



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 4, 2013

PUBLIC ACCESS OPINION 13-009
(Request for Review 2013 PAC 23495)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Casey Toner
Staff Writer, *SouthtownStar*
ctoner@southtownstar.com

Mr. Patrick B. Cage
General Counsel
Office of Labor & Legal Affairs
Chicago State University
9501 South King Drive/ ADM 318
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Dear Mr. Toner and Mr. Cage:

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 2011 Supp.)). For the reasons that follow, this office concludes that Chicago State University (CSU) violated sections 3(d) and 9(a) of FOIA (5 ILCS 140/3(d), 9(a) (West 2010)) by failing to comply with, to deny, or to otherwise appropriately respond to a FOIA request submitted by Mr. Casey Toner within five business days following its receipt.

BACKGROUND

On January 21, 2013, Mr. Toner submitted a FOIA request to CSU seeking:

[A] copy of all bills, receipts, and invoices, and other documents submitted by all Chicago State University board members and college president Wayne Watson related to travel for the years 2010, 2011, and 2012. All of the bills, receipts, and invoices, and

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other documents should contain notations showing who incurred each expense. This information should also include year end totals for each of the board members and Wayne Watson related to travel for the years 2010, 2011 and 2012.

* * * [A] copy of all complete monthly statements for all credit cards used by any Chicago State University board members and president Wayne Watson for the years 2010, 2011, and 2012. These statements should show all purchases, dates, and should be notated to show who incurred the expenses.¹

This e-mail contained the language "Please confirm upon receipt" at the top. On January 23, 2013, Mr. Toner sent a follow up e-mail asking "Did you get it?" Later that day, Ms. Veronica Scates, on behalf of CSU, replied "Yes, received. Apologize for the slow confirmation."² Mr. Toner did not receive any further communications from CSU.

On January 30, 2013, Mr. Toner sent an e-mail to CSU stating "I've amended my prior FOIA request to alter its scope."³ The amended request sought:

[C]opies of all bills, receipts, invoices, expense reports, and similarly titled reimbursement-related documents, submitted by all Chicago State University board members and college presidents for the years 2010, 2011, and 2012. All of the aforementioned documents, written or electronic, should contain notations showing who incurred each expense. Please include year end totals for each of the board members and college presidents related to travel for the years 2010, 2011 and 2012.

* * * [A] copy of all complete monthly statements for all school-issued or reimbursable credit cards used by any Chicago State University board members and college presidents for the years 2010, 2011, and 2012. These statements should show all purchases, dates, and an explanation of the items purchased, and notations to show who incurred the expenses.⁴

¹E-mail from Casey Toner to Patrick Cage (January 21, 2013).

²E-mail from Veronica Scates to Casey Toner (January 23, 2013).

³E-mail from Casey Toner to Patrick Cage and Veronica Scates (January 30, 2013).

⁴E-mail from Casey Toner to Patrick Cage and Veronica Scates (January 30, 2013).

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On February 21, 2013, Mr. Toner submitted a Request for Review to the Public Access Bureau pursuant to section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2011 Supp.)). Mr. Toner alleged that CSU had failed to produce the requested records or otherwise respond to either of his FOIA requests.⁵ On, March 1, 2013, the Public Access Bureau forwarded a copy of Mr. Toner's Request for Review to CSU and asked it to provide a "written explanation of its receipt and handling of Mr. Toner's January 30, 2013, FOIA request."⁶ CSU did not respond to the Public Access Bureau's inquiry. On March 25, 2013, the Public Access Bureau sent a second letter via e-mail to Mr. Patrick Cage, CSU's General Counsel and FOIA officer, again requesting an explanation of CSU's handling of Mr. Toner's revised FOIA request.⁷

As of the date of this binding opinion, CSU has neither responded to Mr. Toner's original or revised FOIA request nor to the Public Access Bureau's requests for a written explanation of how CSU handled his FOIA requests. On April 22, 2013, the Public Access Counselor extended the time for issuing a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.⁸

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 2010). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2010)), "[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 2010)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act."

The statutory procedures for responding to a FOIA request are set out clearly in the Act. Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2010)) 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

⁵E-mail from Casey Toner to Sarah Pratt (February 21, 2013).

⁶Letter from Tola Sobitan, Assistant Attorney General, Public Access Bureau, to Patrick Cage, General Counsel and Freedom of Information Officer, Chicago State University (March 1, 2013).

