



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 29, 2014

PUBLIC ACCESS OPINION 14-011
(Request for Review 2014 PAC 30677; 30678; 30679; 30680)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Matthew L. Walberg
Reporter
Chicago Tribune
3 Westbrook Corporate Center, Suite 800
Westchester, Illinois 60154

The Honorable Eric J. Kellogg
Mayor, City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426

Dear Mr. Walberg and Mayor Kellogg:

This is a binding opinion issued by the Attorney General 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 the City of Harvey (City) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) by failing either to comply with, to deny, or to otherwise appropriately respond to four separate FOIA requests submitted by Mr. Matthew L. Walberg and Mr. Joe Mahr, *Chicago Tribune* reporters, within five business days following their receipt.

BACKGROUND

2014 PAC 30677

On July 11, 2014, Mr. Walberg submitted a FOIA request to the City via an e-mail to Sean Howard, whom he identified as the City's FOIA Officer, seeking:

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--Copies of all contracts, payments, permits and/or licenses, made or granted by the City of Harvey to Joyce Kellogg-Weaver, Joi Weaver, and/or Rommel Kellogg.

--Any applications for permits and/or licenses made to the City of Harvey by Joyce Kellogg-Weaver, Joi Weaver, and/or Rommel Kellogg.

--Any contracts, payments, permits and/or licenses made or granted by the City of Harvey to the businesses listed below.

--Any applications for permits and/or licenses made to the City of Harvey by the businesses listed below.^[1]

Below, Mr. Walberg's e-mail contained names and other information for the following businesses: Family Association Plus, Inc., Family Connection, Inc., Family Connection Plus, We Scrap 2 Inc., People First Behavioral Health Inc., K-la's Transportation Services Inc., Kel-law Enterprises, LLC, Kel-law Foundation, Incorporated, Acme Orthotic and Prosthetic Laboratories, Inc., and Lewis and Lewis, Incorporated.²

On July 18, 2014, Mr. Walberg re-sent the request to the City via an e-mail to Deputy City Clerk Cheryl Anderson, stating: "I was informed that you are now the City of Harvey's FOIA officer. Please see the FOIA below that was sent July 11 to Mr. Sean Howard."³ On July 22, 2014, Ms. Anderson acknowledged receipt of the FOIA request and stated that she had forwarded it to the Building and Planning Department.⁴

¹E-mail from Matthew Walberg, *Chicago Tribune* reporter, to City of Harvey, FOIA officer Sean Howard (July 11, 2014).

²E-mail from Mathew Walberg, *Chicago Tribune* reporter, to City of Harvey, FOIA officer Sean Howard (July 11, 2014).

³E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Cheryl Anderson (July 18, 2014). All four of the FOIA requests from Mr. Walberg and Mr. Mahr addressed in this binding opinion were initially sent to Sean Howard at sthmedia@aol.com; Mr. Walberg advised this office that he used that e-mail address at the direction of Mr. Howard. Mr. Walberg's follow-up e-mails sent on July 18 and July 23, 2014, were sent to both Mr. Howard at sthmedia@aol.com and to Cheryl Anderson at CAnderson@cityofharvey.org.

⁴E-mail from Cheryl Anderson to Matthew Walberg (July 22, 2014).

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On July 11, 2014, Mr. Walberg submitted a FOIA request to the City via an e-mail to Mr. Howard, seeking:

--Copies of all contracts between the City of Harvey and David A. Muhammad, aka David A. Patterson, and any of his companies, including but not limited to Tri-Sphere Construction.

--Copies of all payments from the City of Harvey to David A. Muhammad, aka David A. Patterson, and any of his companies, including but not limited to Tri-Sphere Construction.

--Copies of all applications for City of Harvey permits or licenses filed by David A. Muhammad, aka David A. Patterson, and any of his companies, including but not limited to Tri-Sphere Construction.

--Copies of all permits or licenses granted by the City of Harvey to David A. Muhammad, aka David A. Patterson, and any of his companies, including but not limited to Tri-Sphere Construction.

--Copies of all contracts between the City of Harvey and Norman Wylie and any of his companies, including but not limited to Images Sports Bar Incorporated

--Copies of all payments from the City of Harvey to Norman Wylie and any of his companies, including but not limited to Images Sports Bar Incorporated

--Copies of all applications for City of Harvey permits or licenses filed by Norman Wylie and any of his companies, including but not limited to Images Sports Bar Incorporated

--Copies of all permits or licenses granted by the City of Harvey to Norman Wylie and any of his companies, including but not limited to Images Sports Bar Incorporated^[5]

⁵E-mail from Matthew Walberg, *Chicago Tribune* reporter, to City of Harvey, FOIA Officer Sean Howard (July 11, 2014).

