



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 11, 2012

PUBLIC ACCESS OPINION 12-002
(Request for Review 2011 PAC 16946)

FREEDOM OF INFORMATION ACT:
Under Section 3(d) of FOIA, Public Bodies
Must Respond to a Request for Records
Within Five Business Days After Receipt of
the Request

Via electronic mail
Ms. Megan Cottrell
The Chicago Reporter
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megan.m.cottrell@gmail.com

Ms. Lara D. Shayne
Assistant General Counsel
Chicago Board of Education
125 South Clark Street, 7th Floor
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Dear Ms. Cottrell and Ms. Shayne:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2010), as amended by as amended by Public Act 97-579, effective August 26, 2011).

BACKGROUND

On September 13, 2011, Ms. Megan Cottrell, a staff reporter for *The Chicago Reporter*, submitted a FOIA request via e-mail to the Chicago Public Schools Law Department (CPS) seeking the following information:

Ms. Megan Cottrell
Ms. Lara D. Shayne
January 11, 2012
Page 2

[R]ecords for several different indicators for each and every Chicago public elementary school by name each year for the years 2003, 2004, 2005 and 2006: number of suspensions for each school, total student population, total student population enrolled in special education, number of behavioral incidents as indicated on incident report, number of violent incidents indicated on incident report, number of times the Chicago Police Department was called in [to] investigate or intervene in a school-related incident. To be clear, I request each statistic for each school for each year indicated.¹

On September 15, 2011, CPS notified Ms. Cottrell by e-mail of its receipt of her FOIA request. In this correspondence CPS advised Ms. Cottrell that CPS would respond to requests for non-commercial purposes within five business days and to requests for commercial purposes within 21 days. The notification also advised that if an extension of time were required the requester would receive written notice within five business days providing the reason for the extension and the date by which the records would be available, and noted the policy of CPS for copying charges. A response from CPS was due on or before September 22, 2011.² However, Ms. Cottrell did not receive further communication from CPS. On September 29, 2011, Ms. Cottrell submitted a Request for Review to the Public Access Counselor alleging that CPS failed to provide a proper response to her FOIA request.³ This office initiated further review of this matter on October 4, 2011.⁴

CPS did not respond to the Public Access Bureau's October 4, 2011, letter requesting an explanation of its receipt and handling of Ms. Cottrell's FOIA request within the seven business days required by FOIA. *See* 5 ILCS 140/9.5(c) (West 2010), as amended by Public Act 97-579, effective August 26, 2011. A representative of this office telephoned Ms.

¹Ms. Cottrell has indicated that this was her second attempt at submitting her FOIA request to the Chicago Public Schools. Initially, she attempted to submit her FOIA request to CPS on August 29, 2011, via the fax number provided on its website but was later informed by Ms. Cassandra Daniels that CPS did not receive the faxed FOIA request. Email from Megan Cottrell, *The Chicago Reporter*, to the Public Access Counselor, Office of the Attorney General (September 29, 2011).

²E-mail from Cassandra Daniels, FOIA Officer, CPS, to Megan Cottrell, *The Chicago Reporter* (September 15, 2011).

³E-mail from Megan Cottrell, *The Chicago Reporter*, to the Public Access Counselor, Office of the Attorney General (September 29, 2011).

⁴Letter from Tola Sobitan, Assistant Attorney General, Public Access Bureau, to Cassandra Daniels, FOIA Officer, CPS (October 4, 2011).

Ms. Megan Cottrell
Ms. Lara D. Shayne
January 11, 2012
Page 3

Cassandra Daniels, FOIA Officer for CPS, on October 26, 2011. Ms. Daniels stated that CPS had not responded to Ms. Cottrell's request because CPS was still in the process of retrieving and compiling the data responsive to the request. Ms. Daniels further asserted that complying with Ms. Cottrell's request was taking a longer time because the responsive records are stored in an outdated computer system and thus, a technician was called in to assist in retrieving the records.

On November 3, 2011, CPS sent an e-mail to the Public Access Bureau with a copy to the requester "in response to a request for review, which was received from Ms. Cottrell."⁵ The email: (1) advised that CPS does not maintain information on the number of times the Chicago Police Department was called to investigate a school related incident in an accessible database, because the information is housed at all 600 CPS schools, and that CPD maintains that information; (2) forwarded an excel spreadsheet containing the total student population of CPS for the years 2001 through 2011; and (3) stated that the CPS technology Department was working to provide the remaining information responsive to the FOIA request.

To date, this office has not received any information indicating that CPS has fully complied with the September 13, 2011, FOIA request.

ANALYSIS

The Freedom of Information Act states that "each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed" by the Act (5 ILCS 140/3(b) (West 2010)). All requests for public records received by a public body are required to "immediately be forwarded to its Freedom of Information Officer or designee." 5 ILCS 140/3(c) (West 2010).

