

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT**  
**KANE COUNTY, ILLINOIS**

JEFFREY N. WARD )

19-MR-000833

Petitioner, )

v. )

Case No. 18 MR )

THE KANE COUNTY STATE'S )  
ATTORNEY'S OFFICE, )

Respondent. )

*Thomas M. Hartwell*  
Clerk of the Circuit Court  
Kane County, Illinois  
7/16/2019 11:08 AM  
FILED/IMAGED

**COMPLAINT FOR DECLARATORY AND MANDATORY INJUNCTIVE RELIEF**

NOW COMES the Petitioner, Jeffrey N. Ward, and for his Complaint for Declaratory and Mandatory Injunctive Relief against the Respondent, THE KANE COUNTY STATE'S ATTORNEY'S OFFICE, pursuant to 5 ILCS 140/11, states as follows:

1. The Petitioner, JEFFREY N. WARD ("Jeff Ward"), is an individual residing at 189 Abbey Lane, Geneva, Kane County, Illinois.
2. The Respondent, THE KANE COUNTY STATE'S ATTORNEY'S OFFICE (the "KCSAO"), acting as attorneys for Kane County, is a county corporation with its principal place of business located at 37W777 IL-38, St. Charles, Kane County, Illinois.
3. There has at all times relevant hereto been in full force and effect the Illinois Freedom of Information Act, 5 ILCS 140/1, *et. seq.*, (the "Act").
4. The KCSAO is a "Public Body" within the meaning of Section 2 of the Act. 10 ILCS 140/2(a).
5. The Act provides that all Public Records of a Public Body are presumed to be open to inspection or copying, and that a Public Body that asserts a record is exempt from disclosure has the burden of proving by clear and convincing evidence that the record is exempt. 10 ILCS 140/1.2.
6. The Act provides that Public Records include "all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials 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." 10 ILCS 140/2(c).

7. On October 11, 2018, Jeff Ward submitted an email FOIA request to the KCSAO, pursuant to the Act requesting the following:
  - a. All sexual harassment complaints – in any form – against former prosecutor Alex Bederka during his entire tenure with the KCSAO.
  - b. All response and dispositions to those sexual harassment complaints in any form.
  - c. An explanation and/or the paperwork detailing why Mr. Bederka continued to be paid by the KCSAO for up to 10 weeks after he was fired.

all of which are Public Records under the Act. A true and correct copy of that email is attached hereto as Exhibit “1” and is incorporated herein by this reference.

8. On the same day, October 11, 2018, The KCSAO responded by granting question “c,” but denying questions “a” and “b” as in paragraph 7 above. A true and correct copy of the KCSAO’s FOIA response letter is attached hereto as Exhibit “2” and is incorporated herein by this reference.
9. The KCSAO asserted their denial is predicated upon the sought documents being exempt from the Act citing 5 ILCS 140/7(1)(a) and 5 ILCS 140/7.5, specifically 5 ILCS 430/70.5(a)(ii). The KCSAO wrote, “Specifically: Documents concerning reports of sexual harassment are confidential by operation of law...” Please note that 5 ILCS 140/7.5 does not exist.
10. On October 15, 2018, Jeff Ward appealed the KCSAO’s denial of FOIA questions “a” and “b” in paragraph 7 above to the Illinois Attorney General’s Public Access Counselor Office. A true and correct copy of that appeal letter is attached hereto as Exhibit “3” and is incorporated herein by this reference.
11. On October 26, 2018, the Public Access Counselor determined “further action is warranted” and asked the KCSAO for the sexual harassment documentation described in paragraph 7 as well as “...a detailed explanation of the factual and legal basis for the applicability of the cited FOIA exemptions to the first and second items of the request.” A true and correct copy of that appeal letter is attached hereto as Exhibit “4” and is incorporated herein by this reference.
12. On November 6, 2018, the KCSAO responded to the Public Access Counselor’s request, citing the following assertions for their FOIA denial:
  - a. Asked and answered. Since they’d previously denied a similar FOIA request, the second request was not valid.

- b. The KCSAO is a state entity which “permits a government entity to adopt a sexual harassment policy that includes confidentiality provisions” (5 ILCS 430-/70-5).
- c. The KCSAO thusly adopted a sexual harassment policy that “includes confidentiality provisions.”
- d. The redaction of names in the sought sexual harassment complaints “is an insufficient guarantee of confidentiality.”
- e. That requested documents were created by attorneys, and thus, are “privileged.”
- f. Regardless of the Public Access Counselor’s ruling, the KCSAO would not release the requested documents “absent a court order.”

A true and correct copy of the KCSAO’s response to Jeff Ward’s FOIA appeal is attached hereto as Exhibit “5” and is incorporated herein by this reference.

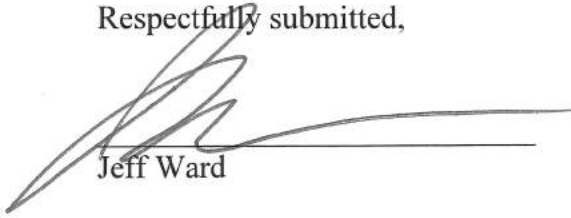
- 13. As to paragraph 12 “a,” there is no provision in the Act prohibiting the issuance of the same FOIA request twice, and even if there were, the FOIA requests were materially different.
- 14. As to paragraph 12 “b,” 5 ILCS 430-/70-5 provides for confidentiality provisions but does not make them an absolute requirement. Furthermore, the Attorney General has previously ruled (Ill. Att’y Gen. Inf. Op. No. 1-07-042) that state’s attorney’s offices are not “government entities” and thus, are not exempt from disclosing the records under 5 ILCS 430-/70-5.
- 15. As to paragraph 12 “c,” an office policy is neither law, nor does it supersede or override the Act. If it did, the KCSAO could render themselves FOIA-proof through office policies. Furthermore, neither a home rule ordinance nor an ethics policy can exempt records from disclosure because the Act is an exclusive prerogative of the State of Illinois.
- 16. As to paragraph 12 “d,” please see paragraph 15, *supra*.
- 17. As to paragraph 12 “e,” that is not a correct reading of the statute as it would render the KCSAO, and all state’s attorney’s offices, FOIA-proof. The Illinois Supreme Court Rule 201(b)(2) work-product doctrine states that to claim this exemption, a public body must demonstrate the requested records “reveal the shaping process by which the attorney has arranged the available evidence for use in trial as dictated by his training and experience.” *Monier v. Chamberlain*, 35 Ill. 2d 351, 359 (1966). Everything else is subject to disclosure as the KCSAO has many functions that do not pertain to trial preparation. To wit, there was no trial and no courtroom involved in creating the requested documents and the fact they were compiled by and adjudicated by attorneys does not automatically confer privilege.