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On July 18, 2014, Mr. Walberg re-sent the request to the City via an e-mail to Ms. Anderson, stating: "I was informed that you are now the City of Harvey's FOIA officer. Please see the FOIA below that was sent July 11 to Mr. Sean Howard."⁶ On July 22, 2014, Ms. Anderson acknowledged receipt of the FOIA request and stated that she had forwarded it to the Planning Department.⁷

2014 PAC 30679

On June 20, 2014, Mr. Walberg and Mr. Mahr submitted a FOIA request to the City via an e-mail to Mr. Howard, seeking:

--All licenses or permits – including but not limited to liquor, business, or entertainment-related licenses – issued by the City of Harvey to the owners and/or agents of Queen of Diamonds, 14719 S. Halsted, Harvey IL.

--All applications filed for licenses or permits filed by the owners and/or agents of Queen of Diamonds with the City of Harvey.

--All ordinances, resolutions, agenda items or other records of any action or debate concerning Queen of Diamonds by the Harvey City Council.

--Copies of any correspondence between the owners and/or agents of Queen of Diamonds and elected officials or employees of the City of Harvey.

--Any fines, fees or payments made by the owners and/or agents of Queen of Diamonds to the City of Harvey.^{8]}

On July 23, 2014, Mr. Walberg re-sent the June 20, 2014, FOIA request to the City via an e-mail to Mr. Howard and Ms. Anderson, stating: "It has been more than a month

⁶E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Cheryl Anderson (July 18, 2014).

⁷E-mail from Cheryl Anderson to Matthew L. Walberg (July 22, 2014).

⁸E-mail from Matthew Walberg and Joe Mahr, *Chicago Tribune* reporters, to City of Harvey, Attn. Sean Howard, FOIA Officer (June 20, 2014).

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since I filed the FOIA request shown below. When can I expect a response from the city?"⁹ This office has not received any indication that the City replied.

2014 PAC 30680

On June 20, 2014, Mr. Walberg and Mr. Mahr submitted a FOIA request to the City via an e-mail to Mr. Howard, seeking:

--Any federal subpoena(s) received by the City of Harvey and/or its elected officials or employees concerning Joseph T. Letke and/or his affiliated businesses, including but not limited to Alli Financial, Letke & Associates and Public Funding Enterprises.

--Any records tendered by the City of Harvey to federal law enforcement authorities pursuant to the aforementioned subpoena(s).^{10]}

On July 23, 2014, Mr. Walberg re-sent the June 20, 2014, FOIA request to the City via an e-mail to Deputy Clerk Anderson and Mr. Howard stating: "It has been more than a month since I filed the FOIA request shown below. When can I expect a response from the city?"¹¹ On July 23, 2014, Ms. Anderson acknowledged receipt of the FOIA request on that date and stated that she had forwarded it to the Building and Planning Department. She asked Mr. Walberg to wait until July 25, 2014, for a response.¹²

Further Inquiry

On August 1, 2014, the Public Access Bureau received Mr. Walberg's four Requests for Review, each alleging that the City had failed to produce the requested records or to otherwise substantively respond to the FOIA requests.¹³ On August 8, 2014, the Public Access

⁹E-mail from Matthew Walberg, *Chicago Tribune*, to Deputy Clerk Anderson and Sean Howard (July 23, 2014).

¹⁰E-mail from Matthew Walberg and Joe Mahr, *Chicago Tribune* reporters, to City of Harvey, Sean Howard, FOIA Officer (June 20, 2014).

¹¹E-mail from Matthew Walberg, *Chicago Tribune*, to Deputy Clerk Anderson and Sean Howard, City of Harvey (July 23, 2014).

¹²E-mail from Cheryl Anderson, City of Harvey, to Matthew L. Walberg (July 23, 2014).

¹³E-mails from Matthew Walberg, *Chicago Tribune* reporter, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 1, 2014).

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Bureau forwarded copies of the Requests for Review to the City and asked for "a detailed explanation of the City's receipt and handling of Mr. Walberg's" FOIA requests.¹⁴ The City did not respond. On August 22, 2014, an Assistant Attorney General (AAG) in the Public Access Bureau contacted Ms. Anderson by telephone and inquired whether the City had responded to the FOIA requests or would issue responses. Ms. Anderson confirmed that the City had received the FOIA requests and the Requests for Review, copies of which were transmitted to the City with this office's letters of further inquiry, and stated that the City would respond both to Mr. Walberg and to this office on August 26, 2014. On August 29, 2014, the AAG contacted Ms. Anderson again by telephone, and she reiterated that the City's responses were forthcoming. On September 5, 2014, Mr. Walberg verified by e-mail that he had not received any responses from the City.¹⁵

As of the date of this binding opinion, this office has received no responses from the City nor any confirmation that it has responded to the four FOIA requests.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 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."

