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IN REPLY REFER TO FILE NO.

July 20, 2016

Mr. Michael J. Nester
Donovan Rose Nester, P.C.
201 S. Illinois Street
Belleville, Illinois 62220
FOIA@drnpc.com

EP-1

Re: Freedom of Information Act Request

Dear Mr. Nester:

On July 1, 2016, the Village of Elmwood Park received your Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA") request for the following records:

- “1. Any public records that evidence, reference, survey, or relate to the **purchase, installation, performance, replacement or ownership** of guardrail end terminal systems, including the ET Plus System, installed on the roads and highways of Illinois from 2005 to the present.
2. Any public records that evidence, reference, survey, or relate to the payment and/or reimbursement by federal, state, city, county, or other funds of the purchase or installation of ET Plus guardrail end terminal systems installed on the roads and highways of Illinois from 2005 to the present.
3. Any public records showing information that your municipality provided or made available to the FHWA in response to the FHWA’s Request for Information, ET-Plus Guardrail End Terminal, Docket No. FHWA-2014-0039 (Dec. 18, 2014), sometimes referred to as ‘Task Force Two.’
4. Any public records that evidence, reference, survey, or relate to the criteria, factors, or features considered in deciding which guardrail end

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terminal systems to approve for use on the roads and highways of Illinois from 2005 to the present, including any criteria, factors, or features considered in deciding which guardrail end terminal systems to include on any approved or qualified products lists.

5. Any public records that evidence, reference, survey, or relate to the criteria, factors, or features considered in deciding which guardrail end terminal systems to purchase for use on road or highways projects in Illinois from 2005 to the present.”

Thereafter, on July 5, 2016, the Village of Elmwood Park received your Addendum to FOIA request, dated July 1, 2016, which modified your initial July 1, 2016, FOIA request as follows:

- “1) Request No. 1 is limited to ET-Plus documents. Documents pertaining to products other than the ET-Plus are limited to: (1) any accidents or problems associated with competitor end terminals and (2) any documents related to the cost of removing and replacing ET-Plus systems with a competitor end terminal;
- 2) Full or complete road surveys are not required. Please produce documents related the end terminals only;
- 3) Please be advised that you may respond no later than July 15, 2016.
- 4) With reference to state or federal projects in your municipality, it is my understanding that the a [*sic*] municipality may receive a bid from the contractor who thereafter identifies each component to be utilized pursuant to the approved list of parts in the manual published by the Illinois Department of Transportation. In addition, after completion of the project, the Illinois Department of Transportation issues payment to the contractor and invoices the municipality. Accordingly, documents in the municipality’s possession do not reflect whether the contractor utilized a Trinity product, or a product of another manufacturer. Please confirm, **in writing**, that I am correct in this regard. If so, you do not need to produce documents with reference to state and federal projects in your municipality.”

Please be advised that the Village of Elmwood Park maintains no records responsive to your July 1, 2016, FOIA request. In regards to item 4 of your Addendum to FOIA request, the Village of Elmwood Park is not required to provide you with written confirmation of your understanding regarding state or federal projects within the Village of Elmwood Park. As you

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know, the purpose of FOIA is to provide access to public records. FOIA is "not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of public records." (5 ILCS 140/3.3). Item 4 of your Addendum to FOIA request does not seek the disclosure of public records, but rather asks a question to the Village of Elmwood Park. Since item 4 of your Addendum to FOIA request does not seek the disclosure of public records, the Village of Elmwood Park has no obligation under FOIA to provide you with the written confirmation you have requested.

The person responsible for the decision to deny your FOIA request is the Village of Elmwood Park Freedom of Information Officer, Gina Pesko. In accordance with Section 9(a) of FOIA, you are hereby notified that you have the right to file a Request for Review regarding the decision made by the Village of Elmwood Park Freedom of Information Officer with the Public Access Counselor at the Illinois Attorney General's Office. You can file your Request for Review with the Public Access Counselor by writing to:

Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

If you choose to file a Request for Review with the Public Access Counselor, you must do so within 60 calendar days of the date of this letter. Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the Public Access Counselor.

You are also notified that you have the right to judicial review regarding the decision made by the Village of Elmwood Park Freedom of Information Officer pursuant to Section 11 of FOIA.

Sincerely,

STORINO, RAMELLO & DURKIN
Attorneys for the Village of Elmwood Park


Erin C. Tinaglia