18. As to paragraph 12 “f”, no state’s attorney’s office is above the law.
19. Furthermore, Illinois state’s attorneys have argued they are somehow “special,” as lawyers or members of the judiciary, and therefore, immune to the Act. But the courts have resoundingly rejected that argument, as made clear by the KCSAO’s own cited authority, *Nelson v. Kendall County*, 2014 IL 116303.
20. On June 14, 2019, the Public Access Counselor upheld Jeff Ward’s FOIA denial appeal and requested “the State’s Attorney’s Office provide Mr. Ward with copies of the records,” subject to limited redactions they set forth. A true and correct copy of the Public Access Counselor’s letter is attached hereto as Exhibit “6” and is incorporated herein by this reference.
21. On July 3, 2019, the KCSAO sent Jeff Ward a letter ignoring the Public Access Counselor’s ruling and denying the FOIA request in paragraph 7 for the same reasons that were the Public Access Counselor ruled against. A true and correct copy of that KCSAO letter is attached hereto as Exhibit “7” and is incorporated herein by this reference.
22. The KCSAO’s denial of Jeff Ward’s request, described in paragraphs 7 “a” and “b” above, is wrongful.
23. Section 11 of the Act provides that any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief, and The circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access. 10 ILCS 140/11(a), (d).

WHEREFORE, the Petitioner, Jeff Ward, respectfully requests this honorable court enter an order affording the following relief:

- A. Declaring that the documents covering the sexual harassment complaints against former prosecutor Alex Bederka and their disposition are Public Records within the meaning of the Act;
- B. Issuing a mandatory injunction directing the Respondent, The KCSAO, to produce to the Petitioner, within five (5) business days, a copy of all of the requested documents with limited redactions as set forth by the Public Access Counselor in Exhibit 6.
- C. Awarding the Respondent, Jeff Ward, his court costs and reasonable attorney’s fees incurred herein, if any; and,
- D. Granting any and all further relief that is just or equitable under the circumstances.

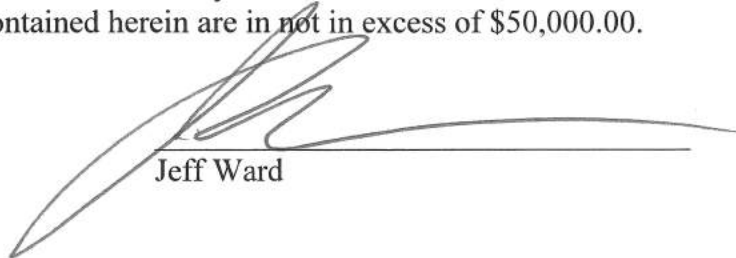
Respectfully submitted,



Jeff Ward

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. The undersigned further states that the damages contained herein are in not in excess of \$50,000.00.



Jeff Ward

Jeffrey N. Ward  
Pro Se  
189 Abbey Lane  
Geneva, Illinois 60134  
630-263-1433  
jeffnward@comcast.net

**NOTICE**  
**BY ORDER OF THE COURT THIS CASE IS HEREBY SET FOR**  
**CASE MANAGEMENT CONFERENCE ON THE DATE BELOW.**  
**FAILURE TO APPEAR MAY RESULT IN THE CASE BEING**  
**DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**  
**Judge: Busch, Kevin T**  
**10/30/2019 9:00 AM**

Exhibit 1

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**From:** JEFF WARD <jeffnward@comcast.net>  
**Sent:** Thursday, October 11, 2018 9:26 AM  
**To:** LulvesJoseph@co.kane.il.us  
**Subject:** 10/11/18 FOIA request

Mr. Lulves:

Please consider this email a FOIA request for the following:

1. All sexual harassment complaints - in any form - against former prosecutor Alex Bederka during his entire tenure with the KCSAO.
2. All responses and dispositions to those sexual harassment complaints - in any form.
3. An explanation and/or the paperwork detailing why Mr. Bederka continued to be paid by the KCSAO for up to 10 weeks after he was fired.

The response can be submitted electronically to this email address. You have five days.

Jeff Ward



Exhibit 2

Office of the Kane County State's Attorney



JOSEPH H. MCMAHON

State's Attorney

Kane County Courthouse  
100 South Third Street, 4<sup>th</sup> Floor  
Geneva, Illinois 60134

Civil Division:  
(630) 208-5320

October 11, 2018

Jeff Ward  
jeffnward@comcast.net

Re: Freedom of Information Act request received October 11, 2018  
SAO FOIA #18-053

Dear Mr. Ward:

Thank you for writing to the Kane County State's Attorney with your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq.

On October 11, 2018 you requested the following documents, and your request is granted in part and denied in part as follows:

1. All sexual harassment complaints - in any form - against former prosecutor Alex Bederka during his entire tenure with the KCSAO.
2. All responses and dispositions to those sexual harassment complaints - in any form.

Response to #1 and #2: These requests are denied. Exempt from production are documents specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law. 5 ILCS 140/7(1)(a) and 140/7.5. Specifically: Documents concerning reports of sexual harassment are confidential by operation of law pursuant to 5 ILCS 430/70-5(a)(ii). Therefore the documents requested are not produced.

3. An explanation and/or the paperwork detailing why Mr. Bederka continued to be paid by the KCSAO for up to 10 weeks after he was fired.

Response: Your request is granted. We have no documents responsive to your request.

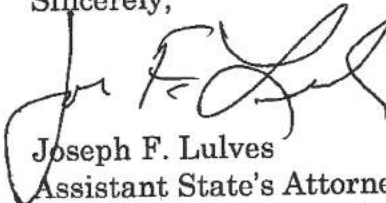
You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor  
Office of the Attorney General  
500 South 2<sup>nd</sup> Street  
Springfield, Illinois 62706  
Fax: 217-782-1396  
E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe F. Lulves", is written over the printed name.

