstanding any provision of this Act to the contrary, a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.

(b) If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this Section, the requester may re-submit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection and copying as provided in Section 3 of this Act.

Reed Sutman  
Ms. Melissa Bradford  
November 13, 2023  
Page 5

These files are closed. If you have questions, you may contact me at the Chicago address on the first page of this letter.

Very truly yours,

*Shannon Barnaby*  
SHANNON BARNABY  
Senior Assistant Attorney General  
Public Access Bureau

78721 78725 f unf sd