



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 8, 2019

Via electronic mail

Ms. Julie L. Ajster
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Via electronic mail

Ms. Stephanie Piscia
Deputy City Clerk
FOIA/OMA Compliance Officer
City of Peru
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RE: FOIA Request for Review – 2018 PAC 53612

Dear Ms. Ajster and Ms. Piscia:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the City of Peru (City) did not violate FOIA by charging a copying fee for paper copies in response to Ms. Julie L. Ajster's March 28, 2018, FOIA request.

On that date, Ms. Ajster, on behalf of a client, submitted a FOIA request to the City stating:

Pursuant to the Freedom of Information Act, I am requesting documents relating to the Dollar General Store located on Peoria Street in the City of Peru. I am requesting any and all documents relating to Dollar General and the acquisition of the property located at the corner of 6th and Peoria Streets from the City of Peru. I am also requesting copies of any and all emails, memos or other correspondence between Peru's Economic

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Development Director Bob Vickrey and/or anyone else from the
City of Peru and any and all representatives from Dollar General.

Please respond within 10 days.^[1]

On that same date, the City informed Ms. Ajster that "there [was] a substantial amount of information to copy," and asked whether she sought specific records or all records that the City had on file.² In reply, Ms. Ajster stated: "I need everything you have. If you need additional time, that is fine."³ On April 16, 2018, at 9:20 a.m., the City's FOIA Officer, Ms. Stephanie Piscia, notified Ms. Ajster: "I will have your documents ready today. There is a lot of information. I will have a dollar amount for you shortly and let you know when they are available."⁴ At 9:45 a.m. on that same date, Ms. Piscia notified Ms. Ajster: "I have your request ready for pickup. There is a total of 1554 documents. The total for the request is \$225.60."⁵

On June 15, 2018, this office received Ms. Ajster's Request for Review disputing the copying charge. She asserted that she had previously sent dozens of FOIA requests to the City and had received copies of the responsive records in an electronic format at no cost. She contended that the City violated FOIA by: (1) "charging [her] for photocopies of documents which should have been produced free of charge in electronic form[;]" (2) "repeatedly complaining in public and in the newspaper about FOIA requests[;]" (3) "not providing [her] with an estimate as to the cost of [her] FOIA request prior to preparing a FOIA response[;]" (4) "demanding [she] pick up the documents rather than mailing them to [her][;]" and (5) "stating to the News Tribune that the FOIA response was free when it is not and they are refusing to release

¹E-mail from Attorney Julie L. Ajster, Ajster Law Office, to Stephanie Piscia (March 28, 2018).

²E-mail from Stephanie Piscia, Deputy City Clerk, FOIA/OMA Compliance Officer, City of Peru, to [Julie L. Ajster] (March 28, 2018).

³E-mail from Julie L. Ajster, Ajster Law Office, to Stephanie Piscia (March 28, 2018).

⁴E-mail from Stephanie Piscia, Deputy City Clerk, FOIA/OMA Compliance Officer, City of Peru, to Julie [L. Ajster] (April 16, 2018).

⁵E-mail from Stephanie Piscia, Deputy City Clerk, FOIA/OMA Compliance Officer, City of Peru, to [Julie L. Ajster] (April 16, 2018).

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the documents until [she] pay[s] \$225.60."⁶ Ms. Ajster enclosed copies of news articles in which she stated, "the City of Peru was complaining about the number of FOIA requests."⁷

On June 25, 2018, this office forwarded a copy of the Request for Review to the City and asked it to address the allegations in Ms. Ajster's Request for Review. This office also asked the City to address the timeliness of its response to her request, and to clarify whether any of the requested records were maintained in an electronic format. On June 27, 2018, the City provided a written response and copies of its correspondence with Ms. Ajster regarding the request. On July 3, 2018, this office forwarded a copy of the City's response to Ms. Ajster; she did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006).

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). FOIA governs the disclosure of existing public records; it does not dictate the manner in which a public body may comment to media outlets or the general public about FOIA requests it has received. Accordingly, this office is not authorized to review allegations concerning public statements that the City made regarding FOIA requests.

Turning to whether the copying fee that the City assessed was permissible, 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 (5 ILCS 140/3(d) (West 2016)) states that a public body shall "either comply with or deny a request for public records within 5 business days after its receipt of the request[.]" Section 3(d) further states that "[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." Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)) permits a public body to extend the time to respond by 5 business days from the original due date for any of seven enumerated

⁶Letter from Julie L. Ajster. Ajster Law Office, to Public Access Counselor, Illinois Attorney General (June 15, 2018), at 2.

⁷Letter from Julie L. Ajster. Ajster Law Office, to Public Access Counselor, Illinois Attorney General (June 15, 2018), at 1.

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reasons, and also provides that "[t]he person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties."

With regard to electronic copies, section 6(a) of FOIA (5 ILCS 140/6(a) (West 2016)) provides:

When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.

The Public Access Bureau "has previously determined that section 6(a) of FOIA does not require a public body to furnish in electronic format records maintained solely in paper format, even if the public body has resources to reproduce those records in PDF." Ill. Att'y Gen. PAC Req. Rev. Ltr. 28697, issued April 18, 2014, at 2. In addition, section 6(b) of FOIA (5 ILCS 140/6(b) (West 2016)), which concerns fees for paper copies, provides, in pertinent part:

Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If a public body provides copies in color or in a size other than letter or legal, the public body may not charge more than its actual cost for reproducing the records.