⁷Letter from Tola Sobitan, Assistant Attorney General, Public Access Bureau, to Patrick Cage, General Counsel and Freedom of Information Officer, Chicago State University (March 25, 2013).

⁸Letter from Tola Sobitan, Assistant Attorney General, Public Access Bureau, to Patrick Cage, General Counsel, Chicago State University, and Casey Toner, Staff Writer, *SouthtownStar* (April 22, 2013).

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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).

Although a public body may extend its time for response by up to an additional 5 business days in certain limited circumstances, the public body must do so *in writing* and *within the initial 5 business day* timeline. See 5 ILCS 140/3(e) (West 2010).

The facts are undisputed that CSU only acknowledged the receipt of Mr. Toner's January 21, 2013, FOIA request. Monday, January 21, 2013, was a campus holiday, Martin Luther King, Jr. Day, therefore, we presume that CSU received the FOIA request on Tuesday, January 22, 2013. Thus, CSU should have responded within five business days, which was Tuesday, January 29, 2013, which it failed to do. CSU did not respond in any manner to Mr. Toner's January 30, 2013, revised FOIA request. CSU did not provide the records that Mr. Toner requested, extend the time for response pursuant to section 3(e) of FOIA, or issue a written denial of the request within 5 business days after receipt of the request. CSU's failure to comply with the requisite procedures constitutes denials of Mr. Toner's FOIA requests.

Further, section 9(a) of FOIA 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. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.

Accordingly, by failing to respond to either Mr. Toner's January 21, 2013, FOIA request or his January 30, 2013, revised request, CSU violated sections 3(d) and 9(a) of FOIA.

FINDINGS AND CONCLUSIONS

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

- 1) On January 21, 2013, Mr. Toner submitted a FOIA request to CSU seeking certain financial records relating to CSU's Board members and CSU's President Wayne Watson for the years 2010 through 2012.
- 2) On January 23, 2013, CSU acknowledged receipt of Mr. Toner's FOIA request.
- 3) On January 30, 2013, Mr. Toner revised his FOIA request to include certain financial records for all of CSU's presidents and board members from 2010, 2011, and 2012.
- 4) CSU did not respond to either Mr. Toner's original or revised FOIA requests.
- 5) On February 21, 2013, Mr. Toner submitted a Request for Review of CSU's denial of his FOIA requests to the Public Access Counselor. Mr. Toner's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2011 Supp.)). The Public Access Counselor extended the time to issue a binding opinion by 30 business days. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 6) On March 1, 2013, the Public Access Bureau determined that further action was warranted and sent a letter to CSU requesting an explanation of its receipt and handling of Mr. Toner's January 30, 2013, FOIA request. CSU did not respond to that inquiry or provide any explanation of its basis for failing to comply with the requirements of FOIA.
- 7) On March 25, 2013, the Public Access Bureau sent a second letter to CSU requesting an immediate response to its March 1, 2013, inquiry letter regarding Mr. Toner's FOIA request. The Public Access Bureau again did not receive any communication from CSU.
- 8) The failure of CSU to comply with Mr. Toner's January 21, 2013, FOIA request, to extend the time for response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part within 5 business days constituted a denial of the request under section 3(d) of FOIA. The denial of a request by failing to respond does not comply with the requirements of section 9(a) of FOIA. Because Mr. Toner sent a second FOIA request specifically stating that he was altering the scope of his first request, however, CSU need not respond to the January 21, 2013, request at this time.

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9) The failure of CSU to comply with Mr. Toner's January 30, 2013, FOIA request, to extend the time for response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part within 5 business days constituted a denial of the request under section 3(d) of FOIA. The denial of a request by failing to respond does not comply with the requirements of section 9(a) of FOIA.

Therefore, it is the opinion of the Attorney General that CSU has violated sections 3(d) and 9(a) of FOIA by improperly denying Mr. Toner's amended request for public records. Accordingly, CSU is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Toner with all records responsive to his January 30, 2013, amended FOIA request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2011 Supp.), as amended by Public Acts 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-847, effective September 22, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012).⁹ If CSU determines that any portions of the responsive records are exempt from disclosure under section 7, CSU is directed to issue a written partial denial that fully complies with the requirements of section 9(a) of FOIA. Further, CSU is directed to issue timely responses to future FOIA requests by all persons in accordance with section 3(d) of FOIA.

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 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in 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. Casey Toner as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

⁹Because CSU did not comply with the statutory requirements for responding to Mr. Toner's FOIA request, CSU is precluded from treating the request as unduly burdensome or assessing copying fees for the records.