Joseph F. Lulves  
Assistant State's Attorney  
FOIA Officer  
Contact Information Above



## Jeff Ward

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189 Abbey Lane  
Geneva, Illinois 60134

Phone: 630-263-1433

October 15, 2018

Sarah Pratt  
Public Access Counselor  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62701

Dear Ms. Pratt:

Please find enclosed my original 10/11/18 FOIA request to the Kane County State's Attorney's Office as well as their denial of the bulk of that request.

I am appealing their denial of numbers 1 and 2 of my three-point FOIA request on the following grounds:

1. These documents are not exempt

Citing 5 ILCS 140/7(1)(a), the KCSAO claims that, "Exempt from production are document specifically prohibited from disclosure by federal or state law or rules and regulations..." But this clearly isn't the case her because no federal or state law applies here.

2. The State's Attorney's Office cites a non-existent statute

There is no 5 ILCS 140/7.5 as cited by the KCSAO as part of the reason for their denial. The statute simply doesn't exist.

3. 5 ILCS 430/70-5(a)(ii) does not apply on a number of levels

- a. That statute is called the State Officials and Employees Ethics Act for a very good reason. It only applies to state officials and their employees. It DOES NOT apply to Kane County elected officials, department heads, or county employees.
- b. Even if the State of Illinois attempted to make that statute apply to Kane County, the internal control statue – a well-known series of Illinois statutes – would prevent its application. As our elected officials love to say, aside from mandated services or if they commit a crime, no elected official or outside agency can tell them how to run their office.
- c. For argument's sake, let's say it actually does apply to county offices and employees, 5 ILCS 430/70-5(a)(ii) fails to provide grounds for a FOIA denial. The KCSAO cited subsection ii states:

*"details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Department of Human Rights;"*

First, this particular portion of the State Officials and Employees Ethics Act sets policy, not statutory law. It DOES NOT say all sexual harassment claims are confidential. It basically states that "state officials must provide for these possibilities." Please also note the use of the word "option" in regard to filing a "confidential" sexual harassment complaint. Laws generally aren't optional. And the KCSAO is clearly not refusing the FOIA request on the grounds that the complainants insisted their reports be confidential.

Furthermore, it's abundantly clear that when state lawmakers used the word "confidential," they meant the name of the complainant would not be divulged if they didn't want it to be divulged. A sexual harassment complaint, by definition, cannot be completely confidential or no one could act on it and the accused couldn't defend him or herself.

I'm not asking for the names of the harassed – I fully expect them to be redacted. I'm simply asking for the complaints, which are subject to a FOIA request.

Please let me add that Joe Lulves has bragged that the KCSAO is immune to FOIA requests to more than one Kane County Board member. Should the PAC rule in my favor, Lulves will simply cite more reasons to refuse the FOIA and play an ongoing series of legal games to draw the process out for as long as possible.

For all of the above reasons, I'm asking the PAC to instruct the Kane County State's Attorney's Office to comply with my FOIA request immediately.

Thank you for your swift considering of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to be "Jeff Ward", with a long horizontal flourish extending to the right.

Jeff Ward

Exhibit 5

Office of the Kane County State's Attorney



JOSEPH H. MCMAHON  
State's Attorney

Kane County Courthouse  
100 South Third Street, 4<sup>th</sup> Floor  
Geneva, Illinois 60134

Civil Division:  
(630) 208-5320

November 6, 2018

Teresa Lim  
Assistant Attorney General  
Public Access Bureau  
Illinois Attorney General's Office  
100 West Randolph  
Chicago, Illinois 60601-3216

Re: Response to FOIA Request for Review-2018 PAC 55350

Dear Ms. Lim:

In reference to the above request for review by Mr. Ward of our denial of his request for sexual harassment documents, as an initial matter we note this is not the first time Mr. Ward has requested them, and not the first time we have denied the request. In a prior FOIA to our office they are part of a broader request and our denial. (Exhibit A, State's Attorney Response to FOIA 18-011). To the extent Mr. Ward appears in his communication with your office to be expanding his appeal to encompass items not requested in the FOIA under your review, we incorporate into this response our prior answer to Mr. Ward in Exhibit A.

To assist in your review we are including on CDs an un-redacted set of documents for our FOIA 18-011, which include those documents requested by Mr. Ward in both FOIAs, and the redacted set of documents Mr. Ward already received in response to FOIA 18-011. For the following reasons, as well as those stated in our denials, we object to Mr. Ward receiving the un-redacted documents which are sent only to assist your office in its review.

As an initial matter, Mr. Ward is simply wrong in stating the State's Attorney's Office is a county office. It is not. "State's Attorneys exercise executive powers, and the office of State's Attorney is considered to be part of the executive branch of State government. *Nelson v. Kendall County*, 2014 IL 116303 ¶27 (2014)(citations omitted)(holding state's attorneys are subject to FOIA).

The statute cited in our denial permits a government entity to adopt a sexual harassment policy that includes confidentiality provisions:

The policy shall include, at a minimum: (i) a prohibition on sexual harassment; (ii) details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Department of Human Rights. 5 ILCS 430/70-5.

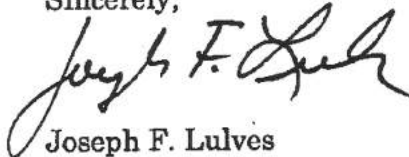
The Kane County State's Attorney pursuant to the above statute has adopted just such a sexual harassment policy which includes confidentiality provisions, which is attached as Exhibit B. This policy assures confidentiality to the greatest extent possible.

The State legislature by enacting this statutory authorization on confidentiality acknowledged the fact the first time these types of documents are released publicly will be the last time an employee brings a complaint on sexual harassment to the public body. Further, we suggest this confidentiality is also intended to protect the reputations and privacy of all those involved, including the respondent and any persons interviewed in the process. Given the close proximity of the working environment in the State's Attorney's Office, redaction of names alone is an insufficient guarantee of confidentiality.

Further, we do not waive the privileged work product nature of documents created by attorneys in the State's Attorney's Office in reviewing and investigating any such referrals, as cited in our first denial of this request.

To be clear, this office will not release, and does not authorize the release, of any of the documents encompassed by Mr. Ward's request for sexual harassment complaints absent a court order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph F. Lulves", written in a cursive style.

