



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 4, 2019

Via electronic mail

Via electronic mail
Ms. Karla Gowen
General Counsel
City Colleges of Chicago
226 West Jackson Boulevard
Chicago, Illinois 60606
kgowen@ccc.edu

RE: FOIA Request for Review – 2018 PAC 53943

Dear [REDACTED] and Ms. Gowen:

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 Colleges of Chicago (City Colleges) improperly responded to certain parts of [REDACTED] May 6, 2018, FOIA request.

On that date, [REDACTED] submitted an eight-item FOIA request to the City Colleges seeking copies of various records pertaining to Wilbur Wright College. In particular, the request sought:

1. "Records detailing the four (4) on-campus stalking crimes reported * * * between 2014-2016";
2. "Records detailing all 'Safety and Security Incident Reports' and 'Daily Crime Log(s)' * * * during the Fall 2017 and Spring 2018 semesters";

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3. "Records detailing" three "meetings conducted at Wilbur Wright College[.]" including the "Chancellor's Focus Group held * * * on Thursday, November 30th, 2017";
4. "Records detailing the 'Materials and Supplies', 'Other Expenditures (i.e. student government...)', and 'Travel and Conference' spending categories * * * in the Fall 2017 and Spring 2018 semesters";
5. "[T]he credentials, experience, training, and/or certification including but not limited to documentation of individual expertise in [eight specified areas] for those who make decisions in disciplinary processes and/or sit on hearing committees," including the credentials of four named City Colleges employees;
6. "A list of positions of employment belonging to the Student Services department[.]" including the responsibilities for each position;
7. "Records starting in 2014 detailing assessments about the effectiveness of documented cases of disciplinary sanctions imposed on students and employees," and;
8. "Records detailing the organizational structure of City Colleges of Chicago and related entities such as the City Colleges of Chicago Foundation, Student Government Association, or Wellness Center[.]"^[1]

Having received no response, [REDACTED] submitted another copy of his request to City Colleges on May 14, 2018. On May 18, 2018, the City Colleges purported to extend its time to respond by five business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)), even though such an extension notification must be sent within five business days after receipt of a request under the plain language of section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)).² On June 8, 2018, the City Colleges provided [REDACTED] with copies of certain responsive records, links to records posted on its website, and a written answer to one item of the request. As to the remaining items, the City Colleges either asserted that it was unable to locate responsive records or asked [REDACTED] to be more specific or narrow the request.

¹E-mail from [REDACTED] to FOIA Officer, General Counsel, City Colleges of Chicago (May 6, 2018).

²On May 29, 2018, [REDACTED] submitted a Request for Review (2018 PAC 53332) to this office alleging that the City Colleges had yet to respond to his request. That matter was closed when the City Colleges responded on June 8, 2018.

On July 9, 2018, this office received [REDACTED] Request for Review disputing the completeness of the City Colleges' response to his request. He alleged, in pertinent part, that the response was inadequate in the following ways:

- "The response to #1 does not include daily campus crime logs before Sunday March 26, 2018";
- "The response [to] #2 [does] not include all 'Safety and Security Incident Reports' kept or created for Wilbur Wright College during the fall 2017 and spring 2018 semesters";
- "The response to #3 does not include any records of the 'Chancellor's Focus Group' on Thursday, November 30, 2017";
- "The response to #4 does not include a list of vendors authorized to conduct business with [City Colleges]. Procurement Services staff enters approved firms into the [City Colleges] vendor database";
- "The response to #5 does not include credentials, training, and or certification for four specified [City Colleges] employees"; and
- "The response to #7 does not list the Dean of Student Services position, and does not provide a detailed list of job responsibilities for the positions of employment belonging to the Student Services department[.]"^[3]

With regard to item three of his request, [REDACTED] provided this office with a copy of "an email sent to members of the student government about this meeting."⁴ Addressing item five, he clarified that he sought "all records from complete and official personnel files for these four individuals, related to training referenced in the 2017 Annual Security Report[.]" and identified specific pages from that report that pertain to safety and security training.⁵

³E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 9, 2018).

⁴E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 9, 2018).

⁵E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 9, 2018).

