



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-021

PUBLIC RECORDS AND INFORMATION:
Intergovernmental Public Safety
Agency Subject to the Local Records Act

Mr. Robert Anderson
Chairman
Local Records Commission
Illinois State Archives
Springfield, Illinois 62756

Dear Mr. Anderson:

I have your letter wherein you inquire whether DuPage Public Safety Communications, an entity created pursuant to an intergovernmental cooperation agreement for the purpose of providing a centralized public safety communications system, is subject to the provisions of the Local Records Act (50 ILCS 205/1 et seq. (West 1998)). For the reasons hereinafter stated, it is my opinion that DuPage Public Safety Communications is an "agency", as that term is used in the Local Records Act, which therefore must maintain its records in accordance with the provisions of that Act.

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According to the materials submitted with your request, in 1975 seven municipalities located in Northeastern Illinois entered into an intergovernmental agreement which created DuPage Public Safety Communications (hereinafter referred to as "Du-Comm"), a centralized public safety communications system that provides police and fire dispatching services for its member governmental units. Membership in Du-Comm is limited to "* * * cities, villages, fire protection districts and other units of local government that provide public safety service, that are located, wholly or partly within DuPage County * * * and that are permitted by the Intergovernmental Cooperation Act to contract and associate with other units of local government * * *". In order to join Du-Comm, a qualifying unit of local government must execute the "Joint Public Safety Communications Systems Agreement" and deliver to Du-Comm, a certified copy of its ordinance authorizing its execution of the Joint Public Safety Communications System Agreement.

Du-Comm is headed by a Board of Directors and an Executive Committee, the members of which serve without compensation from Du-Comm. The Board of Directors consists of the mayor or president of each participating municipality and representatives of the participating fire protection districts. The Board of Directors meets quarterly and is authorized, inter alia, to

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approve and adopt the annual budget of Du-Comm; to enter into contracts on behalf of Du-Comm; to incur debts, liabilities or obligations necessary for the accomplishment of its purposes; and to employ necessary personnel.

The Executive Committee, a nine-member board consisting of the chairman, vice-chairman and secretary/treasurer of the Board of Directors, two municipal administrators, two fire chiefs and two police chiefs, meets monthly. The Executive Committee is responsible for the day to day operations of Du-Comm, subject to the policy directions and limitations established by the Board of Directors.

In order to support its activities, the parties to the intergovernmental agreement that created Du-Comm are required to contribute annually to Du-Comm's budget in accordance with the formula prescribed in Du-Comm's Bylaws. Each unit of local government participating in Du-Comm owns a common interest in all property acquired by Du-Comm and is liable for its debts and liabilities. Given the nature of this entity, as an outgrowth of the units of local government which created it, you have inquired whether the records of Du-Comm are subject to the provisions of the Local Records Act.

The purpose of the Local Records Act is to establish a program for the management of local public records to facilitate

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and expedite governmental operations, and to insure that no public records are destroyed except in accordance with law. (Lopez v. Fitzgerald (1979), 76 Ill. 2d 107, 114-16.) Thus, section 7 of the Act (50 ILCS 205/7 (West 1998)) provides that "[e]xcept as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained". As used in the Act, the term "agency" is defined to include:

" * * *
* * * all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision.

* * * (Emphasis added.) (50 ILCS 205/3 (West 1998).)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (Department of Public Aid ex rel. Davis v. Brewer (1998), 183 Ill. 2d 540, 554.) Legislative intent is best evidenced by the language used in the statute. (People v. Koppa (1998), 184 Ill. 2d 159, 169.) Where statutory language is clear and unambiguous, it must be given effect as written. Gem Electronics v. Department of Revenue (1998), 183 Ill. 2d 470, 475.

Under the language of section 3, it is clear that "all parts, boards, departments, bureaus and commissions of any

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county, municipal corporation or political subdivision" of the State are subject to the provisions of the Local Records Act. As noted above, Du-Comm is an association of units of local government created by an intergovernmental cooperation agreement originally executed by seven municipalities. Clearly, therefore, Du-Comm is not a board, department, bureau or commission of a county. Consequently, Du-Comm will be considered an agency which is subject to the Local Records Act only if it constitutes a part, board, department, bureau or commission of a municipal corporation or other political subdivision.

Municipal corporations are defined generally as public corporations created by the government for political purposes which have subordinate and local powers of legislation. (Black's Law Dictionary 1017 (6th ed. 1990).) The definition of municipal corporation includes municipalities, as well as a variety of other public corporations created for public purposes, including fire protection districts. (70 ILCS 705/1 (West 1998); People ex rel. Gutknecht v. Chicago Regional Port District (1954), 4 Ill. 2d 363, 372; Wilson v. Board of Trustees (1890), 133 Ill. 443, 464; 1977 Ill. Att'y Gen. Op. 155, 157.) The municipalities that created Du-Comm and its member fire protection districts are agencies which are subject to the Local Records Act. Therefore,

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the issue is whether Du-Comm remains a part of the municipal corporations that created it.

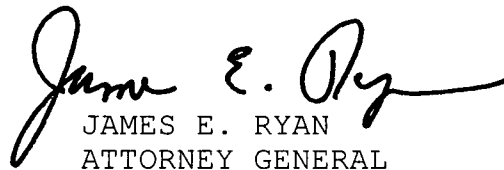
As noted above, Du-Comm is operated by a Board of Directors the membership of which is comprised entirely of municipal officers representing its membership. Moreover, Du-Comm is funded by and its assets are owned by the municipal corporations that created it, and the member corporations remain liable for Du-Comm's debts and liabilities. To the extent set forth in the Bylaws, Du-Comm has the power in its own name to perform the following functions: to approve and adopt an annual budget; to appoint and remove the Director of Communications; to hire a certified public accountant to perform an annual audit; to enter into contracts; and to contract for loans not exceeding \$50,000. Du-Comm has no power of eminent domain or taxation. Du-Comm was not created as a separate legal entity, nor does statutory authority exist for the creation of a communications association as a separate governmental entity.

Based upon the foregoing, it is my opinion that Du-Comm is a joint operation of its member municipal corporations. As such, it is a part of each of the municipal corporations that created it. The fact that an association of units of local government is given a degree of independence in exercising its granted powers does not mean that it is not a part of its origi-

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nating members. (See Springfield-Sangamon County Regional Plan Comm'n v. Fair Employment Practices Comm'n (1976), 45 Ill. App. 3d 116, 123, rev'd in part, 71 Ill. 2d 61 (1978).) Consequently, it is my opinion that Du-Comm is an "agency" which is subject to the provisions of the Local Records Act, and, therefore, its records must be maintained in accordance with the requirements of that Act.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL