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STATE'S ATTORNEYS SUBJECT TO FOIA

Reversing the decision of the Appellate Court last year, the Illinois Supreme Court has ruled that the office of the State's Attorney in each county is indeed subject to the Freedom of Information Act ("FOIA").

FOIA, which requires the disclosure of most state and local governmental records upon request from any member of the public, has certain limited exceptions. It is a statute with which officials in school districts and other local governments have had to become very familiar, especially since the sweeping amendments in 2010. Since its enactment, FOIA has broadly defined "public body" to include "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the State, any subsidiary bodies of any of the foregoing" However, this definition does not include the judicial branch.

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The State's Attorney in Kendall County, which had been served with document requests, had been able to convince the local circuit court and the Illinois Appellate Court, Second District, that office of the State's Attorney belongs to the judicial branch and is, therefore, not a public body subject to FOIA. This view was emphatically rejected by the Illinois Supreme Court on May 22, 2014, in its opinion in *Nelson v. Kendall County*. In that opinion, the Court reviewed both the language and the policy of FOIA, as well as previous court rulings, to conclude that for purposes of FOIA the office of State's Attorney is part of the executive branch.

School districts may find this decision helpful in obtaining copies of correspondence, legal opinions, and notices affecting them which have been prepared, issued, or retained by their local State's Attorney. For instance, where a state's attorney's office has documents relating to such school district-related matters as property tax objections, board member qualifications disputes, or criminal proceedings against employees, requests for copies may no longer be rebuffed out-of-hand.

Should you have any questions, please contact one of

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our attorneys at our Flossmoor Office at 708-799-6766.