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On July 17, 2018, this office forwarded a copy of the Request for Review to the City Colleges and asked it to respond in writing to [REDACTED] allegations. This office also asked the City Colleges to provide a detailed description of its search for responsive records, including the recordkeeping systems that were searched and personnel who were consulted. On July 25, 2018, this office received the City Colleges' written response and additional records responsive to the request for this office's review. On July 30, 2018, this office forwarded a copy of the City Colleges' response to [REDACTED]. He replied on August 2, 2018. [REDACTED] sought clarification as to whether the additional responsive records could be provided to him and questioned whether the City Colleges could treat his request as unduly burdensome based on the timeliness of its response. On March 6, 2019, the City Colleges provided [REDACTED] with copies of the additional records with certain redactions; those records consist of a list of vendors authorized to conduct business with the City Colleges and copies of job descriptions for positions within the student services department.

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 2016); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[]," but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *but see Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982) ("A requester is entitled only to records that an agency has in fact chosen to create and retain."). Further, a public body "has a duty to construe a FOIA request liberally." *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995).

In its response to this office, the City Colleges asserted that it had provided [REDACTED] with copies of records responsive to items one and two of the request. Specifically, the City Colleges stated that it had furnished copies of reports pertaining to the four on-campus crimes specified in item one and the daily crime logs requested in item two. With regard to the latter item, the City Colleges asserted that the logs "have been captured by month on a one-page document with date of reported crimes clearly delineated[,"] and list "over 100 safety and security incident reports."⁶ The City Colleges argued, however, that "[t]o review, redact and provide a set of over 100 individual safety and security reports would be unduly burdensome[,"]

⁶Letter from James M. Reilly, Associate General Counsel, City Colleges of Chicago, to AAG Lim (June 25, 2018).

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and stated that if [REDACTED] sought particular incident reports, "[the City Colleges] will accommodate his request." This office construed the City Colleges as invoking section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)) to deny the request as unduly burdensome. Addressing item three, the City Colleges asserted that it had not located minutes of the chancellor's focus group meeting held on November 30, 2017, and attributed that answer to the Director of Student Activities at Wilbur Wright College, Ms. Kathleen Ordinario. Similarly, addressing item five, the City Colleges asserted that "[a] search of the personnel files for the four individuals cited in the revised request found no records responsive to" the item; the City Colleges stated that its then-Associate General Counsel, Mr. James M. Reilly, had conducted the search of those personnel files. As noted above, the City Colleges also provided [REDACTED] with copies of records responsive to the remaining disputed items, four and six.

This office has reviewed the records provided to [REDACTED]. The City Colleges furnished him with a set of crime logs, including daily logs from March 25, 2018, to May 24, 2018, and monthly logs listing the dates and times of reported crimes within those months for August 2017 to April 2018. The daily logs and monthly logs have the same format; they do not appear to be different types of records, but simply differ as to whether they list reported crimes from either one date or one month per page. The City Colleges also provided lists aggregating the number of incidents that occurred on campus by type for the fall semester of 2017 and spring semester of 2018. Thus, although [REDACTED] correctly contended that the City Colleges did not provide him with copies of daily campus crime logs from before Sunday, March 26, 2018, in the sense that it did not provide him with a separate log for each day, the City Colleges appears to have provided him with complete daily crime log information covering the time frame of August 2017 through March 25, 2018. This office has not received information indicating that the City Colleges possessed separate daily crime logs for each day during that time period. Accordingly, based on the available information, this office concludes that the portion of the City Colleges' response concerning the crime logs did not violate FOIA.

On the other hand, the records [REDACTED] reasonably described in the second item of his request included not just crime logs, but incident reports as well. The language "[r]ecords detailing all 'Safety and Security Incident Reports' and 'Daily Crime Log(s)' * * * during the Fall 2017 and Spring 2018 semesters" indicated that he sought both types of records.⁷ Although the City Colleges argued to this office that providing [REDACTED] with copies of responsive incident reports for the specified time period would be unduly burdensome, it waived its ability to rely on that provision to deny his request by failing to respond in a timely manner. 5

⁷Letter from James M. Reilly, Associate General Counsel, City Colleges of Chicago, to AAG Lim (June 25, 2018).