Section 3(d) of FOIA 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

¹⁴Letters from Josh Jones, Assistant Attorney General, Public Access Bureau, to Cheryl Anderson, FOIA Officer, City of Harvey Police Department (August 7, 2014).

¹⁵E-mail from Matthew Walberg, *Chicago Tribune* reporter, to Joshua Jones (September 5, 2014).

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).

It is not clear from the information provided whether the City received the initial FOIA requests that were e-mailed on June 20, 2014, and July 11, 2014. The City, however, did acknowledge receipt of the two July 11, 2014, FOIA requests on July 18, 2014, and acknowledged one of the June 20, 2014, requests on July 23, 2014, the date it was re-sent. Although the City did not acknowledge receipt of the fourth FOIA request (2014 PAC 30679), it was re-sent in the same manner to the City's FOIA Officer at her City e-mail address on July 23, 2014, one minute after the other June 20, 2014, FOIA request that she acknowledged receiving. Even assuming that the City did not receive the FOIA requests until July 18, 2014, and July 23, 2014, respectively, the City did not comply with the FOIA requests, extend the times for its responses pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)), or issue written denials of the requests within 5 business days after their receipt, as required by section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

Having given due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On June 20, 2014, Mr. Matthew Walberg and Mr. Joe Mahr, *Chicago Tribune* reporters, submitted two FOIA requests to the City of Harvey. One sought records concerning the Queen of Diamonds club and the other sought records concerning a subpoena relating to Mr. Joseph Letke. The City did not, within 5 business days, either comply with the FOIA requests, extend the times for its responses pursuant to section 3(e) of FOIA, or deny the requests in whole or in part, as is required by section 3(d) of FOIA.

2) On July 11, 2014, Mr. Walberg submitted two additional FOIA requests to the City seeking records of contracts, permits, payments, and licenses involving several named individuals and associated businesses. On July 18, 2014, Mr. Walberg re-submitted the two July 11, 2014, requests to the City. Deputy City Clerk Cheryl Anderson acknowledged receipt of these requests on July 22, 2014. The City did not, within 5 business days, either comply with the FOIA requests, extend the times for its responses pursuant to section 3(e) of FOIA, or deny the requests in whole or in part, as is required by section 3(d) of FOIA.

3) On July 23, 2014, Mr. Walberg sent additional copies of the June 20, 2014, FOIA requests to the City and inquired about the status of the City's responses. Deputy City Clerk Cheryl Anderson acknowledged receipt of one of the requests on July 23, 2014, and

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requested that the City be permitted until July 25, 2014, to respond. The City did not respond to the requests.

4) On August 1, 2014, Mr. Walberg requested the Public Access Counselor to review the City's denial of each of the four FOIA requests.. The Requests for Review were timely filed and otherwise comply with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)). Therefore, the Public Access Counselor may properly issue a binding opinion with respect to these matters.

5) In letters dated August 7, 2014, the Public Access Bureau determined that further action was warranted as to each of the Requests for Review. On August 8, 2014, the Public Access Bureau forwarded copies of the Requests for Review to the City, together with letters requesting explanations of the City's receipt and handling of Mr. Walberg's FOIA requests. The City did not respond or otherwise provide the Public Access Counselor with explanations of its reasons for failing to respond to the FOIA requests.

6) To date, the City has not responded either to the FOIA requests or to the Public Access Counselor's inquiries.

7) The failure of the City to either comply with the FOIA requests, to extend the times for its responses pursuant to section 3(e) of FOIA, or to deny the requests in whole or in part, within 5 business days, violated the requirements of section 3(d) of FOIA.

Therefore, it is the opinion of the Attorney General that the City has violated section 3(d) of FOIA by failing to respond to the requests for public records as required by the Act. Accordingly, the City is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Walberg and Mr. Mahr with all records responsive to their June 20, 2014, and July 11, 2014, FOIA requests, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2013 Supp.)).¹⁶ If the City determines that any portions of the responsive records are exempt from disclosure under section 7, the City is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2012)). Further, the City 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

¹⁶Because the City did not comply with the statutory requirements for responding to Mr. Walberg and Mr. Mahr's FOIA requests, the City is precluded from treating the requests as unduly burdensome or imposing copying fees for the records. 5 ILCS 140/3(d) (West 2012) ("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).").

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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 Mr. Matthew Walberg 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

cc: Ms. Cheryl Anderson
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