



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 23, 2024

Via electronic mail



Via electronic mail

Kateah M. McMasters
Senior Assistant Corporation Counsel
Office of Corporation Counsel, Code Enforcement Division
City of Springfield
800 East Monroe Street, Room 327
Springfield, Illinois 62701
Kateah.McMasters@springfield.il.us

RE: FOIA Request for Review – 2023 PAC 77078; FOIA 30359

Dear [REDACTED] and Kateah McMasters:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons stated below, the Public Access Bureau concludes that the response by the City of Springfield (City) to [REDACTED] April 19, 2023, FOIA request did not violate FOIA.

On April 13, 2023, [REDACTED] submitted a FOIA request to the City seeking all e-mails between the City and two specified union-related e-mail addresses for the period of June 1, 2020, to the date of the request, as well as all e-mails sent or received by any City employee with certain keywords for the same period. On April 18, 2023, the City informed [REDACTED] that the request was unduly burdensome and offered an opportunity to narrow the scope of the request to manageable proportions. The City requested a response by April 25, 2023.

¹5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024.

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On April 19, 2023, [REDACTED] submitted an amended FOIA request to the City, narrowing the time frame for the responsive records to July 2021 to November 2021 and January 1, 2023 to April 19, 2023. On April 20, 2023, the City extended its time to respond by 5 business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)). On April 26, 2023, [REDACTED] sought clarification from the City as to whether its April 20, 2023, letter was a final denial. On April 27, 2023, the City explained that it located 500-600 potentially responsive e-mails and requested an additional extension of 5 business days to respond, indicating it would respond by May 5, 2023. Later the same day, [REDACTED] agreed to the extension. On May 8, 2023, and May 11, 2023, [REDACTED] e-mailed the City to state that no records had been received and asking for an update. On May 11, 2023, the City responded that it had e-mailed a final response on May 1, 2023. [REDACTED] stated that no May 1, 2023, e-mail was received and requested that the City forward the May 1, 2023, e-mail. The City then e-mailed [REDACTED] a copy of a letter dated May 1, 2023, stating that the City was denying the April 19, 2023, request as unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2022)). On May 11, 2023, [REDACTED] submitted another FOIA request for any e-mail sent from the City to [REDACTED] or [REDACTED]. On May 18, 2023, the City provided [REDACTED] with copies of the May 1, 2023, letter, but did not provide a copy of any transmittal e-mail. On June 26, 2023, this office received [REDACTED] Request for Review challenging the handling of the April 19, 2023, FOIA request.

On June 30, 2023, and July 26, 2023, this office sent copies of the Request for Review to the City and asked it to provide a written answer to this office describing the City's receipt and handling of [REDACTED] April 19, 2023, FOIA request. This office also requested a detailed written explanation of the factual and legal bases for the assertion that fulfilling [REDACTED] April 19, 2023, FOIA request would cause an undue burden on the City's operations, including how "the burden on the public body outweighs the public interest" in disclosure of the information. 5 ILCS 140/3(g) (West 2022). On August 2, 2023, City responded. On August 4, 2023, this office forwarded a copy of the City's answer to [REDACTED] [REDACTED] who submitted a reply on August 11, 2023.

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 2022); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2022)) provides, in pertinent part, that:

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. * * * 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).** (Emphasis added.)

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)) further 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."

Section 3(g) of FOIA provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

██████████ first contention is that the City's response to the April 19, 2023, amended request was untimely based on questions about the validity of the May 1, 2023, response. On April 20, 2023, the City extended its time to respond to the original April 13, 2023, request by five business days, creating a new due date of April 27, 2023. On April 27, 2023, ██████████ agreed to an additional five business day extension, creating a new due date of May 4, 2023. The City issued its final response on May 1, 2023. Although ██████████ did

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not receive the May 1, 2023, response, the City has provided this office with a copy of the May 1, 2023, 12:29 p.m. transmittal e-mail from CityClerk@cwlp.com to [REDACTED], as well as a screenshot from the City's FOIA management software reflecting that the response was sent on May 1, 2023, at 12:29 p.m.² Accordingly, this office concludes that the City issued a timely final response on May 1, 2023.

