



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 21, 2013

PUBLIC ACCESS OPINION 13-001
(Request for Review 2012 PAC 22708)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Dr. John Kugler, Reporter
Substance News
3701 South Winchester Avenue
Chicago, Illinois 60609

Ms. Cassandra Daniels
FOIA Officer
Chicago Public Schools
Law Department
125 South Clark Street, 7th Floor
Chicago, Illinois 60603-4044

Dear Dr. Kugler and Ms. Daniels:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 120/9.5(f) (West 2011 Supp.)). For the reasons discussed below, this office concludes that the Chicago Public Schools (CPS) violated sections 3(d) and 9(a) of FOIA (5 ILCS 140/3(d), 9(a) (West 2010)), by failing to respond within five business days after receiving a FOIA request from Dr. John Kugler.

BACKGROUND

On December 19, 2012, Dr. Kugler submitted a FOIA request to CPS's FOIA Officer seeking "access to and copies of the *Emergency Management Plans*" referenced by a CPS official in three news media reports.¹ (Emphasis in original.) The request further stated:

As a result of the recent murders of school children in
Newtown, CT we are requesting a list or records identifying all

¹E-mail from John Kugler, Reporter, *Substance News*, to Cassandra Daniels (December 19, 2012).

documents * * * that show the Board has current and up-to-date Emergency Plans and training for all CPS staff, documents should include, but not be limited to:

1. A list or records identifying all CPS policies regarding emergency plans
2. A list or records identifying all CPS procedures regarding emergency plans
3. A list or records identifying all training logs and documents showing CPS emergency plans
4. A list or records identifying all CPS directives and training requirements to local work units regarding showing CPS emergency plans
5. A list or records identifying all documents/posters showing CPS emergency plan contact numbers
6. A list or records identifying all documents showing updated CPS staff organizational chart for CPS emergency reporting
7. A list or records identifying any and all other documents that show CPS is in full compliance of laws and regulations regarding emergency plans
8. A list or records identifying all communications requesting that each school perform its annual emergency drill if it hasn't already done so.
9. A list or records identifying all emergency plans which include a scenario for an active shooter.^[2]

On December 27, 2012, Dr. Kugler submitted to the Public Access Bureau a copy of his December 19, 2012, FOIA request to CPS and a Request for Review alleging that CPS had failed to respond to his request.³ On January 4, 2013, the Public Access Bureau forwarded a copy of the Request for Review to CPS and asked CPS to provide a "written explanation of its receipt and handling of Dr. Kugler's December 19, 2012, FOIA request. If CPS has responded or issues a response to the FOIA request after receiving this letter, please provide a copy of that response."⁴ As of the date of this binding opinion, CPS has not responded to either Dr. Kugler or the Public Access Bureau.

²E-mail from John Kugler, Reporter, *Substance News*, to Cassandra Daniels (December 19, 2012).

³E-mail from John Kugler, Reporter, *Substance News*, to Public Access Bureau, Office of the Attorney General (December 27, 2012).

⁴Letter from Steve Silverman, Assistant Attorney General, Public Access Bureau, to Cassandra

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with this Act." 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 procedures for responding to a FOIA request are clear. Section 3(b) of FOIA (5 ILCS 130/3(b) (West 2010)) provides 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 subsection (a) of this Section and shall certify such copy if so requested." Section 3(d) of FOIA further 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 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).

The facts are undisputed that CPS did not either comply with Dr. Kugler's request, extend the time for response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2010)), or deny the request within 5 business days after December 19, 2012, the date of CPS's receipt of the request. CPS's failure to comply with the requisite procedures constitutes a denial of the request. Further, section 9(a) of FOIA provides:

Dr. John Kugler
Ms. Cassandra Daniels
February 21, 2013
Page 4

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 properly respond to Dr. Kugler's December 19, 2012, FOIA request, CPS violated both sections 3(d) and 9(a) of FOIA.

FINDINGS AND CONCLUSIONS

- 1) On December 19, 2012, Dr. John Kugler submitted a FOIA request to CPS seeking information regarding CPS's emergency management plans.
- 2) CPS did not respond to Dr. Kugler's FOIA request.
- 3) The failure of CPS to comply with Dr. Kugler's request, extend the time for response pursuant to section 3(e) of FOIA, or deny the request in whole or in part within 5 business days constituted a denial of the request under section 3(d) of FOIA. Denial of a request by failing to respond does not comply with the requirements of section 9(a) of FOIA.
- 4) On December 27, 2012, Dr. Kugler submitted a Request for Review of CPS's denial of his FOIA request to the Public Access Counselor. Dr. Kugler'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 2011 Supp.)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 5) On January 4, 2013, the Public Access Bureau determined that further action was warranted and sent a letter to CPS requesting an explanation of its receipt and handling of Dr. Kugler's December 19, 2012, FOIA request. CPS did not respond to that inquiry or provide any explanation of its basis for failing to comply with the requirements of FOIA.

Therefore, it is the opinion of the Attorney General that CPS has violated sections 3(d) and 9(a) of FOIA by improperly denying Dr. Kugler's request for public records. Accordingly, CPS is hereby directed to take immediate and appropriate action to comply with

Dr. John Kugler
Ms. Cassandra Daniels
February 21, 2013
Page 5

this opinion by providing Dr. Kugler with all responsive records, subject only to permissible redactions 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).⁵ If CPS determines that any portions of the responsive records are exempt from disclosure under section 7, CPS is directed to issue a written partial denial that fully complies with the requirements of section 9(a) of FOIA. Further, CPS 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 Dr. John Kugler 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

cc: Mr. James Bebley
General Counsel
Chicago Public Schools
Law Department
125 South Clark Street 7th Floor
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⁵Because CPS did not comply with the statutory requirements for responding to Dr. Kulger's FOIA request, CPS is precluded from treating the request as unduly burdensome or assessing copying fees for the records.