



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 14, 2014

**PUBLIC ACCESS OPINION 14-007
(Request for Review 2014 PAC 29561)**

FREEDOM OF INFORMATION ACT:

Duty to Respond to FOIA Requests; Duty to
Conduct Reasonable Search for Responsive
Records; Duty to Disclose Public Records;
A Public Body That Fails to Respond Within
the Requisite Period May Not Treat Request
as Unduly Burdensome

Ms. Becky Schlikerman
Chicago Sun-Times
350 North Orleans
Chicago, Illinois 60654

Ms. Jaculin Jerman Milovich
Senior Assistant General Counsel
Board of Education of the City of Chicago
125 South Clark Street, Suite 700
Chicago, Illinois 60603

Dear Ms. Schlikerman and Ms. Milovich:

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 2012)). For the reasons discussed below, this office concludes that Chicago Public Schools (CPS) violated FOIA by: (1) failing to respond to Ms. Becky Schlikerman's FOIA request within five business days of receipt or within a properly extended period for response; (2) failing to conduct a reasonable search for records; and (3) failing to provide certain responsive public records in its possession. In addition, because CPS failed to issue a timely response to the request, this office concludes that CPS is precluded from treating the request as unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)).

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BACKGROUND

On March 7, 2014, Ms. Schlikerman, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to CPS via e-mail seeking: (1) all computer-generated eligibility sheets sent to the Director of the Chicago Public High Schools Athletic Association following athletic contests in the 2013-2014 school year; (2) "[a]ny and all contracts and or agreements by Chicago Public Schools or any of its schools with Chicago State University for the 2013-2014 school year"; and (3) "[a]ny and all receipts and or records showing proceeds – by CPS and/or any of its schools – from tickets sold at any and all athletic events in the 2013-2014 school year."¹ On March 10, 2014, CPS acknowledged receiving the FOIA request, although it did not specify the date on which it was received.² On March 18, 2014, the sixth business day after March 10, 2014, CPS extended the time for response by five business days,³ to March 25, 2014, citing a prior version of section 3(e)(i) of FOIA (5 ILCS 140/3(e)(i) (West 2012)).⁴ On March 25, 2014, Ms. Schlikerman narrowed the portion of her request seeking computer eligibility sheets to those submitted for the sport of basketball.⁵

On May 5, 2014, CPS issued its first response to the March 7, 2014, FOIA request,⁶ furnishing Ms. Schlikerman with computer eligibility sheets after having redacted student identifying information pursuant to section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2013 Supp.)). CPS did not address or respond to the other two portions of Ms. Schlikerman's

¹E-mail from Becky Schlikerman, Staff Reporter, *Chicago Sun-Times*, to FOIA Officer (March 7, 2014).

²E-mail from Cassandra D. Daniels, FOIA Officer, Chicago Public Schools, Law Department, to Becky Schlikerman (March 10, 2014).

³E-mail from Cassandra D. Daniels, Freedom of Information Act Officer, Chicago Public Schools, to Becky Schlikerman (March 18, 2014).

⁴CPS's extension e-mail of March 18, 2014, cited "section 203(d)(1)," which this office construes as a reference to a prior version (Ill. Rev. Stat. 1991, ch. 116, par. 203(d)(i)) of section 3(e)(i) of FOIA.

⁵E-mail from Becky [Schlikerman] to FOIA, FOIA [Officer, Chicago Public Schools] (March 25, 2014).

⁶Ms. Schlikerman submitted an earlier Request for Review to the Public Access Bureau on April 1, 2014, alleging that CPS had not responded to her March 7, 2014, FOIA request. The issue in that Request for Review was resolved when CPS responded to the request on May 5, 2014, and May 21, 2014. See, Ill. Att'y Gen. PAC Req. Rev. Ltr. 28712, issued May 30, 2014.

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request in this response.⁷ On May 9, 2014, Ms. Schlikerman contacted CPS's FOIA Officer with regard to the two outstanding portions of her request.⁸ On May 21, 2014, CPS issued a supplemental response asserting that it had searched all of its contract records but did not locate any responsive contracts or agreements by CPS or any of its schools with Chicago State University for the 2013-14 school year. CPS further asserted that it "does not have a uniform method in place for schools to record ticket sales in the system. The CPS Finance office and Office of Sports Administration has searched it[]s records. None were found, responsive to your request."⁹

On May 27, 2014, Ms. Schlikerman submitted a Request for Review to the Public Access Counselor disputing CPS's response to the second two portions of her request.¹⁰ Specifically, Ms. Schlikerman questioned CPS's assertion that it does not possess responsive contracts or agreements with Chicago State University or records documenting proceeds from ticket sales for sporting events:

In regards to the sporting event revenue request, CPS essentially argues it does not have a single record documenting a single dollar being earned at any CPS sporting event during an entire school year.

