



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 20, 2014

PUBLIC ACCESS OPINION 14-014
(Request for Review 2014 PAC 30994)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Matthew L. Walberg
Reporter
Chicago Tribune
3 Westbrook Corporate Center, Suite 800
Westchester, Illinois 60154

The Honorable Eric J. Kellogg
Mayor, City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426

Dear Mr. Walberg and Mayor Kellogg:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons discussed below, this office concludes that the City of Harvey (City) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) by failing either to comply with, to deny, or to otherwise appropriately respond to a FOIA request submitted by Mr. Matthew L. Walberg, *Chicago Tribune* reporter, within five business days following its receipt.

BACKGROUND

On July 23, 2014, Mr. Walberg submitted a FOIA request to the City via an e-mail to Deputy City Clerk Cheryl Anderson, seeking records pertaining to "an entity known as CHANGE Illinois (hereinafter referred to as CHANGE), which is alternately known as

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Comprehensive Health Agency Nurturing Guest Enervation, and doing business as Ethel's Arms, according to filings with [the] Illinois Secretary of State."¹ Specifically, Mr. Walberg requested:

--All applications for permits or licenses -- including [but] not limited to occupancy permits, business licenses, and liquor licenses -- filed by CHANGE and/or its owners or agents to the City of Harvey.

--All permits or licenses issued by the City of Harvey to CHANGE and/or its owners or agents.

--All inspections, reports or other memoranda conducted or produced by the City of Harvey regarding CHANGE.^[2]

On August 22, 2014, Mr. Walberg sent a follow-up e-mail to Deputy Clerk Anderson to check on the status of his FOIA request.³ She did not reply.

On August 27, 2014, Mr. Walberg submitted a Request for Review to the Public Access Bureau alleging that the City had failed to produce the requested records or to otherwise respond to his FOIA request.⁴ On September 3, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the City and asked the City to provide a "written explanation of its receipt and handling of Mr. Walberg's July 23, 2014, FOIA request. If the City has responded or issues a response to the FOIA request after receiving this letter, please provide a copy of that response."⁵ The City did not respond. On September 16, 2014, an Assistant

¹E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Deputy Clerk [Cheryl] Anderson (July 23, 2014).

²E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Deputy Clerk [Cheryl] Anderson (July 23, 2014).

³E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Deputy Clerk [Cheryl] Anderson (August 22, 2014).

⁴E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 27, 2014).

⁵Letter from Dushyanth Reddivari, Assistant Attorney General, Public Access Bureau, to Cheryl Anderson, Freedom of Information Officer, City of Harvey (September 3, 2014), at 2.

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Attorney General in the Public Access Bureau contacted Ms. Anderson by telephone and inquired whether the City had responded to Mr. Walberg's FOIA request. She confirmed that the City had received Mr. Walberg's FOIA request and this office's letter of inquiry, but had not responded to either communication.⁶ As of the date of this binding opinion, this office has received no response from the City or any confirmation that it has responded to the FOIA request.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act."

Section 3(d) of FOIA further provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply to a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

⁶Telephone conversation between Dushyanth Reddivari, Assistant Attorney General, Public Access Bureau, and Cheryl Anderson, Freedom of Information Officer, City of Harvey (September 16, 2014).

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The facts are undisputed that the City did not comply with Mr. Walberg's request, extend the time for response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)), or deny the request within 5 business days after July 23, 2014, the date of the City's receipt of the request. The City's failure to comply with the requisite procedures constitutes a denial of the request. Accordingly, by failing to respond to Mr. Walberg's July 23, 2014, FOIA request, the City violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

1) On July 23, 2014, Mr. Matthew L. Walberg, *Chicago Tribune* reporter, submitted a FOIA request to the City seeking certain information concerning an entity known as CHANGE. The City did not, within 5 business days, comply with the FOIA request, extend the time for its response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as is required by section 3(d) of FOIA.

2) On August 27, 2014, Mr. Walberg asked the Public Access Counselor to review the City's denial of the FOIA request. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)). Therefore, the Public Access Counselor may properly issue a binding opinion with respect to this matter.

3) In a letter dated September 3, 2014, the Public Access Bureau forwarded a copy of Mr. Walberg's Request for Review to the City, together with a letter requesting an explanation of the City's receipt and handling of Mr. Walberg's July 23, 2014, FOIA request. The City did not respond or otherwise provide the Public Access Counselor with an explanation of its reasons for failing to respond to the FOIA request.

4) To date, the City has not responded to Mr. Walberg's FOIA request or to the Public Access Counselor's inquiry.

5) The failure of the City to either comply with the FOIA request, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part, within 5 business days, violated the requirements of section 3(d) of FOIA.

Therefore, it is the opinion of the Attorney General that the City has violated section 3(d) of FOIA by failing to respond to Mr. Walberg's request for public records as

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required by the Act. Accordingly, the City is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Walberg with all records responsive to his July 23, 2014, FOIA request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2013 Supp.)).⁷ If the City determines that any portions of the responsive records are exempt from disclosure under section 7, the City is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2012)). Further, the City is directed to issue timely responses to future FOIA requests by all persons in accordance with section 3(d) of FOIA.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Matthew L. Walberg as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

cc: Ms. Cheryl Anderson
FOIA Officer, City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426

⁷Because the City did not comply with the statutory requirements for responding to Mr. Walberg's FOIA request, the City is precluded from treating the request as unduly burdensome or imposing copying fees for the records. 5 ILCS 140/3(d) (West 2012) ("A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).").