



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 1, 2019

Via electronic mail

Via electronic mail

Ms. Monica Hernandez
Freedom of Information Act Officer
Department of Public Health
City of Chicago
333 South State Street, Room 200
Chicago, Illinois 60604
cdphfoia@cityofchicago.org

RE: FOIA Request for Review – 2018 PAC 51711

Dear [REDACTED] and Ms. Hernandez:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, the Public Access Bureau concludes that the City of Chicago Department of Public Health (Department) improperly denied a portion of [REDACTED] January 10, 2018, FOIA request.

On that date, [REDACTED] submitted a three-part FOIA request to the Department seeking, in relevant part, copies of records:

of Cook County Health and Hospitals System (CCHHS) communications with [the Department] (emails, memos, letters, other records), during the past 12 months, about the operation (including that of its agent, Community Counseling Centers of Chicago, "C4") of the CCHHS-Roseland Community Triage and CCHHS-Roseland Mental ("Behavioral") Health Centers. Please include copies of any quarterly and annual performance reports and financial reports, reports of staffing and any other reports

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"pertaining to the performance and cost of the Behavioral Health Services" and communications and amended agreements on the planned change in CCHHS contracted service provider from C4 to another agency.^[1]

On January 12, 2018, the Department informed [REDACTED] that it was extending its time to respond by five business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)). In a January 30, 2018, e-mail, the Department sent [REDACTED] a letter dated January 29, 2018, denying the above-quoted portion of [REDACTED] request as unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)). On February 14, 2018, this office received [REDACTED] Request for Review challenging the Department's denial of the above-quoted portion of her request pursuant to section 3(g) of FOIA.

On February 20, 2018, this office sent a copy of the Request for Review to the Department and asked it to provide an explanation for treating the relevant portion of [REDACTED] request as unduly burdensome. On March 2, 2018, the Department provided a written response. On March 5, 2018, this office forwarded the Department's response to [REDACTED]; on March 15, 2018, [REDACTED] replied.

DETERMINATION

"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 2016). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)) provides that "[e]ach 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." Section 3(e) permits a public body to extend its time for response by five business days.

The Department deemed [REDACTED] January 10, 2018, FOIA request unduly burdensome under section 3(g) of FOIA, which provides, in pertinent part:

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

¹Letter from [REDACTED] to Jennifer Herd, CDPH FOIA Officer (January 10, 2018).

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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.

Section 3(d) of FOIA, however, provides: "A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g)."

The Department does not dispute that it received [REDACTED] FOIA request on January 10, 2018. On January 12, 2018, the Department timely extended its time to respond to the request by five business days. Accordingly, taking into account the January 15, 2018, Dr. Martin Luther King, Jr. holiday, the Department's response to [REDACTED] was due on January 25, 2018. However, the Department did not respond to [REDACTED] until January 30, 2018, thirteen days after receipt. The Department has not asserted that it and [REDACTED] agreed to an extension beyond January 25, 2018, nor is there any indication that they did. Therefore, the Department's January 30, 2018, response was untimely, and the Department waived the opportunity to deny the relevant portion of [REDACTED] request as unduly burdensome. *See Ill. Att'y Gen. Pub. Acc. Op. No. 14-007*, issued August 14, 2014, at 8 (public body that failed to issue timely response and failed to comply with the requisite procedures in section 3(g) improperly denied request as unduly burdensome).

Accordingly, this office requests that the Department provide the requested records to [REDACTED] subject only to appropriate redactions under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)), as amended by Public Act 100-732, effective August 3, 2018). In accordance with section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)), the Department must provide a detailed factual basis for the applicability of any exemption under which information is redacted or withheld.

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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 any questions, please contact me at (217) 524-7958, or LHarter@atg.state.il.us.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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