This cannot possibly be the case.

While it may be true CPS does not have a uniform record[] keeping system, it is still required under the FOIA to produce these records.

* * *

Also, for the record, though CPS did not claim this request was not overburdensome, it should be noted CPS waived its right to make

⁷E-mail from Cassandra D. Daniels, FOIA Officer, Chicago Public Schools, Law Department, to Becky Schlikerman (May 5, 2014).

⁸E-mail from Becky Schlikerman, *Chicago Sun-Times*, to Cassandra Daniels (May 9, 2014).

⁹E-mail from Cassandra D. Daniels, FOIA Officer, Chicago Public Schools, Law Department, to Becky Schlikerman (May 21, 2014).

¹⁰E-mail from Becky Schlikerman, *Chicago Sun-Times*, to Steven Silverman and Sarah Pratt (May 27, 2014).

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such an argument when it failed to respond to my request within the statutory guidelines.¹¹

On May 30, 2014, the Public Access Bureau sent a copy of the Request for Review to CPS and asked, among other things, that it "describe how CPS documents receipts or proceeds from ticket sales at athletic events during the 2013-2014 school year. In your response, please clarify whether individual schools maintain such records and, if so, whether CPS attempted to obtain those records from individual schools in order to respond to Ms. Schlikerman's FOIA request."¹² CPS did not respond to the Public Access Bureau's request.

This office sent a second copy of the Request for Review to CPS on June 12, 2014, and asked for an update on the status of CPS's response to the allegations.¹³ On June 13, 2014, CPS responded that it was having record keeping problems related to Requests for Review and that its system did not reflect that it had received the copy of the Request for Review sent by this office on May 30, 2014.¹⁴ On June 25, 2014, CPS provided a substantive response to the Request for Review which stated, in relevant part:

[T]he District has no central reporting requirement that is specific for gate receipts at sporting events. Once a school tallies the cash gate receipts and deposits them in the bank, the school may record the revenue in the CPS Internal Accounts System in a variety of ways. They may identify the amount in the general sports line, in a specific-team line, in the sports referee line, or in any other line to reflect how they intend to use the revenue. These account lines typically contain revenue generated from gate receipts as well as team fundraising, sports fees and other revenue sources. The District has no capability to run a report from the Internal Accounts System that shows each school's revenues related to gate receipts only. Hard copies of the receipt of the cash from ticket

¹¹E-mail from Becky Schlikerman, *Chicago Sun-Times*, to Steven Silverman and Sarah Pratt (May 27, 2014).

¹²Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Cassandra Daniels, FOIA Officer, Chicago Public Schools (May 30, 2014).

¹³E-mail from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Jaculin Jerman Milovich (June 12, 2014).

¹⁴E-mail from Jaculin Jerman Milovich to Steven Silverman (June 13, 2014).

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sales and related bank deposit would be housed in the internal accounts files at each individual school and maintained for audit purposes. Any request to produce copies of each school's paper back-up documents of gate receipts maintained for audit purposes would be considered unduly burdensome.¹⁵

This office forwarded CPS's response to Ms. Schlikerman on June 26, 2014.¹⁶ On July 9, 2014, CPS furnished Ms. Schlikerman with records responsive to the portion of her request seeking contracts with Chicago State University. In a subsequent telephone conversation with an Assistant Attorney General in the Public Access Bureau, Ms. Schlikerman stated that she no longer sought our review of that portion of CPS's response.¹⁷ Accordingly, the scope of this binding opinion is limited to the sufficiency of CPS's response to Ms. Schlikerman's request for all records showing proceeds from tickets sold at CPS athletic events during the 2013-2014 school year.

On July 24, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.¹⁸

ANALYSIS

"It 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 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[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 2012)) 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."

¹⁵Letter from Jaculin Jerman Milovich, Senior Assistant General Counsel, Board of Education of the City of Chicago, Law Department, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (June 25, 2014).

