

MEMORANDUM

Issue: Whether, and to what extent, the Chief County Assessment Officer (Assessor) can charge for copying records in both paper and electronic form.

This problem has been created by Sage Information lawsuit against the Assessor. Sage Information seeks to require free copying of certain real property assessment records for the whole county. Various issues have been raised.

First, Sage sought enforcement via the FOIA and from the Assessor's denial, Sage sought relief from the Attorney General's FOIA Counselor. On June 8, 2010, the FOIA Counselor issued its decision, stating:

- A. This request is essentially identical to the request made in Sage v. King/DuPage. The Appellate Court held there that Sec. 9-20 of the Property Tax Code specifically applies to what Sage seeks here - the electronic dissemination of property assessment information.
- B. Section 9-20 requires that copies of property record cards shall be provided upon request and upon payment of the applicable fee. It is not limited to paper documents - i.e., it applies to electronically maintained records.
- C. Although property records may contain "private information" as identified in Section 7(1)(b) of the FOIA, disclosure of those records is required by Sec. 9-20 of the Property Tax Code.
- D. As an aside, the determination of a reasonable fee remains. This issue is explored at length in Sage v. Henderson/Grundy and Sage v. King/DuPage.

Second, Sage v. Henderson/Grundy. The trial court granted defendant's 5/2-619(a)(9) motion to dismiss and the Appellate Court, 3d Dist., affirmed. The trial court had held that Section 9-20 of the Property Tax Code barred Sage from getting the documents. The plaintiff - Sage - did not attempt to state a cause of action under the Property Tax Code: it only sought the dissemination of public information under the FOIA. It's the Property Tax Code that controls the dissemination of the information that Sage sought.

Third, Sage v. King/DuPage. Same issues. Trial Court found that Sage's claim fell under the specific provisions of the Property Tax Code and the information was to be provided upon payment of a reasonable fee and that \$5,500 was a reasonable fee. Trial court granted that 5/2-619(a)(9) Motion. The 2d Dist. App. Ct. Reversed and remanded solely on the issue of the fee award, asserting that the fee award is a material fact to be determined and that the trial court just accepted the bare assertion of the Assessor that \$5,500 was a reasonable fee. Ruled: a 5/2-619(a)(9) motion should be denied because the reasonableness of the fee issue must be determined - a factual basis is required.

RE: FOIA Request - Sage Information Systems

Lee County State's Attorney

Henry S. Dixon

- A. In its analysis, the 2d Dist. Acknowledges that Sage's complaint was based on the FOIA: however, the Property Tax Code specifically applies to property tax assessments and therein, the counties are allowed to charge different fees for reproducing the particular data Sage sought.
- B. The fee under FOIA is limited to the actual cost of reproduction and not for any other necessary activity involved in the process ... "unless otherwise provided by statute." Accordingly, the court must examine the Property Tax Code to determine whether those cost provisions should apply.
- C. After analyzing the issue at length, the Appellate Court does find a basis to relate the provisions of Section 9-20 of the Property Tax Code to Sage's specific request, and it gives to the county assessor the authority to establish and maintain property records in an electronic format. Further, upon request and payment of a reasonable fee established by the custodian, a copy of such records shall be provided. The county may set its charge under the cost provision of Section 9-20 of the Property Tax Code. The case was reversed and remanded for a hearing to determine the reasonable cost.