



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 12, 2016

[REDACTED]

Ms. Elizabeth Scannell
Assistant General Counsel
Sheriff's Office of Cook County
50 West Washington, Room 704
Chicago, Illinois 60632

RE: FOIA Request for Review – 2016 PAC 40373

Dear [REDACTED] and Ms. Scannell:

This determination 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 set forth below, the Public Access Bureau concludes that the Cook County Sheriff's Office (Sheriff's Office) did not comply with the time requirements of FOIA when it treated [REDACTED] FOIA request as a "voluminous request."

[REDACTED] submitted a FOIA request dated January 11, 2016, to the Sheriff's Office seeking all Office of Professional Review reports relating to 51 specified grievances from 2013 to 2015, together with stationary security camera footage relating to those grievances. [REDACTED] submitted this request while he was incarcerated in a State prison and requested that the Sheriff's Office waive the fees for photocopies.

In its response to this Request for Review, the Sheriff's Office asserts that it received the request on January 25, 2016. On February 1, 2016, the Sheriff's Office notified [REDACTED] that it was extending the time for response under section 3 of FOIA (5 ILCS 140/3 (West 2014)), and that it would respond on or before February 8, 2016. On February 8, 2016, the Sheriff's Office notified [REDACTED] that it was treating his request as a "voluminous request" under section 3.6 of FOIA (5 ILCS 140/3.6 (West 2014)) on the basis that it required the

Ms. Elizabeth Scannell
July 12, 2016
Page 2

compilation of more than 500 pages of letter or legal-sized pages of public records. Under section 3.6, a requester has 10 business days to amend the request in such a way that the public body will no longer treat the request as voluminous. When [REDACTED] did not respond to the section 3.6 notification, the Sheriff's Office notified him on February 24, 2016, that it was extending the time for response until March 2, 2016. On March 2, 2016, the Sheriff's Office notified [REDACTED] that it had compiled the responsive records, and that it would charge him for copies in excess of the first 50 pages under section 6(b) of FOIA (5 ILCS 140/6(b) (West 2014)). On March 30, 2016, the Sheriff's Office sent [REDACTED] the first 50 pages of records responsive to his request without charge.

On April 19, 2016, this office sent a copy of the Request for Review to the Sheriff's Office and requested a detailed description of the handling of [REDACTED] request, including the date on which the Sheriff's Office received the request, and an explanation of the legal and factual bases for treating the request as voluminous under section 3.6 of FOIA. The Sheriff's Office submitted a response on May 2, 2016. On May 11, 2016, this office forwarded a copy of the Sheriff's Office's response to [REDACTED]; he did not reply.

DETERMINATION

Definition of Voluminous Request

Section 2(h) of FOIA (5 ILCS 140/2(h) (West 2015 Supp.)) defines a "voluminous request" as:

a request that: (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. "Single requested record" may include, but is not limited to, one report, form, e-mail, letter, memorandum, book, map, microfilm, tape, or recording.

In its response to this office, the Sheriff's Office asserted that the records responsive to [REDACTED] request include 490 pages of responsive reports, 16 photographs, and two video files. The Sheriff's Office subsequently clarified in correspondence to this office that the photographs were stored in an electronic format, but would be printed with a single photograph to a page in order to provide paper copies to [REDACTED]. In total, the request required the compilation of 506 pages of printed material. Accordingly, we conclude that because the request required the

[REDACTED]
Ms. Elizabeth Scannell
July 12, 2016
Page 3

compilation of more than 500 pages of public records, the Sheriff's Office did not improperly treat the request as a "voluminous request."¹

Notification of Voluminous Request

Section 3.6(a) of FOIA (5 ILCS 140/3.6(a) (West 2014)) describes the procedures for notifying a requester that a public body is treating a request as a voluminous request, and provides in relevant part that "*[n]otwithstanding any provision of this Act to the contrary*, a public body shall respond to a voluminous request within 5 business days after receipt." (Emphasis added.) In addition, section 3(i) of FOIA (5 ILCS 140/3(i) (West 2014)) provides that:

[t]he time periods for compliance or denial of a request to inspect or copy records set out in this Section *shall not apply to* requests for records made for a commercial purpose, requests by a recurrent requester, or *voluminous requests*. Such requests shall be subject to the provisions of Sections 3.1, 3.2, and 3.6, as applicable. (Emphasis added.)

The Sheriff's Office first responded to [REDACTED] request on February 1, 2016, by extending the time to respond, until February 8, 2016, citing section 3. Typically, a public body may assert an extension of time of up to five business days for any of the seven reasons enumerated in section 3(e) (5 ILCS 140/3(e) (West 2014)). The plain language of section 3.6(a), however, requires that a public body notify a requester that it is treating a request as a voluminous request within five business days of receipt of the request, and does not provide for an extension of time to respond under section 3(e). In addition, section 3(i) specifies that the time periods for compliance provided in section 3.6, rather than the time periods in section 3, govern voluminous requests. It is undisputed that the Sheriff's Office did not notify [REDACTED] that it was treating his request as a voluminous request until February 8, 2016, which was more than five business days after it received the request on January 25, 2016. Accordingly, this office concludes that the Sheriff's Office did not timely notify [REDACTED] that it was treating his request as a "voluminous request."

[REDACTED] has contested the Sheriff's Office's treatment of his request as voluminous, but has not sought a specific remedy. In contrast to sections 3(d) and 3(f) of FOIA (5 ILCS 140/3(d), (f) (West 2014)), section 3.6 does not provide for a fee waiver (or any other penalty) in the case of a late response. Based on the information provided by the Sheriff's

¹This office does not address the Sheriff's Office's assertion that the first definition of "voluminous request" in section 2(h) also applies.

[REDACTED]
Ms. Elizabeth Scannell

July 12, 2016

Page 4

Office, except for its delayed assertion that the request was voluminous, it complied with the provisions of section 3.6. On March 30, 2016, the Sheriff's Office furnished the first 50 pages of records to [REDACTED] without charge. Under these circumstances, FOIA does not prohibit the Sheriff's Office from charging fees in accordance with section 6(b) of FOIA for paper copies of the remaining records. Accordingly, no remedial action is required.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,

[REDACTED]
NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

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