¹⁶Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Becky Schlikerman, *Chicago Sun-Times* (June 26, 2014).

¹⁷Telephone conversation between Steve Silverman, Assistant Bureau Chief, Public Access Bureau, and Becky Schlikerman, Reporter, *Chicago Sun-Times* (July 10, 2014).

¹⁸Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Becky Schlikerman, *Chicago Sun-Times*, and Cassandra Daniels, FOIA Officer, Chicago Public Schools (July 24, 2014).

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Section 3(d) of FOIA

The statutory procedures for responding to a FOIA request are clear. Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) provides, in part:

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[.]

It is undisputed that CPS did not issue its response within five business days of receipt of the request or within a properly extended period for response. Accordingly, this office concludes that CPS violated section 3(d) of FOIA by failing to timely respond to Ms. Schlikerman's FOIA request.

Search for Records

Under FOIA, a public body is required to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body's search must be "reasonably calculated to uncover all relevant documents." *Weisberg v. Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (C.A.D.C. 1990).

In its May 21, 2014, response to the FOIA request, CPS asserted that it had unsuccessfully searched its finance and sports administration offices for records showing ticket proceeds from athletic events. However, in that response, CPS did not provide an explanation of the recordkeeping systems that it searched, or any other description of the extent of its efforts to locate responsive records. In its June 25, 2014, letter to the Public Access Bureau, CPS expressly acknowledged that it maintains records of proceeds from ticket sales for athletic events in its internal accounts system in a variety of ways. CPS also stated that individual schools maintain records of proceeds from ticket sales for athletic events. Despite these facts, CPS did not provide any explanation of its efforts to search for responsive records. Although CPS asserted that it lacks the technological capability to run a report that segregates ticket sale

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proceeds from other revenue recorded in the internal accounts system, CPS did not explain why it cannot extract at least portions of the responsive information from records in its internal accounts system, even if the information would come with other, non-responsive information. Moreover, there is no indication that CPS conducted such a search to attempt to extract at least portions of the responsive information that is recorded in its internal accounts system.

Additionally, Ms. Schlikerman's request specifically referenced receipts or proceeds of athletic events by any of CPS's schools. CPS has not indicated that it made any attempt to obtain responsive records from its individual schools, despite acknowledging that "[h]ard copies of the receipt of the cash from ticket sales and related bank deposit would be housed in the internal accounts files at each individual school and maintained for audit purposes."

Therefore, this office concludes that CPS violated FOIA by failing to demonstrate that it conducted an adequate search of its internal accounts system to locate the information that Ms. Schlikerman requested. In addition, CPS violated section 3(a) of FOIA by failing to provide any of the responsive records that it acknowledges are maintained by individual schools under its control and supervision.

Section 3(g) of FOIA

CPS's response to this office on June 25, 2014, asserts for the first time that it would be unduly burdensome to furnish Ms. Schlikerman with copies of the records that are maintained by individual schools for audit purposes. This office interprets that claim as an assertion of section 3(g) of FOIA, which provides, in pertinent 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.

However, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) provides that ***"[a] public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g)."*** (Emphasis added.) Therefore, a public body that does not timely respond to a FOIA request may not thereafter assert that a request is unduly burdensome.

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Moreover, even if CPS had issued a timely response, section 3(g) provides that before denying a request as unduly burdensome:

[t]he 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. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information. (Emphasis added.)

Accord National Ass'n of Criminal Defense Lawyers v. Chicago Police Dept., 399 Ill. App. 3d 1, 15 (1st Dist. 2010) (because two police departments failed to offer an organization an opportunity to confer with them to discuss ways for the organization to narrow its request to manageable proportions, "it appears that the police agencies have not complied with FOIA and cannot claim the undue burden exemption.").

CPS did not extend an opportunity to Ms. Schlikerman to confer with CPS to narrow her request for records of proceeds from ticket sales or provide, in its response to her FOIA request, any explanation as to why compliance with that request would be unduly burdensome or the extent to which it would burden CPS's operations. Further, CPS's response to the Public Access Bureau is largely conclusory, and fails to set out any facts from which this office could conclude that the burden of compliance on CPS outweighs the public interest in disclosure of the requested financial records. The strong public interest in disclosure of such records is reflected in both article VIII, section 1(c) of the Illinois Constitution of 1970 ("[r]eports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law[]") and section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)) ("[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.").