[REDACTED] also objected to the City's denial on the basis that the City's May 1, 2023, response did not comply with the requirement in section 3(g) that "[b]efore invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions." The City acknowledged that its May 1, 2023, denial letter did not extend to [REDACTED] an opportunity to confer, but it argued that it was not required to extend a second opportunity, noting that section 3(g) requires only "an opportunity." The City explained that it did not treat the April 19, 2023, amended request as a new FOIA request; rather it addressed it as part of the April 13, 2023, FOIA request. The City argued:

Nothing in FOIA requires public bodies to extend multiple opportunities to a requestor to reduce the scope of their request. Nor does FOIA mention or discuss the treating or handling of "amended" FOIA requests. [REDACTED] did not submit an entirely new FOIA request on April 19, 2023. Instead, she unsuccessfully narrowed the scope of her April 13, 2023 request. Said request remained unduly burdensome on April 19, 2023. FOIA did not obligate the City to provide her an additional or further opportunity to narrow the same request.^[3]

The office has previously concluded that FOIA does not require a public body to continue to confer with a requester to further narrow an amended request. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 55347, issued November 27, 2018, at 4 (a school district was not required to offer requester another opportunity to further narrow her request before denying narrowed request as unduly burdensome). Therefore, the City was not required to include in its May 1, 2023, response an opportunity to confer and narrow the scope of the request. Accordingly, this office concludes that the City met the procedural requirements of section 3(g).

Finally, [REDACTED] argued that the amended request was not unduly burdensome. This office has previously determined that a request seeking all records in a

²This office requests that the City provide [REDACTED] with a copy of the May 1, 2023, 12:29 p.m. transmittal e-mail if it has not already done so.

³Letter from Kateah McMasters, Senior Assistant Corporation Counsel, Office of Corporation Counsel, City of Springfield to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (August 2, 2023), at 2.

category over an extended period, which would require a public body to review a large quantity of responsive records, is unduly burdensome under section 3(g) of FOIA in the absence of an identified public interest in disclosure of all the records that outweighs the burden of compliance with the request. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 20002, issued August 29, 2012, at 3 (a request for all grievance records spanning a 12-month period was unduly burdensome); Ill. Att'y Gen. PAC Req. Rev. Ltr. 21102, issued November 19, 2012, at 3-4 (a request for financial records spanning a 5-year period was unduly burdensome); *see also National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 17 (2010) ("A request that is overly broad and requires the public body to locate, review, redact and arrange for inspection a vast quantity of material that is largely unnecessary to the [requester's] purpose constitutes an undue burden.").

In its response to this office, the City explained that there are 500-600 e-mails responsive to [REDACTED] narrowed FOIA request, resulting in over 2,000 pages. The City's preliminary review of the responsive records identified information that it would choose to redact pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(f) of FOIA.⁴ The City estimated that it would take several weeks for its staff to complete the review of the requested records.

Based on this office's review, compliance with [REDACTED] request would impose a heavy burden on the City's operations by requiring it to review and produce a large number of documents. [REDACTED] narrowed the timeframe of the original request, but the request remained categorical, seeking all City e-mails containing a union representative's e-mail address, regardless of the subject matter. Although there is a general public interest in how the City communicates with union representatives, [REDACTED] did not identify a particular public interest in disclosure that outweighs the City's burden of compliance. Illinois courts have determined that a FOIA request must be specifically targeted to advance a compelling public interest to outweigh the burden of compliance on a public body under section 3(g) of FOIA. *See, for example, Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶¶ 39-41 (determining that although the topic of the school-to-prison pipeline is of significant public interest, the year-long scope of the request was indicative of a fishing expedition rather than an appropriately targeted request, such as a request limited to suspected misconduct within a specific school or of a specific officer, or schools with the highest student arrest rates). On balance, the burden on the City to produce the volume of records responsive to [REDACTED] request outweighs the public's interest in them. Therefore, this office concludes that the City did not violate FOIA by denying [REDACTED] request as unduly burdensome.

⁴ 5 ILCS 140/7(1)(b), (1)(c), (1)(f) (West 2022).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at laura.harter@ilag.gov. This letter serves to close this file.

Very truly yours,

[REDACTED]

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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