Section 3(a) of FOIA 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." 5 ILCS 140/3(a) (West 2010). Under section 1.2 of FOIA, all public records in the possession of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2010).

Section 3(d) of FOIA requires that "[a] 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 the provisions of the Act. 5 ILCS 140/3(d) (West 2010). This section further states that "[f]ailure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be

⁵E-mail from Cassandra Daniels, FOIA Officer, CPS, to Tola Sobitan, Assistant Attorney General, Public Access Bureau (November 3, 2011).

Ms. Megan Cottrell
Ms. Lara D. Shayne
January 11, 2012
Page 4

considered a denial of the request." 5 ILCS 140/3(d) (West 2010). Although a public body may extend its time for response by up to an additional five business days in certain circumstances, including in situations where responding within five business days would unduly burden the operations of the public body, the public body must do so *in writing* and *within the initial five business day* timeline. (Emphasis added.) See 5 ILCS 140/3(e) (West 2010).

Section 3(d) of FOIA also provides that:

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).

Here, the evidence shows that CPS failed to properly respond to Ms. Cottrell's FOIA request within five business days after September 15, 2011, the date of its receipt of the request. CPS acknowledged receipt of the FOIA request on September 15, 2011, and indicated that it would respond appropriately within five business days, or by September 22, 2011. CPS could have either provided the requested information, or indicated that it required an extension of time and provided the reason for the extension and the date the records would be available. CPS could also have asserted that responding to the request would constitute an undue burden⁶ and asked Ms. Cottrell to narrow the scope of that request, especially given its assertion that an outside computer consultant had to be called in to retrieve the records from an outdated computer system. Additionally, CPS could have contacted the requester, explained the difficulty and special circumstances involved, and sought to reach an agreement for additional time to retrieve the requested records.

However, CPS did not pursue any of these options. Other than its initial acknowledgment of receipt of the FOIA request, CPS did not provide any response until after the requester filed a Request for Review. CPS did partially respond to Ms. Cottrell's FOIA request when it responded to the Public Access Counselor on November 4, 2011. Although CPS has provided some of the requested information and has indicated that it is still searching for additional responsive records, CPS has nonetheless violated FOIA by failing to provide a proper written response to the requester within the statutory time frame. Further, CPS has violated FOIA by failing to respond to the Public Access Counselor's inquiry within seven business days. We

⁶In order to deny a request as unduly burdensome, a public body is required to specify "the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body" (5 ILCS 140/3(g) (West 2010)).

Ms. Megan Cottrell
Ms. Lara D. Shayne
January 11, 2012
Page 5

note that because CPS did not follow the statutory requirements for responding to Ms. Cottrell's request, CPS is now precluded from treating Ms. Cottrell's request as unduly burdensome or imposing any fee for copies of any additional records it may furnish to her.

FINDINGS AND CONCLUSIONS

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

1) On September 13, 2011, Ms. Megan Cottrell submitted a Freedom of Information Act request to CPS.

2) On September 15, 2011, CPS acknowledged receipt of Ms. Cottrell's FOIA request.

3) Ms. Cottrell's 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 2010), as amended by Public Act 97-579, effective August 26, 2011). Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the requested records.

4) On October 4, 2011, the Public Access Bureau determined that further action was warranted and issued a letter to CPS requesting an explanation of its receipt and handling of Ms. Cottrell's September 13, 2011, FOIA request.

5) CPS failed to furnish a response to the Public Access Bureau's October 4, 2011, letter within the seven business days response period set forth in section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2010)).

6) CPS, as a matter of law, denied Ms. Cottrell's FOIA request by failing to furnish a copy of the requested records within five business days as required by section 3(d) of FOIA, or to properly extend the time for response as specified in section 3(e) of FOIA (5 ILCS 140/3(e) (West 2010)).

7) The records sought by Ms. Cottrell are public records that CPS is required to produce to Ms. Cottrell for inspection and copying under section 3 of FOIA (5 ILCS 140/3 (West 2010)).

8) In accordance with section 3(d) of FOIA, CPS is precluded from imposing a fee for production of any additional documents responsive to Ms. Cottrell's FOIA request.

Ms. Megan Cottrell
Ms. Lara D. Shayne
January 11, 2012
Page 6

Therefore, it is the opinion of the Attorney General that CPS has, in violation of sections 3 and 9.5(c) of FOIA, improperly denied Ms. Cottrell's September 13, 2011, request for records. Accordingly, CPS is directed to take immediate and appropriate action to comply with this opinion by furnishing the requested records to Ms. Cottrell pursuant to her September 13, 2011, request. In the future, CPS must comply with FOIA's procedures for responding to FOIA requests by either providing requested records in a timely fashion, following the proper procedures to extend the time within which to respond, or, when appropriate, asking the requester to narrow the request, to avoid further violations of the requirements of FOIA.

This opinion shall be considered a final decision of an administrative agency for the purpose 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 Ms. Megan Cottrell as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
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