



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 25, 2023

Via electronic mail
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Via electronic mail
Ms. LaShonda Morgan
FOIA Officer
Department of Planning and Development
City of Chicago
121 North LaSalle Street, Room 1000
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RE: FOIA Request for Review: 2023 PAC 75440; FOIA O036175-010323

Dear Elliott Mallen and Ms. Morgan:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons explained below, the Public Access Bureau concludes that the City of Chicago's Department of Planning and Development (Department) improperly denied Elliott Mallen's January 3, 2023, FOIA request.

On that date, Elliott Mallen, on behalf of Unite Here Local 1, submitted a FOIA request to the Department seeking copies of "the summary of responses to the Invitation for Proposals issued for the City of Chicago's LaSalle Street Reimagined initiative, referenced in the

¹5 ILCS 140/9.5(f) (West 2020).

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Chicago Sun Times on Dec. 28, 2022 and Crain's Chicago Business on Jan. 3, 2023.² On January 19, 2023, the Department provided a list that included the names of six properties and the entities that responded with bids for proposed improvements to those properties. The Department partially denied the request by redacting one "business that dropped off 208 South LaSalle."³ On January 24, 2023, Elliott Mallen asked the Department to clarify its response and identify the exemption in FOIA that applied to the redacted information; it appears the Department did not respond. On February 9, 2023, this office received Elliott Mallen's Request for Review disputing the redaction.

On February 17, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Department and asked it to provide unredacted copies of the withheld record for our confidential review along with a detailed explanation of the legal and factual bases to support its redaction. The Department did not respond to the Public Access Bureau. On March 7, 2023, this office forwarded a second copy of the Request for Review to the Department and again requested that it respond to Elliott Mallen's Request for Review. Again, the Department did not respond. On March 31, 2023, an Assistant Attorney General called the Department's FOIA Officer and left a message requesting a call back. To date, this office has not received any response from the Department.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt."⁴ FOIA 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."⁵

Section 9.5(c) of FOIA

The procedures for a public body to respond to the Public Access Counselor in connection with a Request for Review of the denial of a FOIA request are clear. Section 9.5(c) of FOIA unambiguously provides that "[w]ithin 7 business days after receipt of the request for

²FOIA request O036175-010323.

³Letter from LaShonda Morgan, FOIA Officer, [City of Chicago] Department of Planning and Development to Elliot Mallen (January 19, 2023) at 2.

⁴5 ILCS 140/1.2 (West 2020).

⁵5 ILCS 140/3(a) (West 2020).

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review, **the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor.**⁶ (Emphasis added.) It is undisputed that the Department did not provide the Public Access Bureau with the requested records as expressly required by section 9.5(c) of FOIA. This mandate could not be more clearly stated. The Department's failure to provide our office with copies of the records responsive to Elliott Mallen's FOIA request for our confidential review violated the requirements of FOIA. The Department should be mindful of its obligation to fully cooperate with this office in all future Requests for Review.

Section 9(a) of FOIA

Section 9(a) of FOIA⁷ provides:

Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, **the reasons for the denial, including a detailed factual basis for the application of any exemption claimed**, and the names and titles or positions of each person responsible for the denial. (Emphasis added.)

The Department's response to Elliott Mallen does not provide a basis for the partial denial other than to state that "[t]he area that is deleted is a business that dropped off 208 South LaSalle."⁸ The Department's response is vague and the Department has not responded to this office's requests for clarification. Nevertheless, this office construes the Department's response as asserting that the entry for 208 South LaSalle is not responsive to the request because the developer listed was no longer participating in the LaSalle Street Reimagined Initiative.

Generally, FOIA does not require disclosure of information that was not requested. Ill. Att'y Gen. Pub. Acc. Op. No. 12-009, issued May 25, 2012, at 4 ("FOIA does not require the disclosure of clearly nonresponsive information within documents simply because some portion of [the] document is responsive to a request for specific information."). However, public bodies "should err on the side of liberally construing what material falls within the scope of the request." *Dunaway v. Webster*, 519 F. Supp. 1059, 1083 (N.D.Cal. 1981). Ambiguities should be resolved in favor of disclosure. *See, e.g., LaCedra v. Executive Office for U.S.*

⁶5 ILCS 140/9.5(c) (West 2020).

⁷5 ILCS 140/9(a) (West 2020).

⁸Letter from LaShonda Morgan, FOIA Officer, [City of Chicago] Department of Planning and Development to Elliot Mallen (January 19, 2023) at 2.

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Attorneys, 317 F.3d 345, 348 (D.C. Cir. 2003) (rejecting public body's narrow construction of language used in request).

The Department has not demonstrated that the entry for 208 South LaSalle was not responsive to Elliott Mallen's request. The articles referenced in Elliott Mallen's FOIA request stated that the redevelopment plans involved seven properties, including two submissions for 208 South LaSalle.⁹ The record provided in response to the FOIA request only listed six properties and omitted any reference to 208 South LaSalle. Elliott Mallen's request specifically sought the copy of the summaries as referenced in the articles. Therefore, even if a business subsequently withdrew a response to the Invitation for Proposals, the summary that included 208 South LaSalle was nevertheless responsive to the FOIA request. Accordingly, this office is unable to conclude that the Department has demonstrated by clear and convincing evidence that the redacted information is exempt from disclosure. This office requests that the Department provide Elliott Mallen with a copy of the unredacted record responsive to the request.

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 matter. If you have questions, please contact me at victoria.frazier@ilag.gov.

Very truly yours,



VICTORIA FRAZIER
Assistant Attorney General
Public Access Bureau

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⁹David Roeder, *Developers propose \$1 billion in work to help La Salle Street*, Chicago Sun Times, (Dec. 5, 2022), <https://chicago.suntimes.com/2022/12/28/23528757/lasalle-street-chicago-financial-district-rejuvenate-housing-residential>; Danny Ecker, *Developers pitch \$1.2 billion of LaSalle Street residential conversations*, Crain's Chicago Business, (Jan. 3, 2023), <https://www.chicagobusiness.com/commercial-real-estate/developers-pitch-12-billion-lasalle-street-residential-conversions>.