

COURT HOLDS THAT GIS DATA IS EXEMPT FROM FOIA DISCLOSURE

To: ICRMT Members
From: OKGC Law, LLC
Re: *Hurlbert v. Edmonds*, 2022 IL App (4th) 220204
Date: December 5, 2022

In a matter of first impression, the Fourth District Appellate Court recently held that Jo Daviess County properly relied on FOIA exemption 7(1)(i) when it denied a request from Sage Information Systems (Sage) for a shapefile that was contained within its geographic information system (GIS). *Hurlbert v. Edmonds*, 2022 IL App (4th) 220204. The opinion was issued on November 30, 2022.

Sage sent a FOIA request seeking a copy of the most recent tax map file for all of the parcels in the county in shapefile (not pdf) format. The county asked Sage if the request was for a commercial purpose, and Sage admitted that it was a commercial requester. The county denied the FOIA request asserting that the shapefiles of parcel boundaries are GIS data that is exempt under section 7(1)(i) of FOIA.

Section 7(1)(i) exempts “[v]aluable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss.” Sage asserted that the exemption did not apply because it had not requested the entire GIS “system” but only a shapefile that was contained within the system.

The Court examined exemption 7(1)(i) in the context of the full statute and held that the term “computer geographic systems” includes the data stored in a GIS system. Further, because Sage had admitted that it was a commercial requester, private gain could reasonably be expected if the data were disclosed pursuant to FOIA. Thus, exemption 7(1)(i) applied.

The Court rejected Sage’s argument that based on earlier precedent, the county was required to provide the data in the format requested (a shapefile not a pdf). It held that 7(1)(i), by its express terms, is intended to protect “valuable” materials, and the county had established that shapefiles, because of their functionality, have more value than pdf files.

Sage also asserted that even if the exemption applied, the county had waived its right to claim it by previously licensing the data to others as part of a cost recovery program. In exchange for access to the GIS data, requesters had to pay a fee and sign a licensing agreement which prohibited them from reproducing or redistributing the data. The Court held that the county had not waived its right to assert the exemption because the licensing agreement prohibited the redistribution or reproduction of the data, and

therefore, the requester could not realize a private gain. Further, because the county could recoup its GIS costs through the program, no public loss would occur. Thus, neither exemption 7(1)(i), nor its purpose were invoked by the prior disclosures pursuant to the licensing agreement.

Sage also asserted that the user fee associated with the licensing agreement violated the fee provisions in Section 6 of FOIA. The Court held that Sage forfeited this argument by failing to develop it.

This opinion offers guidance to counties on the applicability of exemption 7(1)(i), which the appellate court had not previously addressed. It also provides insight on the factors that a court will consider when determining whether a public body has waived its right to assert a FOIA exemption. Public bodies should be aware, however, that the Court's decision is subject to further appeal in the event that Sage seeks rehearing or files a petition for leave to appeal to the Illinois Supreme Court. Public bodies are encouraged to consult with counsel when determining whether to assert exemption 7(1)(i) in response to a FOIA request.