Joseph F. Lulves  
Assistant State's Attorney

Enc.

Exhibit C



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

June 14, 2019

*Via electronic mail*

Mr. Jeff Ward  
189 Abbey Lane  
Geneva, Illinois 60134  
jeffward@comcast.net

*Via electronic mail*

Mr. Joseph F. Lulves  
Assistant State's Attorney, FOIA Officer  
Kane County State's Attorney's Office  
Kane County Courthouse  
100 South Third Street, 4th Floor  
Geneva, Illinois 60134  
saofia@co.kane.il.us

RE: FOIA Request for Review – 2018 PAC 55350; SAO FOIA #18-053

Dear Mr. Ward and Mr. Lulves:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that the Kane County State's Attorney's Office (State's Attorney's Office) improperly withheld certain information responsive to Mr. Jeff Ward's October 11, 2018, FOIA request.

On that date, Mr. Ward submitted a FOIA request to the State's Attorney's Office seeking copies of: (1) all sexual harassment complaints against a former prosecutor, Alex Bederka, (2) any responses and dispositions of those complaints, and (3) an explanation and/or records "detailing why Mr. Bederka continued to be paid by the [State's Attorney's Office] for up to 10 weeks after he was fired."<sup>1</sup> On October 11, 2018, the State's Attorney's Office denied the first two items of the request pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West

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<sup>1</sup>E-mail from Jeff Ward to [Joseph] Lulves (October 11, 2018).



Mr. Jeff Ward  
Mr. Joseph F. Lulves  
June 14, 2019  
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2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018) and section 7.5 of FOIA (5 ILCS 140/7.5 (West 2017 Supp.), as amended by Public Acts 100-646, effective July 27, 2018; 100-863, effective August 14, 2018; 100-887, effective August 14, 2018). In connection with section 7(1)(a), the State's Attorney's Office cited section 70-5(a)(ii) of the State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/70-5(a)(ii) (West 2017 Supp.)). The State's Attorney's Office asserted that it did not have records responsive to the third portion of the request.

On October 18, 2018, this office received Mr. Ward's Request for Review disputing the denial of the first two items of his request. He contended that the SOEEA does not state that all sexual harassment claims must be kept confidential, but rather requires governmental entities to provide for confidential reporting. He further stated that he did not seek the names of any people who were harassed but rather "the complaints and the documentation of how those complaints were handled \* \* \*. The public has a right to know if taxpayer funded offices are resolving sexual harassment complaints in an appropriate manner."<sup>2</sup>

On October 26, 2018, this office forwarded a copy of the Request for Review to the State's Attorney's Office and asked it to provide copies of the records that it withheld for this office's confidential review, together with a detailed explanation of the legal and factual basis for the asserted exemptions. On November 6, 2018, the State's Attorney's Office provided the requested response and records, as well as additional materials for this office's review. On November 13, 2018, this office forwarded a copy of the State's Attorney's written response to Mr. Ward; he replied on November 14, 2018.

#### DETERMINATION

"All 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 2016); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

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<sup>2</sup>Letter from Jeff Ward to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 15, 2018).



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Mr. Joseph F. Lulves  
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### Section 7(1)(a) of FOIA

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." As noted above, the State's Attorney's Office cited section 70-5(a)(ii) of the SOEEA.<sup>3</sup> Section 70-5(a) of that Act (5 ILCS 430/70-5(a) (West 2017 Supp.)) requires each "governmental entity," defined as "a unit of local government (including a community college district) or a school district but not a State agency or a Regional Transit Board,"<sup>4</sup> to adopt an ordinance or resolution regulating the ethical conduct of its officers and employees. Section 70-5(a) of the SOEEA further provides, in pertinent part:

No later than 60 days after the effective date of this amendatory Act of the 100th General Assembly, each governmental unit shall adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. The policy shall include, at a minimum: (i) a prohibition on sexual harassment; (ii) details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Department of Human Rights; (iii) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under this Act, the Whistleblower Act, and the Illinois Human Rights Act; and (iv) the consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report.

In its response to this office, the State's Attorney maintained that it properly denied Mr. Ward's request pursuant to section 70-5(a)(ii) of the SOEEA. The State's Attorney's Office provided this office with a copy of its sexual harassment policy and contended:

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<sup>3</sup>In its response to this office, the State's Attorney Office first stated that Mr. Ward had previously submitted a FOIA request for the records at issue and that it had provided him with certain responsive information. This office's review showed that although the State's Attorney's Office disclosed a discrete portion of a June 5, 2017, letter from State's Attorney Joseph H. McMahon to Mr. Bederka concerning certain allegations, it withheld a memorandum (with attachments) concerning the complaints and investigation.

<sup>4</sup>5 ILCS 430/1-5 (West 2016).

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The State legislature by enacting this statutory authorization on confidentiality acknowledged the fact the first time these types of documents are released publicly will be the last time an employee brings a complaint on sexual harassment to the public body. Further, we suggest this confidentiality is also intended to protect the reputations and privacy of all those involved, including the respondent and any persons interviewed in the process. Given the close proximity of the working environment in the State's Attorney's Office, redaction of names alone is an insufficient guarantee of confidentiality.<sup>[5]</sup>

In reply to that answer, Mr. Ward argued that the State's Attorney's Office's sexual harassment policy "[i]s just that – policy[.]" and that if policies could be considered law, the State's Attorney's Office "could implement a series of 'policies' that would essentially render them FOIA-proof."<sup>6</sup>

The Office of the Attorney General has previously issued an opinion letter concluding that state's attorneys' offices are not subject to county ethics ordinances adopted pursuant to section 70-5(a) of the SOEEA because state's attorneys are State officials or employees rather than county employees. Ill. Att'y Gen. Inf. Op. No. 1-07-042, issued August 2, 2007, at 6. A copy of that opinion is attached. Because state's attorneys' offices are not "governmental entities" within the scope of section 70-5(a) of the SOEEA, the State's Attorney's Office is not specifically prohibited from disclosing any records pursuant to that provision. Further, to the extent the State's Attorney's Office bases its assertion of section 7(1)(a) on its own sexual harassment policy, it is clear that even a home rule ordinance cannot exempt any public records from disclosure under FOIA because prescribing conditions for accessing public records is an exclusive State prerogative. Ill. Att'y Gen. Pub. Acc. Op. No. 15-002, issued January 23, 2015, at 9-10 (home rule ordinance purporting to allow village to withhold financial information related to entertainment events was not a valid exercise of home rule power). Therefore, this office concludes that the State's Attorney's Office did not sustain its burden of demonstrating by clear and convincing evidence that any records are exempt from disclosure under section 7(1)(a) of FOIA.

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<sup>5</sup>Letter from Joseph F. Lulves, Assistant State's Attorney, Office of the Kane County State's Attorney, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (November 6, 2018).

<sup>6</sup>Letter from Jeffrey Ward to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (November 14, 2018).

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Mr. Joseph F. Lulves  
June 14, 2019  
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The State's Attorney's Office also stated that it "[does] not waive the privileged work product nature of documents created by attorneys in the State's Attorney's Office in reviewing and investigating any such referrals," referencing its partial denial of Mr. Ward's previous request under section 7(1)(m) of FOIA (5 ILCS 140/7(1)(a) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018) based on the work product doctrine.<sup>7</sup> Section 7(1)(m) of FOIA exempts from disclosure, in relevant part:

Communications between a public body and an attorney  
\* \* \* representing the public body that would not be subject to  
discovery in litigation, and materials prepared or compiled by or  
for a public body in anticipation of a criminal, civil or  
administrative proceeding upon the request of an attorney advising  
the public body[.]

The work-product doctrine as set out in Illinois Supreme Court Rule 201(b)(2) provides that "[m]aterial prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." A public body asserting that records are attorney work-product must demonstrate that the records "reveal the shaping process by which the attorney has arranged the available evidence for use in trial as dictated by his training and experience[.]" [Citation.]" *Monier v. Chamberlain*, 35 Ill. 2d 351, 359 (1966).

There is no indication that the records at issue were prepared for trial or prepared or compiled by or for a public body in anticipation of a criminal, civil, or administrative proceeding upon the request of an attorney advising the public body. Therefore, the State's Attorney's Office did not sustain its burden of demonstrating that any records it withheld are protected by the work product doctrine. Thus, the records are not exempt under section 7(1)(m).

Lastly, although the State's Attorney's Office did not expressly cite section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), that provision is relevant to this matter because the State's Attorney's Office asserted that confidentiality was also necessary to protect the reputations and privacy of the individuals who were involved in the investigation, including the respondent and persons who were interviewed in the process.

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted

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<sup>7</sup>Letter from Joseph F. Lulves, Assistant State's Attorney, Office of the Kane County State's Attorney, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (November 6, 2018).

Mr. Jeff Ward  
Mr. Joseph F. Lulves  
June 14, 2019  
Page 6

invasion of personal privacy." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Additionally, section 7(1)(c) provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

In 2018 PAC 52303, this office reviewed a FOIA request to the Madison County State's Attorney's Office that sought records pertaining to complaints of sexual harassment or other harassment against members of that office. The Madison County State's Attorney's Office denied that request pursuant to section 7(1)(c) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, issued October 16, 2018, at 1. As in this matter, the Madison County State's Attorney's Office argued that disclosure of any portion of the responsive records would identify the individuals involved in the investigation, given the personal and specific nature of the circumstances described in the records. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 4. The Madison County State's Attorney's Office also raised concerns about the chilling effect that could potentially result from release of the records with regard to individuals coming forward with future claims. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 4-5. Under the four-factor test set forth in *National Ass'n of Criminal Defense Lawyers*, this office determined that the Madison State's Attorney's Office "did not demonstrate that disclosing general information concerning [the alleged victim's] allegations would substantially invade her personal privacy under these circumstances." Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 6. This office determined that "[r]edacting the relatively minimal content that could be characterized as salacious and disclosing the remaining information concerning the alleged misconduct would strike the appropriate balance between the public interest and the complainant's privacy interest." Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 6. Additionally, this office determined that "[r]edacting the personally-identifying information from [the interviewees'] statements \* \* \* would greatly reduce the impact on their personal privacy." Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 7. This office concluded that the Madison County State's Attorney's Office had not demonstrated that the investigation report at issue was exempt from disclosure in its entirety under section 7(1)(c). Ill. Att'y Gen. PAC Req. Rev. Ltr. 52303, at 7; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 31045, issued April 13, 2015 (concluding that Jo Daviess County State's Attorney's Office had not demonstrated by clear and convincing evidence that records pertaining to a sexual harassment complaint were exempt from disclosure in their entirety under section 7(1)(c)).

Mr. Jeff Ward  
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This office has reviewed the records at issue and determined that the records reflect the State's Attorney's Office's investigation into the alleged misconduct of Mr. Bederka in connection with his public duties. In *Gekas v. Williamson*, 393 Ill. App. 3d 573, 574 (4th Dist. 2009), the Illinois Appellate Court considered whether citizen complaints and records related to citizen complaints against a deputy sheriff were exempt from disclosure under a prior version of section 7(1)(c), which also expressly excluded from its scope information that bears on the public duties of public employees.<sup>8</sup> The trial court ruled that files concerning unfounded complaints could be withheld "in order to protect the deputy's privacy." *Gekas*, 393 Ill. App. 3d at 578. The appellate court reversed, holding that records concerning alleged wrongdoing in the course of the deputy's public duties were subject to disclosure regardless of whether the underlying allegations had merit:

Complaints, founded or unfounded, that he committed misconduct in his capacity as a deputy sheriff are "information that bears on [his] public duties," and the disclosure of such information "shall not be considered an invasion of personal privacy." [Citation.] Insomuch as these materials, true or false, founded or unfounded, bear on his duties as a police officer, the disclosure of these materials would not invade his personal privacy, and, thus, we do not reach the question of whether their disclosure would be a "clearly unwarranted invasion of [his] personal privacy." [Citation.] *Gekas*, 393 Ill. App. 3d at 586.

See also Ill. Att'y Gen. Pub. Acc. Op. No. 18-018, issued December 31, 2018, at 6 (two complaints against police officer not exempt from disclosure under section 7(1)(c) even though one complaint was unsubstantiated and the other complaint involved conduct by the officer that was deemed to be appropriate).

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<sup>8</sup>Section 7(1)(b)(ii) of FOIA (5 ILCS 140/7(1)(b)(ii) (West 2006)) provided:

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. **The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.** Information exempted under this subsection (b) shall include but is not limited to:

\* \* \*

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions[.] (Emphasis added.)



