



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 29, 2013

PUBLIC ACCESS OPINION 13-005
(Request for Review 2013 PAC 22996)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Sherri Krogman
202 North Broadway St.
Cleveland, Illinois 61241

The Honorable Jim White
Mayor, Village of Cleveland
408 Jackson Street
Cleveland, Illinois 61241

Dear Ms. Krogman and Mayor White:

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 Cleveland (Village) violated sections 3(d) and 9(a) of FOIA (5 ILCS 140/3(d), 9(a) (West 2010)), by failing to comply with, deny, or otherwise appropriately respond to a FOIA request submitted by Ms. Sherri Krogman within five business days following its receipt.

BACKGROUND

According to the information we have been furnished, on January 9, 2013, Ms. Krogman submitted a FOIA request to the "Village of Cleveland[,] * * * including FOIA Officer/Treasurer Lindell, Clerk Erickson, [and] Mayor White[.]" The request sought the following information: copies of the Village's checkbook register of the General Fund from January 1, 2012, through December 31, 2012; copies of the Treasurer's reports from January 1, 2012, through December 31, 2012; and copies of invoices paid or to be paid for services

Ms. Sherri Krogman
Mayor Jim White
April 29, 2013
Page 2

provided by Village Attorney Joseph Polaschek from December 1, 2011, through January 9, 2013.¹

On January 17, 2013, Ms. Krogman submitted a Request for Review to the Public Access Bureau, alleging that the Village had failed to respond to her FOIA request.² The Request for Review was received by the Public Access Bureau later that same day. On January 24, 2013, the Public Access Bureau forwarded a copy of Ms. Krogman's Request for Review to Mayor White and asked that the Village "provide a written explanation of its receipt and handling of Ms. Krogman's January 9, 2013, FOIA request."³ As of the date of this binding opinion, the Village has neither responded to Ms. Krogman's FOIA request, nor to the Public Access Bureau's request for an explanation of the Village's handling of this FOIA request. On March 15, 2013, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.⁴

ANALYSIS

Initially, we note that the Public Access Bureau has received conflicting information concerning who is serving as the appointed FOIA officer for the Village, or indeed, whether anyone is currently acting in that capacity. Section 3.5(a) of FOIA (5 ILCS 140/3.5(a) (West 2010)) requires every public body to "designate one or more officials or employees to act as its Freedom of Information officer or officers. * * * Freedom of Information officers, or their designees, shall receive requests submitted to the public body under this Act, ensure that the public body responds to requests in a timely fashion, and issue responses under this Act." Further, every public body is required to display and make available for copying "[a] brief description of the methods whereby the public may request information and public records, a directory designating [its] Freedom of Information officer or officers, [and] the address where requests for public records should be directed." 5 ILCS 140/4 (West 2010).

The Village is therefore required to have one or more FOIA officers designated and acting at all times and to provide notice of the procedures for obtaining records to the public

¹FOIA request from Sherri Krogman to Freedom of Information Officer, Village of Cleveland (January 9, 2013).

²Request for Review from Sherri Krogman to Public Access Counselor, Public Access Bureau (January 17, 2013).

³Letter from Lindsay LaVine, Assistant Attorney General, Public Access Bureau to Mayor Jim White, Village of Cleveland (January 24, 2013).

⁴Letter from Lindsay LaVine, Assistant Attorney General, Public Access Bureau, to Sherri Krogman and Mayor Jim White, Village of Cleveland (March 15, 2013).

Ms. Sherri Krogman
Mayor Jim White
April 29, 2013
Page 3

in accordance with the requirements of the Act. To the extent that the Village is not in compliance with any of these requirements, it is directed to come into compliance immediately.

With respect to the failure of the Village to respond to Ms. Krogman's FOIA request, "[i]t is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2010). Pursuant to 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(d) of FOIA (5 ILCS 140/3(d) (West 2010)) 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 Ms. Krogman's FOIA request, extend the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2010)), or deny the request within 5 business days after its receipt. 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 positions of each person responsible for the denial. Each notice of

Ms. Sherri Krogman
Mayor Jim White
April 29, 2013
Page 4

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 Ms. Krogman's January 9, 2013, FOIA request, the Village violated sections 3(d) and 9(a) of FOIA.

FINDINGS AND CONCLUSIONS

- 1) On January 9, 2013, Ms. Sherri Krogman submitted a FOIA request to the Village of Cleveland requesting certain financial records.
- 2) The Village did not respond to Ms. Krogman's FOIA request.
- 3) On January 17, 2013, Ms. Krogman submitted a Request for Review of the Village's denial of her FOIA request to the Public Access Counselor. Ms. Krogman'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 pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 4) On January 24, 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 Ms. Krogman's January 9, 2013, FOIA request. The Village did not respond to that letter or otherwise provide the Public Access Counselor with an explanation of its basis for failing to address Ms. Krogman's FOIA request.
- 5) The failure of the Village to comply with Ms. Krogman's request, extend the time for response pursuant to section 3(e) of FOIA, or deny the request in whole or in part within five 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.

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 Ms. Krogman's request for public records. Accordingly, the Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Krogman 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,

Ms. Sherri Krogman
Mayor Jim White
April 29, 2013
Page 5

effective September 22, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012).⁵ 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.

The Village is also requested to provide the Public Access Bureau with the name and contact information of its FOIA officer(s) within five business days of receipt of this binding opinion, and to make the information required under section 4 of FOIA (5 ILCS 140/4 (West 2010)) available to the public. The Village is reminded that FOIA officer(s) must complete the Attorney General's electronic training curriculum within 30 days after assuming that position. 5 ILCS 140/3.5 (West 2010).

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 Ms. Sherri Krogman 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

⁵Because the Village did not comply with the statutory requirements for responding to Ms. Krogman's FOIA request, it is precluded from treating the request as unduly burdensome or assessing copying fees for the records.