In its response to this office, the City addressed the timeliness of its response to Ms. Ajster's request by explaining that when it e-mailed Ms. Ajster on March 28, 2018, about the size of her request, Ms. Ajster expressed that she was fine with the City taking additional time to respond. This office has reviewed a copy of the e-mail exchange between the City and Ms. Ajster and confirmed that she granted the City extra time to respond. While the parties did not discuss or agree on a specific due date for the City's response, Ms. Ajster did not express that she sought any limitations to the additional time for response or otherwise indicate any objections to an extension. Consequently, this office concludes that the correspondence was sufficient to extend the City's time for compliance. See *Garlick v. Bloomingdale Twp.*, 2018 IL App (2d)

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171013, ¶37, __ N.E.3d __ (2018) (concluding that a requester's reply to a public body that an answer by a particular date "would be appreciated" was sufficient to extend the time for compliance to that date). Therefore, for purposes of assessing a copying fee, this office concludes that the City's April 16, 2018, response was timely.

Discussing its rationale for assessing Ms. Ajster a copying fee for paper copies rather than providing her with electronic copies free of charge, the City explained:

When a request of this size is received and it is determined that multiple departments and/or individuals will be providing documentation, we ask that they gather from paper files or print out related electronic files so that all information can be compiled in a central location. Based on this method it is difficult to determine which documents were copied from a paper file or printed from an electronic source. It is my belief based on communication with those that provided documentation that as much as 50% of the documents were copied from an electronic format.^[8]

The City questioned whether Ms. Ajster should be liable for half of the fee given its estimate that half of the records did not exist in an electronic format.

Because a public body is not required to provide electronic copies of records that are maintained solely in paper format, the City was not required to convert the responsive records maintained in paper format into an electronic format. As to the remaining records, section 6(a) of FOIA provides, in pertinent part, that "the public body shall furnish it in the electronic format *specified by the requester*, if feasible." (Emphasis added.) As also quoted above, the next sentence of section 6(a) again references "the *specified* electronic format." (Emphasis added.) Accordingly, section 6(a) of FOIA signifies that when a request specifies that it seeks electronic copies, the public body must provide electronic copies of records that it maintains in an electronic format, free of charge. Even if a requester specifies an electronic format and the public body does not maintain the electronic records in that format, the public body must either convert the electronic records to that format, if feasible, or provide the requester with electronic copies of the records in the electronic format in which they are maintained or paper copies at the option of the requester. Here, Ms. Ajster's request did not specify that she sought electronic copies. Although Ms. Ajster contended that the City had previously provided her with copies of records electronically, the City did not, by that course of

⁸Letter from Stephanie Piscia, City of Peru FOIA Officer, to Teresa Lim, Assistant Attorney General (June 27, 2018).

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action, bind itself to providing all future responsive records electronically regardless of the format in which they are maintained.

The current copying fee dispute potentially could have been avoided in part if the City had provided Ms. Ajster with a fee estimate prior to beginning to make copies of the records maintained only in paper format. Nonetheless, although FOIA requires that a public body provide fee estimates for voluminous requests,⁹ it does not set forth a similar requirement for non-voluminous requests. Here, the City did not assert that the request was a voluminous request and, therefore, the City was not required to provide an estimate of the fees to be charged. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 41192, issued September 8, 2017, at 4 (concluding that a public body was not required to provide an estimate of fees to be charged or provide an opportunity to narrow a request where the public body did not assert that the request was a voluminous request). Further, although Ms. Ajster alleged that the City had claimed to the *News Tribune* that FOIA responses are free, sections 6(a) and 6(b) of FOIA expressly permit a public body to charge for certain costs involved in reproducing records. In this case, the total cost of \$225.60 reflects a charge of 15 cents per page for the 1554 pages of documents after 50 free pages. Thus, the City's fee is permissible under section 6(b) of FOIA. Under these circumstances, this office concludes that the copying fee the City assessed did not violate FOIA. Still, because it appears that Ms. Ajster would have had the right to obtain copies of approximately half of the records free of charge if she had specified that she sought electronic copies, and because she may have reasonably believed that it was not necessary to specify that she sought electronic copies in order to receive electronic copies of the records maintained electronically in light of her previous FOIA correspondence with the City, the City's idea about halving the copying fee sounds reasonable.

Lastly, with regard to Ms. Ajster's claim that the City required her to pick up the paper copies rather than mailing them to her, it appears that the City contemplated an in-person

⁹Section 3.6(c) of FOIA (5 ILCS 140/3.6(c) (West 2016)) provides:

If a request continues to be a voluminous request following the requester's response under subsection (b) of this Section or the requester fails to respond, the public body shall respond within the earlier of 5 business days after it receives the response from the requester or 5 business days after the final day for the requester to respond to the public body's notification under this subsection. The response shall: (i) ***provide an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents***; (ii) deny the request pursuant to one or more of the exemptions set out in this Act; (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or (iv) provide the records requested. (Emphasis added.)

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exchange of payment for the copies. Although a public body may require receipt of the authorized copying fee prior to providing a requester with copies of responsive records, this office has previously determined that "FOIA requires a public body to mail copies of records when the requester has provided the public body with a mailing address; the public body may not impose a fee for the cost of the regular postage." *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 41192*, issued September 8, 2017, at 4. Here, the City did not dispute Ms. Ajster's claim or otherwise indicate that it would mail the responsive records at no additional cost. Consequently, this office reminds the City to offer requesters the opportunity to receive paper copies by regular mail once they have paid any requisite copying fees. Further, if it has not already done so, this office requests that the City mail copies of the first 50 pages of responsive documents at no cost to Ms. Ajster.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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