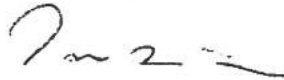
Mr. Jeff Ward  
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Likewise, because the records bear on Mr. Bederka's public duties, their disclosure would not constitute an unwarranted invasion of his personal privacy. There is a legitimate public interest in information concerning the claims against him and how the State's Attorney's Office addressed the matter. While the records contain some details concerning the alleged sexual harassment that could be characterized as salacious, a partial redaction of the records would strike an appropriate balance between the public interest in information concerning the alleged misconduct and investigation and the privacy interests of any complainants or witnesses who were interviewed during the investigation. In addition to salacious details, the State's Attorney's Office may properly redact names and other information, such as medical conditions, office locations, and pre-employment background, from which the identities of any complainant or complainants could be discerned. Ill. Att'y Gen. Pub. Acc. Op. No. 18-018; issued December 31, 2018, at 6 (disclosure of information identifying individuals who filed complaints against police officer would constitute an unwarranted invasion of personal privacy). Records concerning the substance of the allegations and how they were investigated, however, bear directly on the public duties of a public employee and therefore are not exempt from disclosure in their entireties pursuant to section 7(1)(c) of FOIA.

In accordance with the conclusions expressed in this determination, this office requests that the State's Attorney's Office provide Mr. Ward with copies of the records, subject to limited redactions under section 7(1)(c) of FOIA. Specifically, the State's Attorney's Office may redact information identifying any individuals who were not accused of misconduct and the discrete portions of the records that specifically describe the alleged conduct/comments of a sexual nature.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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Enclosure





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 2, 2007

I - 07-042

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
Applicability of a County Ethics  
Ordinance to Circuit Clerks, State's  
Attorneys, and Their Employees

The Honorable David N. Stanton  
State's Attorney, Perry County  
Perry County Courthouse  
One Public Square  
Pinckneyville, Illinois 62274

Dear Mr. Stanton:

I have your letter inquiring whether the clerk of the circuit court, the State's Attorney, and the employees of those officers are subject to an ethics ordinance adopted by a non-home-rule county pursuant to subsection 70-5(a) of the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/70-5(a) (West 2006)). For the reasons stated below, circuit clerks, State's Attorneys, and their employees are generally not subject to a county ordinance adopted pursuant to section 70-5 of the Ethics Act, and counties may not regulate their conduct under that provision.

**BACKGROUND**

The Ethics Act comprehensively regulates ethical conduct, political activities, and the making and acceptance of gifts by executive branch constitutional officers, legislative branch constitutional officers, General Assembly members, and State employees. *See generally* 5 ILCS 430/1-1 *et seq.*, 5-5 *et seq.*, 10-10 *et seq.* (West 2006). Although the Ethics Act does not apply directly to officers and employees of units of local government or school districts, section 70-5 of

the Ethics Act requires all "governmental entities," a term defined to include units of local government such as counties (Ill. Const. 1970, art. VII, §1), to adopt comparable ethics ordinances or resolutions:

(a) Within 6 months after the effective date of this Act, *each governmental entity shall adopt an ordinance or resolution that regulates*, in a manner no less restrictive than Section 5-15 and Article 10 of this Act, (i) *the political activities of officers and employees of the governmental entity* and (ii) the soliciting and accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity. (Emphasis added.) 5 ILCS 430/70-5 (West 2006).

Counties, therefore, have a duty to adopt ordinances or resolutions regulating the conduct of their officers and employees. You have asked whether such county ordinances are applicable to circuit clerks, State's Attorneys, and their employees.

#### ANALYSIS

It is well established that non-home-rule counties possess only those powers that are expressly granted to them by the Constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate those expressly granted. Ill. Const. 1970, art. VII, §7; *Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981). Because section 70-5 of the Ethics Act authorizes counties to regulate only the ethical conduct of their own officers or employees, the threshold issue is whether circuit clerks, State's Attorneys, and their personnel are county officers and employees.

#### Circuit Clerk's Office

The Illinois Constitution of 1870 categorized circuit clerks as elected county officers. Ill. Const. 1870, art. X, §8. However, the new judicial article of the 1870 Constitution adopted in 1962, effective January 1, 1964, provided that the General Assembly "shall provide by law for the selection by the judges or election, terms of office, removal for cause and salaries of clerks and other non-judicial officers of the various courts[.]" Ill. Const. 1870, art. VI (1964), §20. Article VI, section 18(b), of the Illinois Constitution of 1970 now provides:

The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, *of clerks and other non-judicial officers of the Circuit Courts* and for their terms of office and removal for cause. (Emphasis added.)

The status of circuit clerks was addressed in *Drury v. County of McLean*, 89 Ill. 2d 417 (1982), arising out of a suit filed against McLean County seeking reimbursement of fine money and costs paid to the circuit clerk upon plaintiffs' conviction under a statute later held unconstitutional. In reaching its conclusion that the plaintiffs were entitled to the return of their court costs attributable to the convictions from the county, the Illinois Supreme Court addressed whether circuit clerks are county officials. After noting that the Sixth Illinois Constitutional Convention rejected amendments attempting to include references to the circuit clerk in the local government article, as opposed to the judicial article, of the Constitution, the Court held that the drafters intended the circuit clerk to be a nonjudicial member of the judicial branch of State government. *Drury*, 89 Ill. 2d at 423. The Court acknowledged that counties are required by law to pay the salary of their circuit clerks (705 ILCS 105/27.3(a) (West 2006)), but determined that "[t]he fact that counties pay the salaries and expenses of circuit court clerks does not make the office of circuit court clerk a county office." *Drury*, 89 Ill. 2d at 425.

Based on the holding in *Drury*, circuit clerks are not county officers but State officers. Therefore, because section 70-5 of the Ethics Act authorizes counties to regulate the conduct of only county officers and employees, an ordinance adopted pursuant to section 70-5 is not applicable to the circuit clerk.

With respect to the status of employees of the circuit clerk, in *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453 (1989), the Illinois Supreme Court addressed whether counties and the State, through the chief judge of each circuit, are joint employers of judicial branch employees for the purpose of negotiating collective bargaining agreements. After discussing *Drury*, the Court concluded that:

the fact that a county pays the salaries of other nonjudicial employees in the judicial branch, or even administers personnel policies covering them by agreement with the judicial branch, does not in constitutional or statutory terms make the county their employer. Rather, *the State, personified by the chief judge of each circuit, is their employer.* (Emphasis added.) *Orenic*, 127 Ill. 2d at 476.

