



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

November 18, 2020

Via electronic mail
The Honorable Allen Skillicorn
State Representative, 66th District
245 Dunridge Circle
East Dundee, Illinois 60118
loudes13@yahoo.com

Via electronic mail
Ms. Mallory A. Milluzzi
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
mamilluzzi@ktjlaw.com

RE: FOIA Request for Review – 2018 PAC 52130

Dear Representative Skillicorn and Ms. Milluzzi:

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 2018)).

On March 5, 2018, Representative Allen Skillicorn submitted a FOIA request to the Village of East Dundee (Village) seeking "[a]ll emails from Finance Director Torres to [Village Administrator] Jennifer Johnsen from March 1, 2017 to April 1, 2017 in an electronic format." On March 12, 2018, the Village responded that the request was unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2018)). The Village stated:

A FOIA request was received on February 18, 2018 for all emails, including any attachments to emails, between Jennifer Johnsen and the Finance Director from February 1st, 2017 through August 1st, 2017. After numerous times of the requestor and I going back and forth with requests to narrow the scope of the request, efforts to reduce the request to manageable proportions were unsuccessful

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and the request was ultimately denied.

Since then, I have come to realize that several individuals are working in concert with each other and farming out the original request amongst each other with each requesting for the same exact information but for the next consecutive month. Therefore, all six requests that have been received by six different individuals are being considered as one requestor. And although **it is not appropriate to deny the requests individually**, clearly all six requesters are working together. Therefore, the Village is denying the request based on the fact that the request is unduly burdensome because the burden on the Village of complying with your request outweighs the public interest in providing the specified records, the efforts to reduce the request to manageable proportions have been unsuccessful and your refusal to narrow the scope by subject?⁽¹⁾ (Emphasis added.)

Representative Skillicorn submitted this Request for Review contesting the Village's response. In addition, five other individuals submitted Requests for Review contesting the denial of their FOIA requests for similar information in different time periods. Since a significant time period has passed, this office recently asked each requester whether he or she was still interested in pursuing their Request for Review. Representative Skillicorn is the only individual who indicated to this office that he was still interested in receiving responsive records. Accordingly, this determination will review whether Representative Skillicorn's FOIA request was unduly burdensome.

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

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

¹E-mail from Katherine Holt (March 12, 2018).

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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.

"[A] public body asserting a section 3(g) exemption must make a clear and convincing showing that the burden of compliance outweighs public interest in the disclosure of the requested records." *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶38, 122 N.E.3d 729, 738 (2018). Section 3(g) does not define what constitutes an unduly burdensome request, other than that it is a categorical request for records in which the burden on the public body of producing the records would outweigh the public interest in obtaining the information. Thus, section 3(g) necessarily involves a case-by-case analysis in which the public body must demonstrate the extent of the burden of compliance on its operations and that the burden outweighs the public interest in disclosure. See *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶38, 122 N.E.3d 729, 738 (2018) ("What constitutes a clear and convincing showing of undue burden will likely vary from case to case, depending on the broadness of the request, the level of detail provided in the public body's response, and the nature of the parties' exchange.").

In response to this office, the Village provided a chart which indicated that it had approximately 275 e-mails responsive to Representative Skillicorn's March 5, 2018, FOIA request. Although Representative Skillicorn has not identified a specific public interest in viewing the approximately 275 e-mails responsive to his categorical request for *all* e-mails within a certain time period, there generally is a public interest in the disclosure of communications between the Village Administrator and Finance Director. Further, the Village acknowledged in its response to Mr. Skillicorn that it would not be appropriate to deny his individual FOIA request as unduly burdensome.

Section 3(g) requires a public body to specify the extent to which its operations would be burdened by complying with each "categorical request[.]" Other provisions of FOIA are designed to address the burden of responding to separate requests submitted by multiple

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individuals acting in concert.² Section 3(g), however, does not permit a public body to measure the burden of complying with an individual request by aggregating the burden of complying with other related requests. As such, the Village has not demonstrated that the burden of complying with Representative Skillicorn's March 5, 2018, FOIA request would outweigh the public interest in the requested e-mails. Accordingly, this office requests that the Village provide Representative Skillicorn with those e-mails in an electronic format, subject to permissible redactions pursuant to section 7 of FOIA (5 ILCS 140/7 (West 2018)).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at (312) 814-5201 or at the Chicago address on the first page of this letter if you have questions.

Very truly yours,



EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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²Section 2(b) of FOIA (5 ILCS 140/2(b) (West 2018)) defines "person" as "any individual, corporation, partnership, firm, organization or association, acting individually or as a group." (Emphasis added.); *see also* 5 ILCS 140/2(g) (West 2018) (defining "recurrent requester" as "a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period."); 5 ILCS 140/2(h) (West 2018) defining "voluminous request" to include "a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days;"; 5 ILCS 140/3.2, 3.6 (West 2018) (providing expanded time periods and options for responding to voluminous requests and requests by recurrent requesters).