



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 9, 2017

[REDACTED]
Pontiac Correctional Center
P.O. Box 99
Pontiac, Illinois 61764

Via electronic mail
Ms. Charise Valente, General Counsel
Chicago Police Department
pacola@chicagopolice.org

RE: Request for Review – 2016 PAC 45372

Dear [REDACTED] and Ms. Valente:

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 2014)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) did not improperly impose copying fees in response to a FOIA request from [REDACTED]

On October 17, 2016, [REDACTED] submitted a FOIA request to CPD seeking all complaint registers (CR) filed against nine specified officers and all crime scene photographs of the homicides at 6120 South Hermitage, Chicago, Illinois 60636 on April 4, 2008. On October 26, 2016, CPD denied [REDACTED] request as unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2014)). CPD stated that there are 154 CR log numbers responsive to his request and each log number averages 5-100 pages of records. CPD provided [REDACTED] with copies of 18 pages of CR report listings and forms to assist him should he choose to narrow his request. CPD also stated that it had forwarded his request for crime scene photographs to its lab in the forensic division and would notify him if it located any photographs responsive to his request. On November 7, 2016, CPD notified [REDACTED] that it had located 334 photographs that were available to him and that it would provide [REDACTED] with copies of the photographs upon receipt of a check or money order for \$334.00. On December 5, 2016, [REDACTED] submitted this Request for Review asserting that CPD was prohibited from imposing a fee for copies of the 334 photographs because it did not respond to his request within 5 business days

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after receipt of his request. [REDACTED] also enclosed copies of the envelopes that contained CPD's responses to his FOIA request. The envelopes showed that CPD's October 26, 2016, letter was postmarked on October 28, 2016, and CPD's November 7, 2016, letter was postmarked on November 10, 2016.¹

On December 19, 2016, this office forwarded a copy of the Request for Review to CPD, requested that it explain its receipt and handling of [REDACTED] request, and requested that it clarify the date CPD received the request. On January 29, 2017, CPD responded by stating that it received [REDACTED] FOIA request on October 21, 2016, and that its response to [REDACTED] was due on October 28, 2016. CPD stated that it denied [REDACTED] FOIA request within 5 business days of receiving his request. CPD stated that sent its November 7, 2016, letter to [REDACTED] listing the "number of photographs and [the] fee that would be charged[] to assist him in narrowing his request to Parts 2 and 3 if he wished to do so."² CPD stated it had not received any correspondence from [REDACTED] narrowing his request. On February 1, 2016, this office forwarded a copy of the CPD's response to [REDACTED]. He replied on February 6, 2016, asserting that CPD only denied Part 1 of his FOIA request as unduly burdensome, and that it did not respond to Parts 2 and 3 of his request within 5 business days. [REDACTED] asserted that CPD should have extended the time for response by 5 business days under section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)) if it needed additional time to respond to Parts 2 and 3 of his request.

DETERMINATION

Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) 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 2014)) 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 6(b) of FOIA (5 ILCS 140/6(b) (West 2014)), which concerns fees for copies, provides, in pertinent part:

¹CPD states that its response was sent on October 26, 2016. [REDACTED] demonstrated that the response letter was not postmarked until October 28, 2016. Accordingly, for the purposes of this determination, this office will refer to CPD's letter by the date it was postmarked.

²Letter from Wendi P. Liss, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs, to Matt Hartman, Assistant Attorney General, Public Access Bureau (January 29, 2017), at 1.

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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.

████████ asserted that CPD may not impose a fee for copies of the crime scene photographs because it failed to respond to that portion of his request within 5 business days after receiving his request. It is undisputed that CPD denied Part 1 of █████ FOIA request as unduly burdensome under section 3(g) of FOIA within 5 business days of receiving the request. The resolution of this matter hinges on whether CPD's October 28, 2016, unduly burdensome denial applied to Parts 2 and 3 of █████'s request.

Section 3(g) of FOIA provides:

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.

The plain language of section 3(g) of FOIA states that a public body may treat a FOIA request as unduly burdensome if it is categorical and if the burden on the public body of complying with the request outweighs the public interest in the information. Section 3(g) does not require a public body to individually assess whether each portion of a request seeking multiple types of records is unduly burdensome. Instead, if compliance with the request as a

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whole or any portion of the request is unduly burdensome, then the entire request may be denied under section 3(g) of FOIA. CPD's October 28, 2016, response letter recites the entire text of [REDACTED] FOIA request and then states "[y]our request was reviewed by the undersigned and the Bureau of Internal Affairs (BIA). Your request as written is unduly burdensome, as the BIA determined that there are over 500 pages of records responsive to your request."³ Thus, CPD's denial of [REDACTED] request under section 3(g) applied to his entire request. Accordingly, CPD's subsequent correspondence to [REDACTED] about the number of photographs was not a late response to his request, but an attempt to assist him with narrowing his request. Because CPD responded to the request for crime scene photographs and other records within 5 business days after its receipt, we conclude that CPD may impose fees for copies in accordance with section 6(b) of FOIA. If [REDACTED] wishes to receive copies of the crime scene photographs, he may wish to submit a narrowed request to CPD and tender the appropriate sum to reimburse CPD's actual cost of reproducing the photographs.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 782-9054 listed on the first page of this letter.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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³Letter from P.O. Sanders #13769, Freedom of Information Officer, Department of Police, Office of Legal Affairs, to [REDACTED] (October 28, 2016), at 1.