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State's attorneys subject to FOIA, high court says

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SPRINGFIELD — The Illinois Supreme Court's conclusion Thursday was short, sweet and unequivocal.

"The FOIA applies to the office of [s]tate's [a]ttorney," the justices stated at the end of a 10-page unanimous decision authored by Justice [Lloyd A. Karmeier](#).

"Plaintiffs' actions against the Kendall County [s]tate's [a]ttorney's office should not have been dismissed on the grounds that it does not."

Indeed, in rendering its judgment, the high court determined state's attorneys' offices must comply with state open-record laws because they are divisions of the executive branch of government.

The high court's opinion overturned an earlier decision by Kendall County Associate Judge [Marcy L. Buick](#) as well as a 2nd District Appellate Court ruling authored by Justice [Kathryn E. Zenoff](#).

In the process, it dismissed contentions by the state that prosecutors are part of the judicial branch — which is beyond the scope of the Freedom of Information Act — as "untenable."

To say state's attorneys are part of the judicial branch would be "incompatible" with the rest of the Judicial Article of the Illinois Constitution, Karmeier wrote, because it vests power specifically in the courts and does not mention that office.

Citing at least 10 previous opinions spanning 34 years between 1970 and 2004, Karmeier added that "[s]uch a characterization would also require that we jettison the substantial and well-established body of case law set forth earlier in this opinion which holds that [s]tate's [a]ttorneys exercise executive powers, and that the office of [s]tate's [a]ttorney is part of the executive branch of [s]tate government."

The Freedom of Information Act says, in short, that "[e]ach public body shall make available to any person for inspection or copying all public records" with some exceptions. A list of public bodies includes "all legislative, executive, administrative or advisory bodies" of Illinois.

The case stemmed from multiple freedom of information requests sent by radio station owner

Larry Nelson to Kendall County and the Kendall County state's attorney's office.

The state's attorney argued, in part, that the office had already voluntarily furnished Nelson with thousands of documents relating to his request, and thus, his cause of action was moot.

But Nelson argued his action was not moot, saying the office was still denying access to records without demonstrating how or why they were exempt from disclosure.

He also said the office acknowledged that it was subject to the open-records law because it had made public pronouncements about it and hired FOIA officers to deal with requests.

In that area, the court concurred that the state's attorney had acknowledged being subject to the law.

"That [s]tate's [a]ttorneys' offices qualify as public bodies subject to the FOIA is no revelation to the Kendall County [s]tate's [a]ttorney," Karmeier wrote.

"Indeed, the materials before us show that the office had previously accepted and processed a FOIA request from Nelson, taking care to obtain review and approval from the [a]ttorney [g]eneral's office to withhold certain documents as exempt pursuant to the provisions of the law."

Kendall County State's Attorney [Eric C. Weis](#) could not be reached for comment.

"It's always kind of nice to have the law and facts on your side," said [Grant S. Wegner](#), counsel to Mahoney, Silverman & Cross LLC in Joliet, who represented Nelson in the case.

The case is *Nelson v. Kendall County*, No. 116303.

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