



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 24, 2013

PUBLIC ACCESS OPINION 13-004
(Request for Review 2013 PAC 23366)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Brad VanHoose
319 South McKinley
Belleville, Illinois 62221

The Honorable Len Black, Clerk
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

Dear Mr. VanHoose and Mr. Black:

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 2011 Supp.)). For the reasons discussed below, this office concludes that the Village of Caseyville violated sections 3(d) and 9(a) of FOIA (5 ILCS 140/3(d), 9(a) (West 2010)) by failing to comply with, to deny, or to otherwise appropriately respond to a FOIA request from Mr. Brad VanHoose within five business days following its receipt.

BACKGROUND

On January 15, 2013, Mr. VanHoose submitted a FOIA request to the Village Clerk seeking records that he described as follows:

1. * Copy of All video surveillance from Village Hall on
Wednesday 9 January 2013 between the hours of 4:00 pm and 7
pm[.]

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2. Copy of Village Police Department policy for handling phone calls from informants, (confidential or otherwise) 2011, 2012, 2013[.]
3. Meeting Minutes from Wednesday 9 January 2013, for meeting held in back kitchen and office area of Village Hall 909 South Main Caseyville, Illinois 62232 for the hours between 5 pm and 5:55 PM.
4. Copy of log or record documenting who accessed through employee entrance on 9 January 2013 between the hours of 4pm and 10pm.¹

On February 12, 2013, Mr. VanHoose submitted a Request for Review to the Public Access Bureau, which was received on February 13, 2013, and alleged that the Village had failed to comply with, deny, or respond in any way to his January 15, 2013, FOIA request.² On February 22, 2013, the Public Access Bureau determined that further inquiry was warranted and forwarded a copy of the Request for Review to the Village together with a request that the Village provide "an explanation of its receipt and handling of this FOIA request."³ When the Village had not responded to this request by March 14, 2013, an Assistant Attorney General in the Public Access Bureau sent an e-mail inquiry to the Village Clerk regarding the status of the request.⁴ An Assistant Attorney General subsequently left voice mail messages for the Village Clerk on March 28, 2013, and April 4, 2013. As of the date of this binding opinion, the Village has neither responded to Mr. VanHoose's FOIA request, nor to the Public Access Bureau's requests for an explanation of the Village's handling of this FOIA request.

On April 10, 2013, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.⁵

¹E-mail from Brad VanHoose to Len Black, Clerk, Village of Caseyville (January 15, 2013).

²E-mail from Brad VanHoose to Public Access Bureau, Office of the Attorney General (February 12, 2013).

³Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Len Black, Clerk, Village of Caseyville (February 22, 2013).

⁴E-mail from Shari L. West, Assistant Attorney General, Public Access Bureau, to Len Black, Clerk, Village of Caseyville (March 14, 2013).

⁵Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Brad VanHoose and Len Black, Clerk, Village of Caseyville (April 10, 2013).

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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 140/3(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 the Village did not comply with Mr. VanHoose's request, extend the time for response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2010)), or deny his request within 5 business days after its receipt on January 15, 2013. The Village's failure to comply with the requisite procedures constitutes a denial of the request. Further, section 9(a) of FOIA provides:

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

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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 respond to Mr. VanHoose's January 15, 2013, FOIA request, the Village violated both sections 3(d) and 9(a) of FOIA.

FINDINGS AND CONCLUSIONS

- 1) On January 15, 2013, Mr. Brad VanHoose submitted a FOIA request to the Village of Caseyville seeking the records listed above.
- 2) The Village did not respond to Mr. VanHoose's FOIA request.
- 3) On February 12, 2013, Mr. VanHoose submitted a Request for Review of the Village's denial of his FOIA request to the Public Access Counselor. Mr. VanHoose'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.)). The Public Access Counselor extended the time to issue a binding opinion by 30 business days. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 4) On February 22, 2013, the Public Access Bureau determined that further inquiry was warranted and sent a letter to the Village requesting an explanation of its receipt and handling of Mr. VanHoose's January 15, 2013, FOIA request. An Assistant Attorney General in the Public Access Bureau subsequently sent an e-mail to the Village Clerk on March 14, 2013, and left telephone voice mail messages for the Village Clerk on March 28, 2013, and April 4, 2013, regarding the February 22, 2013, request. The Village did not respond to these subsequent inquiries or otherwise provide an explanation of its basis for failing to comply with the requirements of FOIA.
- 5) The failure of the Village to comply with Mr. VanHoose'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. A denial of a request by failure to respond does not comply with the requirements of section 9(a) of FOIA.

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Therefore, it is the opinion of the Attorney General that the Village has violated sections 3(d) and 9(a) of FOIA by improperly denying Mr. VanHoose's request for public records. Accordingly, the Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. VanHoose 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).⁶ If the Village determines that any portions of the responsive records are exempt from disclosure under section 7, the Village is directed to issue a written partial denial that fully complies with the requirements of section 9(a) of FOIA. Further, the Village 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 Mr. Brad VanHoose 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

⁶Because the Village did not comply with the statutory requirements for responding to Mr. VanHoose's FOIA request, the Village is precluded from treating the request as unduly burdensome or assessing copying fees for the records.