



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 14, 2016

PUBLIC ACCESS OPINION 16-011
(Request for Review 2016 PAC 44066)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Michael Glotz
8408 Budingen Lane
Tinley Park, Illinois 60487

Mr. Jon A. Duncan
General Counsel
Housing Authority of Cook County
175 West Jackson Boulevard, Suite 350
Chicago, Illinois 60604-3042

Dear Mr. Glotz and Mr. Duncan:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that the Housing Authority of Cook County (Authority) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Michael Glotz.

BACKGROUND

On July 19, 2016, Mr. Glotz submitted the following FOIA request to the Authority via e-mail:

From March 01, 2015 to July 25, 2016 please provide me in PDF format any Emails, Faxes, phone calls & notes from phone conversations, and any other correspondence between Buckeye, Dave Petroni, Steven Boone, or any other Buckeye employee.

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Also, please provide me in the same time frame any applications for properties Buckeye has applied for, copies of contracts, approval of applications and properties, & denials of properties.

Please provide any negative remarks for projects they've done or complaints from tenants on any of their properties.^[1]

On August 3, 2016, eleven business days after Mr. Glotz submitted his FOIA request, Mr. Jon Duncan, the Authority's General Counsel, sent an e-mail to Mr. Glotz stating:

We have not yet located responsive documentation for your FOIA request, but I have some questions regarding your request that may assist us in locating any responsive records. I attempted, without success, to reach you by telephone this afternoon. Please call me at [telephone number] to discuss this further.^[2]

Mr. Glotz replied by e-mail later that day, notifying Mr. Duncan that he would be available to discuss the request the following day.³ On August 22, 2016, Mr. Glotz and Mr. Duncan conferred by telephone regarding Mr. Glotz's FOIA request. Mr. Glotz furnished additional information concerning the records he was seeking.⁴ Later that day, Mr. Duncan sent an e-mail to Mr. Glotz stating:

Following up on our telephone conversation of this afternoon, I understand that you are amending your FOIA request to ask for correspondence between the Housing Authority of Cook County and Buckeye, Dave Petroni, Steven Boone, or any other Buckeye employee, regarding a project known as "the Reserve" located at 183rd and Oak Park Avenue in Tinley Park.

Please confirm that I have correctly summarized your amended request and then I will process your amended request accordingly.^[5]

¹E-mail from Mike Glotz to FOIA Officer [Housing Authority of Cook County] (July 19, 2016).

²E-mail from Jon A. Duncan, General Counsel, Housing Authority of Cook County, to [Mike] Glotz (August 3, 2016).

³E-mail from Mike Glotz to [Jon] Duncan (August 3, 2016).

⁴E-mail from Michael Glotz to Public Access Counselor, Illinois Attorney General (September 15, 2016).

⁵E-mail from Jon A. Duncan, General Counsel, Housing Authority of Cook County, to [Mike] Glotz (August 22, 2016).

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Mr. Glotz replied to Mr. Duncan that same day confirming that he correctly summarized his FOIA request.⁶

On August 26, 2016, Mr. Glotz sent an e-mail to Mr. Duncan asking: "Since my FOIA was filed over a month ago and is now old, is it possible to extend my timeline to eliminate another FOIA request for you guys. Could you just make it current to Aug 27, 2016?"⁷ Not having received a response, Mr. Glotz sent e-mails to Mr. Duncan on September 1, 2016,⁸ September 7, 2016,⁹ and September 13, 2016,¹⁰ inquiring about the status of the response to his FOIA request. Mr. Duncan did not respond to Mr. Glotz.¹¹

On September 15, 2016, Mr. Glotz e-mailed a Request for Review to the Public Access Bureau and the Public Access Counselor alleging that the Authority improperly denied his request by failing to respond.¹²

In a letter dated September 22, 2016, the Public Access Bureau forwarded a copy of the Request for Review to the Authority¹³ and asked the Authority to advise this office whether it had responded to Mr. Glotz's FOIA request; if it had not yet responded to Mr. Glotz, this office asked the Authority to do so and to provide this office with a copy of its response.¹⁴ The Authority did not respond to the Public Access Bureau's September 22, 2016, correspondence. On October 19, 2016, the Public Access Bureau again forwarded a copy of the

⁶E-mail from Mike Glotz to Jon Duncan (August 22, 2016).

⁷E-mail from [Mike Glotz] to Jon Duncan (August 26, 2016).

⁸E-mail from Mike Glotz to Jon Duncan (September 1, 2016).

⁹E-mail from Mike Glotz to Jon Duncan (September 7, 2016).

¹⁰E-mail from [Mike Glotz] to Jon Duncan (September 13, 2016).

¹¹E-mail from Mike Glotz to Public Access Counselor, Illinois Attorney General (September 15, 2016).