Accordingly, because CPS failed to issue a timely response to Ms. Schlikerman's FOIA request and failed to comply with the requisite procedures set forth in section 3(g), CPS is precluded from asserting that the request is unduly burdensome.

FINDINGS AND CONCLUSIONS

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

1) On March 7, 2014, Ms. Becky Schlikerman, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to Chicago Public Schools seeking specific categories of records including "[a]ny and all receipts and or records showing proceeds – by CPS and/or any of its schools – from tickets sold at any and all athletic events in the 2013-2014 school year."

2) On March 10, 2014, CPS acknowledged receipt of Ms. Schlikerman's FOIA request. On March 18, 2014, CPS extended the time for responding to the request by five business days pursuant to section 3(e)(i) of FOIA.

3) On May 5, 2014, CPS furnished Ms. Schlikerman with copies of records responsive to one portion of her request. However, that response did not address the portion of the request seeking records of the proceeds from ticket sales for athletic events.

4) In response to Ms. Schlikerman's follow up e-mail on May 9, 2014, regarding the outstanding portions of her request, on May 21, 2014, CPS issued a supplemental response stating that it unsuccessfully searched its finance and sports administration offices for records showing proceeds from tickets sales, but provided no details of the recordkeeping systems that were searched or the specific measures that CPS took to try to locate responsive records. The supplemental response also stated that CPS "does not have a uniform method in place for schools to record ticket sales in the system."

5) On May 27, 2014, Ms. Schlikerman submitted a Request for Review to the Public Access Counselor disputing CPS's assertion that it does not possess records showing proceeds from ticket sales for athletic events. Ms. Schlikerman'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 2012)).

6) On May 30, 2014, the Public Access Bureau forwarded a copy of the Request for Review to CPS and asked it to explain how it documented the proceeds from ticket sales for athletic events during the 2013-14 school year, to clarify whether individual schools maintain such records and, if so, whether CPS attempted to obtain those records from individual schools.

7) On June 25, 2014, CPS responded that it does maintain records of revenue from ticket sales for athletic events in its internal accounts system, but asserted that it is unable to generate a report showing the revenue that each school collected. CPS also acknowledged that

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individual schools maintain paper copies of responsive records, but asserted that it would be unduly burdensome to furnish those records to Ms. Schlikerman.

8) On July 24, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion by 30 business days pursuant to section 9(f) of FOIA, to September 8, 2014. Therefore, the Public Access Counselor may properly issue a binding opinion with respect to this matter.

9) CPS violated section 3(d) of FOIA by failing to respond to Ms. Schlikerman's FOIA request within five business days of receipt or any properly extended period for response.

10) Further, CPS has not demonstrated that it conducted a reasonably adequate search for all records showing proceeds from ticket sales for athletic events during the 2013-14 school year. CPS's assertion that it is unable to run a report from its internal accounts system showing each school's revenue from athletic events does not demonstrate that there is no alternative method of obtaining the records. Moreover, CPS has acknowledged that responsive records are maintained by individual schools under its control and supervision, but has not explained why it was not feasible to search those sources for the requested information.

11) Because CPS has acknowledged that responsive records are maintained by individual schools under its control and supervision, CPS has also violated section 3(a) of FOIA by failing to provide those records to the requester or to identify authority justifying its refusal to do so.

12) Because CPS did not issue a timely response to the FOIA request or offer Ms. Schlikerman an opportunity to narrow her request for records showing proceeds from ticket sales for sporting events to manageable proportions, CPS is now precluded from asserting that the request is unduly burdensome pursuant to section 3(g) of FOIA.

Therefore, it is the opinion of the Attorney General that CPS has improperly denied, in part, Ms. Schlikerman's Freedom of Information Act request in violation of the requirements of the Act. Accordingly, CPS is directed to take immediate and appropriate action to comply with this opinion by searching all recordkeeping systems likely to contain records showing proceeds from ticket sales for athletic events for the 2013-14 school year – including athletic events held at Chicago State University – and by providing those records to Ms. Schlikerman. In particular, with respect to revenue for gate receipts that CPS claims cannot be pinpointed in its internal accounts system, CPS should furnish hardcopies of gate receipts and related bank deposits which it acknowledges individual schools possess for audit purposes.

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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 2012). 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. Becky Schlikerman as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General