The Court further stated:

not only are nonjudicial employees of a court the employees of a State agency rather than of a county, but even the counties' salary-setting and facilities-providing function is subject to the courts' own ultimate power to ensure reasonable adequacy. Except for setting and paying salaries and providing facilities subject to

ultimate court power, the counties are entitled to no other role in regard to the courts' nonjudicial employees that might arguably be considered the role of a joint employer. \* \* \*

\* \* \* If the [Illinois State Labor Relations] Board were allowed to compel chief judges to share their collective-bargaining authority with counties, and if counties' assertion of funding authority then impeded or frustrated the chief judges' efforts to bargain, the "whole power" of the chief judges in the vital administrative area of employment relations would be effectively lodged in the counties' hands. This would be far more than a "peripheral effect" on judicial administration; it would be an evisceration of the courts as free and independent employers of their own employees, since authority over compensation is central to employer status. (Emphasis added.) *Orenic*, 127 Ill. 2d at 480-81.

*Orenic* clarifies that the State, through the chief judge of each circuit, is the sole employer of judicial branch employees, and a county may not infringe on the chief judge's right to control the operations of the circuit court.<sup>1</sup> Therefore, pursuant to *Orenic*, employees in the circuit clerk's office are not county employees who are subject to a county ordinance adopted pursuant to section 70-5 of the Ethics Act.

Although the circuit clerk and the employees of that office are not subject to a county ordinance adopted under the Ethics Act, I do not discount the possibility that policies may be put into place to regulate the conduct of the circuit clerks and their staff. The Illinois Supreme Court may adopt statewide rules governing the ethical conduct of the circuit clerks and their employees. Ill. Const. 1970, art. VI, §16 ("[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules"). Additionally, the chief judge may impose requirements governing the ethical conduct of the circuit clerk and the circuit clerk's employees. Ill. Const. 1970, art. VI, §7(c) ("[s]ubject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court"); 134 Ill. 2d R. 21(b) ("[t]he chief judge of each circuit may enter general orders in the exercise of his general administrative authority").

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<sup>1</sup>See also *Baker v. DuPage County*, 703 F. Supp. 735 (N.D. Ill. 1989) (holding that both a legal secretary hired by the circuit court and the court administrator who fired her were not county employees; therefore, the secretary did not have a property interest in continued employment with the county and the court administrator was not obligated to comply with the termination procedures outlined in the county's policy manual).

### State's Attorney's Office

You have also inquired whether the State's Attorney and his or her employees are subject to a county ethics ordinance. The Office of State's Attorney is also provided for in the judicial article of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, §19), although the salary for such office is paid through the county (55 ILCS 5/3-9012, 4-2005 (West 2006); Ill. Const. 1970, art. VI, §19 (providing that a State's Attorney's salary "shall be provided by law")).

With regard to the status of State's Attorneys, in *Hoyne v. Danisch*, 264 Ill. 467 (1914), decided under the Illinois Constitution of 1870, the Illinois Supreme Court held that State's Attorneys were State officers. The Illinois Supreme Court has subsequently reaffirmed this conclusion under the Illinois Constitution of 1970, noting that "[t]he debates of the Sixth Illinois Constitutional Convention of 1969-70 indicate that the drafters of our present constitution agreed with the decision in *Hoyne* that State's Attorneys should be classified as State, rather than county, officials." *Ingemunson v. Hedges*, 133 Ill. 2d 364, 369 (1990). Cases decided under the current Constitution have held that State's Attorneys are either State officers or State employees. See *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 475 (2005) (State officers); *Price v. State*, 354 Ill. App. 3d 90, 93 (2004) (the State's Attorney is a State employee for purposes of section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2002)) and the Court of Claims Act (705 ILCS 505/8(d) (West 1994))); *Sneed v. Howell*, 306 Ill. App. 3d 1149, 1155 (1999), *appeal denied*, 187 Ill. 2d 591 (2000) (the State's Attorney is a State employee for purposes of section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 1994)) and the Court of Claims Act (705 ILCS 505/8(d) (West 1994))).<sup>2</sup> Based on *Hoyne* and *Ingemunson*, therefore, a State's Attorney is not a county officer subject to a county ethics ordinance adopted under section 70-5 of the Ethics Act.

Pursuant to section 3-9006 of the Counties Code (55 ILCS 5/3-9006 (West 2006)), the State's Attorney controls the internal operations of his or her office, including procuring the necessary services to perform the duties of the office. 55 ILCS 5/3-9006 (West 2006). The State's Attorney's position with respect to his or her employees is, therefore, analogous to that of a chief judge and the circuit court's employees. Based on the reasoning of the *Orenic* Court, the State's Attorney, not the county, has the sole right to control the conduct of

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<sup>2</sup>Moreover, the Illinois Appellate Court, relying in part on *Hoyne* and *Ingemunson*, held that Assistant State's Attorneys are State officers for purposes of negligence actions brought under the *respondeat superior* doctrine. *Biggerstaff v. Moran*, 284 Ill. App. 3d 196, 200 (1996); see also *Stokes v. City of Chicago*, 660 F. Supp. 1459, 1463 (N.D. Ill. 1987) (noting that the State status granted Assistant State's Attorneys is analogous to the State status afforded circuit judges and clerks for purposes of suit brought pursuant to 42 U.S.C. §1983); *People ex rel. Landers v. Toledo, St. Louis & Western R. R. Co.*, 267 Ill. 142, 145-46 (1915) (Assistant State's Attorneys are officers, not employee-agents, for purposes of tax levies to pay county officers' salaries).



The Honorable David N. Stanton - 6

his or her employees. Accordingly, employees within the State's Attorney's office are not county employees subject to the county ethics ordinance adopted pursuant to section 70-5 of the Ethics Act.

