



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 20, 2024

PUBLIC ACCESS OPINION 24-015
(Request for Review 2024 PAC 83788)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. David Brink
1902 Long Ridge Court
Plainfield, Illinois 60586

Ms. Bonnie Shadid
Freedom of Information Officer
Illinois Municipal Retirement Fund
2211 York Road
Oak Brook, Illinois 60523-2337

Dear Mr. Brink and Ms. Shadid:

This binding opinion is 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 2023 Supp.)). For the reasons discussed below, this office concludes that the Illinois Municipal Retirement Fund (IMRF) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2022)) by failing to comply with, deny in writing in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. David Brink.

BACKGROUND

On October 28, 2024, Mr. Brink submitted a FOIA request to IMRF seeking information concerning FOIA requests submitted to IMRF since December 13, 2022. Specifically, Mr. Brink requested (1) request numbers; (2) dates and times of the requests; (3) descriptions of the requests; (4) statuses of the requests; and (5) closure dates.¹ On November 5,

¹E-mail from David Brink to Bonnie Shadid, Freedom of Information Officer, Illinois Municipal Retirement Fund (October 28, 2024).

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2024, Mr. Brink submitted a Request for Review to the Public Access Counselor alleging that IMRF had failed to respond to his FOIA request.²

On November 8, 2024, an Assistant Attorney General (AAG) in the Public Access Bureau e-mailed a copy of the Request for Review to IMRF's FOIA Officer and asked for an opportunity to discuss the submission.³ Later that day, having received no response, this office again sent a copy of the Request for Review to IMRF's FOIA Officer together with a letter asking whether IMRF had received and responded to Mr. Brink's FOIA request.⁴ If IMRF had not responded to the request, the November 8, 2024, inquiry letter asked IMRF to do so and to provide a copy of its response to this office.⁵ IMRF did not respond to the inquiry letter.

On November 20, 2024, the AAG left a voicemail message for IMRF's FOIA Officer requesting an update on the status of IMRF's response to the request.⁶ The FOIA Officer did not respond. On November 27, 2024, the Public Access Bureau sent IMRF's FOIA Officer an additional copy of the Request for Review and another letter stating that this office had not received a response to its November 8, 2024, inquiry letter, and reiterated the request for a response.⁷ Again, IMRF did not respond. On December 13, 2024, Mr. Brink sent a letter to the AAG stating that he had "received no response in the 16 days since you sent the second letter."⁸ As of the date of the issuance of this binding opinion, this office has not received confirmation or any indication from IMRF or Mr. Brink that IMRF has responded to Mr. Brink's October 28, 2024, FOIA request.

²E-mail from Dave Brink to Steven [Silverman] (November 5, 2024).

³E-mail from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Bonnie] Sha[d]id (November 8, 2024).

⁴Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Bonnie Shadid, Freedom of Information Officer, Illinois Municipal Retirement Fund (November 8, 2024), at 1.

⁵Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Bonnie Shadid, Freedom of Information Officer, Illinois Municipal Retirement Fund (November 8, 2024), at 1.

⁶Voicemail message from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney, to Bonnie Shadid, Freedom of Information Officer, Illinois Municipal Retirement Fund (November 20, 2024).

⁷Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Bonnie Shadid, Freedom of Information Officer, Illinois Municipal Retirement Fund (November 27, 2024), at 1.

⁸E-mail from [David Brink] to Steven [Silverman] (December 13, 2024).

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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 2022). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2022)), "[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 2022)) 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).

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)) permits a public body to extend its response time by no more than five business days for any of seven enumerated reasons. Any additional extension requires a written agreement between the requester and the public body. 5 ILCS 140/3(e) (West 2022).

It is undisputed that IMRF did not timely respond and provide records responsive to Mr. Brink's October 28, 2024, FOIA request, deny the request in writing in whole or in part, extend the time for responding to the request by five business days, or reach a written agreement with Mr. Brink for a longer extension. IMRF's failure to comply with the requisite response 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 October 28, 2024, Mr. David Brink submitted a FOIA request to IMRF seeking certain information concerning FOIA requests submitted to IMRF since December 13, 2022.

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2) On November 5, 2024, Mr. Brink submitted a Request for Review to the Public Access Bureau alleging that IMRF had not responded to his FOIA request. Mr. Brink's 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 2023 Supp.)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

3) On November 8, 2024, the Public Access Bureau forwarded a copy of the Request for Review to IMRF's FOIA Officer along with an e-mail message asking to discuss the matter. The FOIA Officer did not respond. Later that day, the Public Access Bureau sent another copy of the Request for Review to IMRF together with a letter asking whether IMRF had received and responded to Mr. Brink's FOIA request. IMRF did not respond.

4) On November 20, 2024, an Assistant Attorney General in the Public Access Bureau left IMRF's FOIA Officer a voicemail message asking for an update on the status of IMRF's response. The FOIA Officer did not respond.

5) On November 27, 2024, this office resent IMRF copies of the November 8, 2024, inquiry letter and Mr. Brink's Request for Review to along with another letter reiterating the request for a response. IMRF did not respond.

6) As of the date of the issuance of this binding opinion, this office has received no information indicating that IMRF has responded to Mr. Brink's October 28, 2024, FOIA request seeking records concerning FOIA requests submitted to IMRF since December 13, 2022.

Therefore, it is the opinion of the Attorney General that IMRF has violated section 3(d) of FOIA by failing, within the statutory time period for responding to Mr. Brink's October 28, 2024, request, to provide copies of the requested records or to deny the request in writing in whole or in part. Accordingly, IMRF is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Brink with copies of all records responsive to his October 28, 2024, FOIA, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2023 Supp.)), as amended by Public Act 103-605, effective July 1, 2024).⁹ If IMRF determines that any portion of the responsive records is exempt from disclosure under section 7, it 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 2022)).

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 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County

⁹Because IMRF did not comply with the statutory requirements for responding to Mr. Brink's FOIA request, IMRF is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2022).

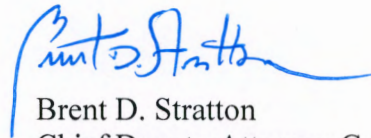
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within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. David Brink as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 24-015) upon:

Mr. David Brink
1902 Long Ridge Court
Plainfield, Illinois 60586
dabrink@gmail.com

Ms. Bonnie Shadid
Freedom of Information Officer
Illinois Municipal Retirement Fund
2211 York Road
Oak Brook, Illinois 60523-2337
FOIA@imrf.org

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 Chicago, Illinois on December 20, 2024.



STEVE SILVERMAN
Bureau Chief

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Bureau Chief
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