



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 26, 2018

PUBLIC ACCESS OPINION 18-006
(Requests for Review 2018 PAC 52207, 52208, and 52209)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Scott Rose
5400 Bunkum Road
Washington Park, Illinois 62204

The Honorable Rickie Thomas
Mayor
Village of Washington Park
5218 North Park Drive
Washington Park, Illinois 62204

Dear Mr. Rose and Mr. Thomas:

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 2016)). For the reasons discussed below, this office concludes that the Village of Washington Park (Village) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to three FOIA requests submitted by Mr. Scott Rose.

BACKGROUND

On February 21, 2018, Mr. Rose submitted three FOIA requests to the Village seeking certain records pertaining to the Village and its Fire Department. In his first FOIA request to the Village, Mr. Rose sought "[t]o review minutes from Village of Washington Park personnel meeting from February 19 2018 5:30 PM as well as listen to tape recording of such

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meeting[.]"¹ Mr. Rose's second FOIA request to the Village asked "to review all personnel polic[ies] [and] procedures for the Washington Park Fire Department that are used for hiring, firing, discipline as well as promotion or demotion of rank."² In his third FOIA request to the Village, Mr. Rose sought "to review the Village of Washington Park Fire Department[']s monthly meeting minutes and any commit[t]ee meeting minutes from July 1st 2017 through February 21 2018."³

On March 14, 2018, Mr. Rose sent the Public Access Counselor three Requests for Review via facsimile alleging that the Village had failed to respond to his three FOIA requests.⁴

On March 22, 2018, the Public Access Bureau forwarded copies of the Requests for Review to the Village, together with one letter asking the Village to advise this office whether it had received and responded to Mr. Rose's FOIA requests. If it had not yet responded to Mr. Rose, this office requested that the Village do so and provide this office with a copy of the responses.⁵ The Village did not respond to the Public Access Bureau's March 22, 2018, correspondence.

On April 6, 2018, the Public Access Bureau forwarded a second copy of the Requests for Review to the Village and asked it to respond as soon as possible to this office's March 22, 2018, letter of inquiry, noting that section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2016)) requires a public body to "fully cooperate with the Public Access Counselor" within 7 business days of receiving a Request for Review.⁶ The Village did not respond to this letter.

¹VILLAGE OF WASHINGTON PARK FOIA REQUEST FOR PUBLIC RECORDS form submitted by Scott Rose to Village of Washington Park (February 21, 2018).

²VILLAGE OF WASHINGTON PARK FOIA REQUEST FOR PUBLIC RECORDS form submitted by Scott Rose to Village of Washington Park (February 21, 2018).

³VILLAGE OF WASHINGTON PARK FOIA REQUEST FOR PUBLIC RECORDS form submitted by Scott Rose to Village of Washington Park (February 21, 2018).

⁴FOIA – REQUEST FOR REVIEW BY PUBLIC ACCESS COUNSELOR (PAC) submitted by Scott Rose (March 14, 2018).

⁵Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Rickie Thomas, Mayor, Village of Washington Park (March 22, 2018).

⁶Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Rickie Thomas, Mayor, Village of Washington Park (April 6, 2018).

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On May 1, 2018, an Assistant Attorney General (AAG) in the Public Access Bureau contacted Mr. Rose by telephone and inquired whether he had received any responses from the Village to his three FOIA requests. Mr. Rose stated that he had not received any response from the Village.⁷ On May 14, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to June 26, 2018, pursuant to section 9.5(f) of FOIA.⁸ As of the issuance of this binding opinion, this office has not received a written response from the Village or confirmation from Mr. Rose that he has received a response to his February 21, 2018, FOIA requests.

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 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 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 with 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).

The Village did not respond to Mr. Rose's FOIA requests within five business days after their receipt by either complying with his requests, extending the time for its responses pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)), or denying the requests in

⁷Telephone conversation between Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Scott Rose (May 1, 2018).

⁸Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Scott Rose and Rickie Thomas, Mayor, Village of Washington Park (May 14, 2018).

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writing. The Village's failure to comply with the requisite procedures violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On February 21, 2018, Mr. Scott Rose submitted three FOIA requests to the Village of Washington Park seeking to inspect minutes and recordings of a February 19, 2018, personnel meeting; personnel policies and procedures for the Village Fire Department related to hiring, firing, discipline, and promotion or demotion of rank; and Fire Department meeting minutes from July 1, 2017, through February 21, 2018. Mr. Rose did not receive responses to his requests.

2) On March 14, 2018, Mr. Rose submitted three Requests for Review and asked the Public Access Counselor and the Public Access Bureau to review the Village's failure to respond to his FOIA requests. The Requests for Review were timely filed and otherwise comply with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)).

3) On March 22, 2018, the Public Access Bureau forwarded copies of Mr. Rose's Requests for Review to the Village, and asked the Village to advise this office whether it had responded to Mr. Rose's February 21, 2018, FOIA requests. The Village did not respond to this office's inquiry.

4) On April 6, 2018, the Public Access Bureau sent the Village additional copies of the Requests for Review and a letter inquiring as to the status of the Village's response. The Village did not respond.

5) On May 1, 2018, Mr. Rose confirmed to this office by telephone that the Village had not responded to his requests.

6) On May 14, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to June 26, 2018, pursuant to section 9.5(f) of FOIA. Therefore, that Attorney General may properly issue a binding opinion with respect to this matter.

7) As of the date of issuance of this binding opinion, this office has not received confirmation that the Village has responded to Mr. Rose's requests.

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Therefore, it is the opinion of the Attorney General that the Village has violated section 3(d) of FOIA by failing to respond to Mr. Rose's requests for public records as required by the Act. Accordingly, the Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Rose with all records responsive to his February 21, 2018, requests, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)).⁹ If the Village determines that any portion of the responsive records is exempt from disclosure under section 7, the Village 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 2016)).

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 2016). 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. Scott Rose as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

⁹Because the Village did not comply with the statutory requirements for responding to Mr. Rose's FOIA requests, the Village is precluded from treating the requests as unduly burdensome or imposing copying fees for the responsive records.

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-006) upon:

Mr. Scott Rose
5400 Bunkum Road
Washington Park, Illinois 62204
sr1963@gmail.com

The Honorable Rickie Thomas
Mayor
Village of Washington Park
5218 North Park Drive
Washington Park, Illinois 62204
mayorrickiethomas@gmail.com

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on June 26, 2018.


SARAH L. PRATT
Public Access Counselor

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