¹²E-mail from Mike Glotz to Public Access [Bureau]. Sarah Pratt, Christopher Boggs, Illinois Attorney General (September 15, 2016).

¹³After receiving messages on September 22 and 23, 2016, that delivery to jduncan@thehacc.org had failed, the Public Access Bureau sent the letter to Mr. Duncan by United States Postal Service on September 23, 2016.

¹⁴Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jon A. Duncan, General Counsel, FOIA Officer, Housing Authority of Cook County (September 22, 2016).

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Request for Review to the Authority and asked the Authority to respond.¹⁵ An Assistant Attorney General in the Public Access Bureau also sent an e-mail to Mr. Duncan and attempted to contact Mr. Duncan by telephone.¹⁶ As of the date of this binding opinion, this office has not received any indication that the Authority has responded to Mr. Glotz's FOIA request. On November 10, 2016, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.¹⁷

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2014)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 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 further provides:

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. Denial shall be in writing as provided in Section 9 of this Act. 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).

¹⁵Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jon A. Duncan, General Counsel, FOIA Officer, Housing Authority of Cook County (October 19, 2016).

¹⁶E-mail from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, to Jon Duncan (October 27, 2016).

¹⁷Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, to Mike Glotz and Jon A. Duncan, General Counsel, FOIA Officer, Housing Authority of Cook County (November 10, 2016).

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The Authority did not respond to Mr. Glotz's FOIA request within five business days after receiving it by either complying with the request, extending the time to respond pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)), or denying the request in writing. Eleven business days after Mr. Glotz submitted his request, the Authority contacted him and worked with him to clarify his request. After obtaining written clarification of the records that Mr. Glotz was seeking, however, the Authority did not respond to his FOIA request. The Authority's failure to comply with the requisite procedures violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On July 19, 2016, Mr. Michael Glotz submitted a FOIA request to the Authority via e-mail seeking records concerning Buckeye. The Authority did not, within five business days after its receipt of the initial request, comply with the FOIA request, extend the time for response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as is required by section 3(d) of FOIA. The failure to do so constituted a denial of the FOIA request.
- 2) On August 3, 2016, the Authority contacted Mr. Glotz by e-mail and informed him that it had questions concerning his request. On August 22, 2016, Mr. Glotz explained to the Authority's General Counsel by telephone that he was seeking records involving Buckeye and its employees that relate to a specific development project, and confirmed the scope of his request to the Authority by e-mail. Even assuming, *arguendo*, that the August 22, 2016, clarification of the original FOIA request could be considered a new request, for purposes of initiating the statutory period for response, the Authority did not, within five business days thereafter, comply with the request, extend the time for response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as is required by section 3(d) of FOIA.
- 3) On September 15, 2016, Mr. Glotz asked the Public Access Counselor and the Public Access Bureau to review the Authority's denial of his FOIA request. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).
- 4) On September 22, 2016, and again on October 19, 2016, the Public Access Bureau forwarded copies of Mr. Glotz's Request for Review to the Authority, together with a letter asking the Authority to advise this office whether it had responded to the FOIA request that Mr. Glotz submitted on July 19, 2016, and clarified on August 22, 2016. The Authority did not respond to those inquiries.

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5) Pursuant to section 9.5(f) of FOIA, this office properly extended the time for issuing a binding opinion by 30 business days to December 28, 2016. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) To date, this office has received no indication that the Authority has responded to Mr. Glotz's request.

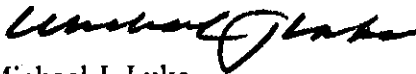
Therefore, it is the opinion of the Attorney General that the Authority has violated section 3(d) of FOIA by failing, within five business days after receiving Mr. Glotz's request, to provide the requested records, to deny the request in whole or in part, or to notify Mr. Glotz in writing that it was extending the time for issuing a response. Accordingly, the Authority is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Glotz with all records responsive to his July 19, 2016, FOIA request, as clarified on August 22, 2016, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016).¹⁸ If the Authority determines that any portion of the responsive records is exempt from disclosure under section 7, the Authority is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2014)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Michael Glotz as defendants. See 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹⁸Because the Authority did not comply with the statutory requirements for responding to Mr. Glotz's FOIA request, the Authority is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. See 5 ILCS 140/3(d) (West 2014).


CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-011) upon:

Mr. Michael Glotz
8408 Budingen Lane
Tinley Park, Illinois 60487
uds2004local786@aol.com

Mr. Jon A. Duncan
General Counsel
Housing Authority of Cook County
175 West Jackson Boulevard, Suite 350
Chicago, Illinois 60604-3042
jduncan@thehacc.org

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 14, 2016.


SARAH L. PRATT
Public Access Counselor

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