



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 15, 2015

PUBLIC ACCESS OPINION 15-013
(Request for Review 2015 PAC 37664)

FREEDOM OF INFORMATION ACT:
Failure to Respond to FOIA Requests

Robert E. Bionaz, Ph.D.
8720 South Utica Avenue
Evergreen Park, Illinois 60805

Ms. Robin M. Hawkins
Associate Vice President &
Senior Associate General Counsel
Chicago State University
Office of Labor & Legal Affairs
9501 South King Drive/ADM 318
Chicago, Illinois 60628-1598

Dear Dr. Bionaz and Ms. Hawkins:

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 2014)). For the reasons discussed below, this office concludes that Chicago State University (CSU) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) by failing to comply with, deny, or otherwise appropriately respond to a FOIA request submitted by Dr. Robert E. Bionaz.

BACKGROUND

On September 15, 2015, Dr. Bionaz submitted a FOIA request to CSU via an e-mail to Ms. Robin M. Hawkins, CSU's FOIA Officer, seeking copies of records maintained pursuant to sections 3.5(a)(1), 3.5(a)(2), 3.5(a)(3), and 3.5(a)(4) of FOIA (5 ILCS 140/3.5(a)(1),

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(a)(2), (a)(3), (a)(4) (West 2014)) since July 31, 2013.¹ On September 23, 2015, Dr. Bionaz submitted a Request for Review to the Public Access Bureau alleging that CSU had failed to produce the requested records or otherwise respond to his FOIA request.² On October 1, 2015, the Public Access Bureau forwarded a copy of the Request for Review to CSU and asked CSU to notify this office whether it had received and responded to Dr. Bionaz's FOIA request; if it had not yet responded, this office asked CSU to respond to Dr. Bionaz and to provide a copy of its response to this office.³ No response was received from CSU.

On October 27, 2015, an Assistant Attorney General with the Public Access Bureau left a voicemail message for Ms. Hawkins seeking the status of CSU's response to this office's October 1, 2015, inquiry; Ms. Hawkins did not respond. On October 29, 2015, this office sent Ms. Hawkins a second letter noting that CSU had not responded to this office's October 1, 2015, letter, and specifically stating that *"if we do not receive a response within 7 business days, we may proceed to resolve this matter based on the available information."*⁴ (Emphasis in original.) On November 20, 2015, this office properly extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.⁵ As of the date of this binding opinion, this office has not received a written response from CSU, nor any confirmation that it has responded to Dr. Bionaz's FOIA request.

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 2014). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2014)), "[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 2014)) provides that "[e]ach public body shall

¹E-mail from Robert E. Bionaz, Associate Professor of History, Chicago State University, to Robin M. Hawkins, Esq. (September 15, 2015).

²E-mail from Robert E. Bionaz, Ph.D., to Public Access Counselor (September 23, 2015).

³Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Robin Hawkins, Associate General Counsel and FOIA Officer, Chicago State University (October 1, 2015).

⁴Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Robin M. Hawkins, Esq., Associate Vice President & Senior Associate General Counsel, Chicago State University (October 29, 2015), at 2.

⁵Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Robert E. Bionaz, Associate Professor of History, Chicago State University, and Robin M. Hawkins, Esq., Associate Vice President & Senior Associate General Counsel, Chicago State University (November 20, 2015).

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make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 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 CSU did not: comply with Dr. Bionaz's request; extend the time for response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)); or deny the request in writing within 5 business days after September 15, 2015, the date of CSU's receipt of the request. CSU's failure to comply with the requisite procedures constitutes a denial of the request. Accordingly, by failing to respond to Dr. Bionaz's September 15, 2015, FOIA request, CSU violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

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

1) On September 15, 2015, Dr. Robert E. Bionaz submitted a FOIA request to Chicago State University seeking copies of records generated pursuant to sections 3.5(a)(1), 3.5(a)(2), 3.5(a)(3), and 3.5(a)(4) of FOIA. CSU did not, within 5 business days after receipt: comply with the FOIA request; extend the time for its response pursuant to section 3(e) of FOIA; or deny the request in whole or in part, as is required by section 3(d) of FOIA.

2) On September 23, 2015, Dr. Bionaz asked the Public Access Counselor to review CSU's denial of the FOIA request. The 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 2014)).

3) On October 1, 2015, the Public Access Bureau forwarded a copy of Dr. Bionaz's Request for Review to CSU's FOIA Officer, together with a letter asking CSU to advise

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this office whether it had received and responded to Dr. Bionaz's September 15, 2015, FOIA request. CSU did not respond to this office's inquiry.

4) On October 29, 2015, this office sent CSU's FOIA Officer a second letter, stating that if CSU did not respond to this office within 7 business days, the Request for Review would be resolved based on the available information.

5) On November 20, 2015, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA, to January 6, 2016. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) To date, this office has received no confirmation that CSU has responded to Dr. Bionaz's FOIA request, nor has CSU responded to this office's inquiries.

7) The failure of CSU to comply with the FOIA request, extend the time for its response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, within 5 business days after receiving the request, violated the requirements of section 3(d) of FOIA.

Therefore, it is the opinion of the Attorney General that CSU has violated section 3(d) of FOIA by failing to respond to Dr. Bionaz's request for public records as required by the Act. Accordingly, CSU is hereby directed to take immediate and appropriate action to comply with this opinion by providing Dr. Bionaz with all records responsive to his September 15, 2015, FOIA request, subject only to permissible redactions, if any, of "private information"⁶ under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014), as amended by Public Act 99-298, effective August 6, 2015).⁷ If CSU determines that any portion of the responsive records is exempt from disclosure under section 7(1)(b), CSU 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 2014)).

⁶Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

⁷Because CSU did not comply with the statutory requirements for responding to Dr. Bionaz's FOIA request, CSU is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2014)) ("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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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 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with 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. Robert E. Bionaz as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General