⁸E-mail from [REDACTED] to FOIA Officer, General Counsel, City Colleges of Chicago (May 6, 2018).

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ILCS 140/3(d) (West 2016) ("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"). As discussed above, [REDACTED] submitted his FOIA request to the City Colleges on May 6, 2018, and forwarded another copy of his request to the City Colleges on May 14, 2018. On May 18, 2018, the City Colleges purported to extend the time to respond by five business days. The City Colleges subsequently responded to the request fourteen business days later on June 8, 2018. Even assuming that the City Colleges did not receive [REDACTED] request until May 14, 2018, the City Colleges did not respond to the request within the time periods permitted under sections 3(d) and 3(e) of FOIA.⁹ This office has not received information indicating that the City Colleges and [REDACTED] agreed in writing to extend the time for compliance beyond the five business days allowed under section 3(e).¹⁰ Therefore, the City Colleges waived the ability to claim that compliance with the portion of the request seeking incident reports would be unduly burdensome. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 12-014, issued December 11, 2012, at 11 (school district waived ability to assert that compliance would be unduly burdensome because its response to request was late).

With regard to item three, this office has reviewed the copy of the e-mail that [REDACTED] included in his Request for Review. The e-mail is from Ms. Ordinario to a group of students regarding their participation in a focus group meeting. The e-mail indicates that the students represented various interest groups and constituencies, and that the meeting was intended to gather feedback about the concerns of the college community. In this matter, the City Colleges appropriately consulted with Ms. Ordinario with regard to item three, as she sent the e-mail in question and thus would be reasonably expected to have knowledge of records relating to the meeting at issue. The City Colleges did not, however, explain the search that she performed, such as the specific recordkeeping systems that she searched. While the City Colleges asserted that Ms. Ordinario was unable to locate records of minutes for the November 30, 2017, meeting, item three of the request was not limited to minutes. Instead, the item sought "records detailing the meetings" and asked the City Colleges to "include minutes for" the meeting.¹¹ The City Colleges did not address whether Ms. Ordinario had performed a search for

⁹Section 3(d) of FOIA provides "[e]ach 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." Section 3(e) of FOIA provides that "[t]he time for response under this Section may be extended by the public body for not more than 5 business days from the original due date for any of the following reasons[.]" and then enumerates those reasons.

¹⁰Section 3(e) of FOIA 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."

¹¹E-mail from [REDACTED] to FOIA Officer, General Counsel, City Colleges of Chicago (May 6, 2018).

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any other records pertaining to the meeting. Consequently, based on the available information, this office concludes that the City has not demonstrated that it conducted a reasonable search for records responsive to item three of the request pertaining to the November 30, 2017, chancellor's focus group meeting.

As to the remaining items, the City Colleges indicated that it performed supplemental searches for responsive records based on the clarifications provided by [REDACTED] [REDACTED] in his Request for Review. With regard to item five, the City Colleges confirmed that it searched the personnel files of the four individuals named in the request and was unable to locate records related to the training that was discussed in the 2017 Annual Security Report. Because the City's search of the specified personnel files appears to have been reasonably calculated to locate any responsive records, this office concludes that the City Colleges' response to that item did not violate FOIA. With regard to items four and six, the City Colleges released to [REDACTED] a list of vendors authorized to conduct business with the City Colleges and copies of job descriptions for the positions within the student services department. [REDACTED] did not raise any concerns to this office about those records after the City Colleges provided him with copies. Because the City Colleges has now provided [REDACTED] with records responsive to items four and six, his allegation that the City Colleges' initial response to those items was incomplete has been resolved. *See Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 782 (5th Dist. 1999) ("Once an agency produces all records related to a plaintiff's request, the merits of a plaintiff's claim for relief, in the form of production of information, becomes moot.").

In accordance with the conclusions expressed in this determination, this office requests that the City Colleges provide [REDACTED] with copies of the incident reports responsive to item two of his request, subject to permissible redactions under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018). This office also requests that the City Colleges perform a supplemental search for any records pertaining to the November 30, 2017, chancellor's focus group meeting. If the City Colleges does not locate any responsive records, the City Colleges should provide [REDACTED] with a supplemental response describing in detail its efforts to search for responsive records.

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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,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

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