

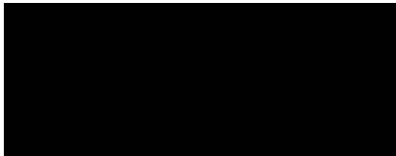


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 10, 2023

Via electronic mail



Via electronic mail

Mr. Tom Skelton
Office of the Mayor
City of Chicago
121 North LaSalle Street, Suite 500
Chicago, Illinois 60601
thomas.skelton@cityofchicago.org

RE: FOIA Request for Review – 2023 PAC 77169

Dear [REDACTED] and Mr. Skelton:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022)). For the reasons set forth below, the Public Access Bureau concludes that the response by the City of Chicago Office of the Mayor (Mayor's Office) to [REDACTED] May 28, 2023, FOIA request did not violate FOIA.

On that date, [REDACTED] submitted a FOIA request to the Mayor's Office seeking records related to the removal of homeless individuals from O'Hare Airport. On June 6, 2023, the Mayor's Office extended its time to respond to the request by five business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)). On June 13, 2023, the Mayor's Office responded by asserting that compliance with the request would be unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2022)). On that same date, [REDACTED] replied that he would like to confer with the Mayor's Office to narrow his request and also offered to exclude communications advising employees of news article clippings. On July

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3, 2023, ██████████ submitted the above-referenced Request for Review alleging that the Mayor's Office had not provided him with an opportunity to confer to narrow his request.

On July 12, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Mayor's Office and asked it to provide a written response to ██████████ allegation, including a description of any efforts by the Mayor's Office to provide ██████████ with an opportunity to narrow his request. On July 21, 2023, the Mayor's Office provided its written answer. On that same date, this office forwarded the Mayor's Office's response to ██████████; he did not reply.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2020).

Section 3(g) of FOIA provides, in relevant 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 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.** (Emphasis added.)

In its response to this office, the Mayor's Office argues that it "provided ██████████ opportunities to confer regarding his FOIA request, but ██████████ did not avail himself of these opportunities."¹ As part of its response, the Mayor's Office included an additional e-mail that its FOIA Officer sent to ██████████ on June 13, 2023, stating that ██████████ offer to exclude news clippings would not sufficiently narrow his request. This e-mail also included an offer to answer other questions and to discuss the matter. This appears to

¹Letter from Tom Skelton, FOIA Officer, Office of the Mayor to Benjamin Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (July 21, 2023) at 4.

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be the last e-mail on this matter between the Mayor's Office and [REDACTED], as the Mayor's Office stated that he did not respond to its offer to confer.

In his Request for Review and his correspondence with the Mayor's Office, [REDACTED] argued, citing Ill. Att'y Gen. Pub. Acc. Op. No. 23-007, issued May 26, 2023, that the Mayor's Office has an obligation to determine which employees may have sent or received responsive correspondence and to ascertain the personnel who could provide keywords for the search. In that binding opinion, the Attorney General found that "public employees and officials who are knowledgeable about the operations of their public body are in a better position than members of the public to know which employees and officials are likely to have sent or received e-mails about particular subjects." Ill. Att'y Gen. Pub. Acc. Op. No. 23-007, issued May 26, 2023, at 7-8. However, the public body in that case improperly denied a FOIA request as unduly burdensome when it insisted that a requester provide the names of employees or their e-mail address before conducting any search.

Here, the Mayor's Office did not refuse to conduct a search without [REDACTED] providing the names or e-mail addresses of employees. Rather, the Mayor's Office conducted a search utilizing keywords from [REDACTED] request and a list of employees that it determined may have sent or received responsive correspondence, but the search returned over 3,000 e-mails and attachments. The Mayor's Office relayed this information to [REDACTED] as part of its June 13, 2023, response to his FOIA request. Accordingly, the Mayor's Office did not require [REDACTED] to provide a list of names or e-mail addresses in order to conduct a search in response to his request.

[REDACTED] further suggested that a public body must schedule a conference to narrow to comply with the provisions of section 3(g). The Open Meetings Act provides that a public body must extend "an opportunity to confer," but does not mandate what that opportunity entails. The Illinois Appellate Court has advised that section 3(g) requires a public body to engage in a "good-faith dialogue" when the requester seeks "an opportunity to confer" about narrowing a request to manageable proportions. *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶34, 122 N.E.3d 729, 737 (2018). The Attorney General has previously determined that "the plain and ordinary meaning of 'an opportunity to confer' is a chance to engage in dialogue." Ill. Att'y Gen. Pub. Acc. Op. No. 21-001, issued January 26, 2021, at 10. *See American Heritage Dictionary* 872 (2d coll. ed. 1982) (Defining "Confer" as "[t]o hold a conference; **to consult with one another.**" (Emphasis added.) *Black's Law Dictionary* (11th ed. 2019), available at Westlaw BLACKS. Thus, while a public body may meet its obligation under section 3(g) by scheduling a conference, it may also meet its obligation by providing a chance to consult with the requester through another means, including e-mail correspondence.

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The Mayor's Office's response to this office indicates that its last correspondence with [REDACTED] informed him, in response to his last e-mail to that office, that his offer to exclude news clippings did not sufficiently narrow his request. The Mayor's Office offered him further opportunity to discuss the matter. This office has not received evidence that [REDACTED] engaged the Mayor's Office in further discussion before submitting this Request for Review. Under these circumstances, this office is unable to conclude that the Mayor's Office violated section 3(g) of FOIA by failing to provide [REDACTED] with an opportunity to confer before denying his May 28, 2023, FOIA request as unduly burdensome.

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 (773) 590-7878 or benjamin.silver@ilag.gov.

Very truly yours,

[REDACTED]
BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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