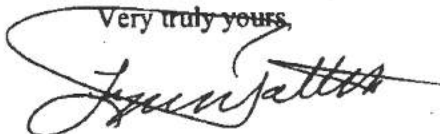
Although the State's Attorney's office is not subject to the county ethics ordinances, State's Attorneys and their assistants, as licensed attorneys, are obligated to comply with the extensive ethical mandates found in the Illinois Rules of Professional Conduct (134 Ill. 2d R. 1.1 *et seq.*). See, e.g., 210 Ill. 2d R. 8.4(c) ("[a] lawyer who holds public office may accept political campaign contributions as permitted by law"). Additionally, the statutory authority to control the internal operations of their office (55 ILCS 5/3-9006 (West 2006)) permits State's Attorneys to establish ethical standards for their employees, which may include implementing the provisions of the county's ethics ordinance adopted pursuant to section 70-5 of the Ethics Act.

#### CONCLUSION

Section 70-5 of the State Officials and Employees Ethics Act requires governmental entities, such as counties, to adopt an ordinance regulating the conduct of their officers and employees. Because circuit clerks, State's Attorneys, and their employees are not county officers or employees, those officers and their employees are not subject to the county ethics ordinances adopted pursuant to section 70-5 of the Ethics Act.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



LYNN E. PATTON  
Senior Assistant Attorney General  
Chief, Opinions Bureau

LEP:KMC:ljc



**Office of the Kane County State's Attorney**



**JOSEPH H. McMAHON**

State's Attorney

Kane County Courthouse  
100 South Third Street, 4<sup>th</sup> Floor  
Geneva, Illinois 60134

Civil Division General:  
(630) 208-5320

July 3, 2019

Jeff Ward  
189 Abbey Lane  
Geneva, Illinois 60134

Re: 2018 PAC 55350; SAO FOIA 18-053

Dear Mr. Ward:

We are in receipt of the Illinois Attorney General's Public Access Bureau's non-binding letter, dated June 14, 2019, in connection with your appeal of the denial of items #1 and #2 of your October 11, 2018 FOIA request for the following:

1. All sexual harassment complaints – in any form – against former prosecutor Alex Bederka during his entire tenure with the KCSAO.
2. All responses and dispositions to those sexual harassment complaints – in any form.
3. An explanation and/or paperwork detailing why Mr. Bederka continued to be paid by the KCSAO for up to 10 weeks after he was fired.

We have reviewed and further discussed the non-binding letter with the AG's Public Access Counselor's Office. We have also reviewed the Illinois Officials and Employees Ethics Act, as well as additional exemptions discussed with the AG's Office and cited in various court opinions. After weighing the important privacy and public policy interests involved, we are granting your request for dispositions (item #2) and including with this letter an unredacted disciplinary letter (with the exception of the signature), which is responsive to your request. Please note, this is the only written disciplinary letter. In light of our discussions with the AG's Office and our review of the law, we are of the opinion that the remaining materials requested in items #1 and #2 are exempt under the following provisions of FOIA, 5 ILCS 140/7(1):

- (a) Information specifically prohibited from disclosure by federal or State law or rules or regulations implementing federal or State law (as described below and in previous correspondence).
- (c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated...

(m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

In addition, pursuant to the State Officials and Employees Ethics Act, the Illinois Human Rights Act and Title VII, and regulations adopted pursuant to those statutes, the Office of the Kane County State's Attorney, as a state executive officer, agency or employee, prohibits sexual harassment and has adopted a confidential sexual harassment complaint process to encourage employees to report incidents of sexual harassment and to encourage honest participation in investigations regarding sexual harassment. As such, sexual harassment complaint and investigation materials are confidential and not subject to public disclosure. To conclude otherwise would render State's Attorney's Offices as the only state office or agency where employees are not entitled to a confidential sexual harassment complaint and investigation process. This would be a catastrophic result and would be counter to the clear public interest of prohibiting sexual harassment.

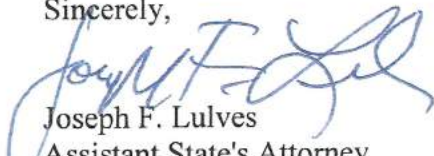
You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor  
Office of the Attorney General  
500 South 2<sup>nd</sup> Street  
Springfield, Illinois 62706  
Fax: 217-782-1396  
E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Sincerely,



Joseph F. Lulves  
Assistant State's Attorney  
FOIA Officer

Enc.



Office of the Kane County State's Attorney



JOSEPH H. McMAHON

State's Attorney

Kane County Judicial Center  
37W777 Route 38 Suite 300  
St. Charles, Illinois 60175

General Offices:  
(630) 232-3500

June 5, 2017

Alex Bederka  
Assistant State's Attorney

Re: Meetings on March 30, 2017 and April 3, 2017 regarding conduct in the office

Dear Alex:

As you recall, we met on two separate dates to discuss allegations made by other ASAs regarding your conduct in the office. The allegations included your use of inappropriate language in the office, sexual language in the office, derogatory comments about ASAs both inside and outside the office, and statements inflating your influence with supervisors.

As I discussed with you, the above type of language and actions will not be tolerated in this office. Offensive and derogatory language about other employees is unacceptable and violates office policy concerning Sexual and Other Types of Harassment and Professional Conduct.

If you have an issue with an employee, you are to address the issue in a professional manner. If you need guidance in how to handle certain types of issues (for example body odor) you should discuss the issue with your supervisor or the First Assistant. You are not to engage in conduct that is unbecoming or impugns the integrity of this Office or any member of the Kane County State's Attorney's Office. Further, use of sexually explicit language regarding your sex life or others' in the office is never appropriate in a professional office.


Additionally, you are not to insinuate to ASAs, support staff or volunteers, that you have any special connections or influence with supervisors in the office. As you know, this office has an open door policy for all employees, and I value the input of all employees. I am reassigning your office to the other end of the office, to help correct any impression that you created that you had undue influence in the office.

You have been previously counseled concerning your interpersonal communications with other ASAs and defense counsel. I am issuing you a written reprimand in connection with the current allegations concerning the behavior discussed in our prior two meetings and additionally

described herein. You will meet with your supervisor and/or the First Assistant to determine appropriate remedial training.

Alex, as we discussed, you are a very talented lawyer and a valuable employee in this office. However, the above types of actions will not be tolerated in this office. If this type of behavior continues, it will lead to further discipline up to and including termination. Similarly, harassing, discriminatory and retaliatory conduct is not tolerated and may be grounds for further discipline including immediate termination. If you have any questions, please see me.

Sincerely,

  
Kane County State's Attorney