



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 14, 2016

PUBLIC ACCESS OPINION 16-001
(Request for Review 2015 PAC 38674)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Mick Dumke
Staff Reporter
Chicago Sun-Times
350 North Orleans Street, 10th Floor
Chicago, Illinois 60654

Mr. Ralph Price
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653-1020

Dear Mr. Dumke and Mr. Price:

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 the Chicago Police Department (CPD) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Mick Dumke.

BACKGROUND

On November 2, 2015, Mr. Dumke, on behalf of the *Chicago Sun-Times*, submitted a two-part FOIA request to CPD seeking:

1--All First Amendment-related worksheets generated from
August 2014 through October 2014.

Mr. Mick Dumke
Mr. Ralph Price
January 14, 2016
Page 2

2--Emails, Open Source Intelligence (OSINT), and other communications issued by the Crime Prevention Information Center (CPIC) from August to October 2014 regarding the Revolutionary Communist Party; Ferguson; the National Moment of Silence; and/or Black Lives Matter.¹¹⁾

On November 18, 2015, Mr. Dumke submitted a Request for Review to the Public Access Bureau alleging that CPD had failed to produce the requested records or otherwise respond to his FOIA request.² On November 23, 2015, the Public Access Bureau forwarded a copy of the Request for Review to CPD and asked CPD to advise this office whether it had received and responded to Mr. Dumke's FOIA request; if it had not yet responded to Mr. Dumke, this office asked CPD to do so and to provide a copy of its response.³

On December 10, 2015, the Public Access Bureau sent a second letter to CPD stating that CPD was obligated under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2014)) to advise this office whether it had received and responded to Mr. Dumke's request.⁴ On December 17, 2015, CPD's Office of Legal Affairs responded that "[a]fter consultation with the Department's FOIA Unit, it was determined that this response is still open under FOIA 15-6519 and the response should be forthcoming."⁵ As of the date of this binding opinion, this office has not received any confirmation that CPD has responded to Mr. Dumke'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."

¹FOIA request from Mick Dumke, Staff Reporter, [*Chicago Sun-Times*], to FOIA Officer, Chicago Police Department (November 2, 2015).

²E-mail from Mick Dumke to Public Access Bureau, Office of the Illinois Attorney General (November 18, 2015).

³Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Ralph Price, General Counsel, Chicago Police Department (November 23, 2015).

⁴Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Ralph Price, General Counsel, Chicago Police Department (December 10, 2015).

⁵Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, City of Chicago, to Office of the Attorney General, Josh Jones, Assistant Attorney General (December 17, 2015).

Mr. Mick Dumke
Mr. Ralph Price
January 14, 2016
Page 3

Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall 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 CPD did not, within 5 business days after CPD's receipt thereof, comply with Mr. Dumke'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. CPD's failure to comply with the requisite procedures 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 November 2, 2015, Mr. Mick Dumke, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Chicago Police Department seeking copies of: (1) "[a]ll First Amendment-related worksheets generated from August 2014 through October 2014"; and (2) "[e]-mails, Open Source Intelligence * * *, and other communications issued by the Crime Prevention Information Center * * * from August to October 2014 regarding the Revolutionary Communist Party; Ferguson; the National Moment of Silence; and/or Black Lives Matter." CPD 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. Pursuant to section 3(d) of FOIA, the failure to do so constituted a denial of the FOIA request.

Mr. Mick Dumke
Mr. Ralph Price
January 14, 2016
Page 4

2) On November 18, 2015, Mr. Dumke asked the Public Access Counselor to review CPD's denial of his 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)). Therefore, the Public Access Counselor may properly issue a binding opinion with respect to this matter.

3) On November 23, 2015, the Public Access Bureau forwarded a copy of Mr. Dumke's Request for Review to CPD, together with a letter asking CPD to advise this office whether it had received and responded to Mr. Dumke's November 2, 2015, FOIA request. CPD did not respond to this inquiry.

4) On December 10, 2015, this office sent CPD a second letter, stating that CPD is obligated under FOIA to advise this office whether it had received and responded to Mr. Dumke's request. On December 17, 2015, CPD's Office of Legal Affairs responded that CPD's FOIA Unit was processing the request. To date, this office has received no confirmation that CPD has responded to Mr. Dumke's request.

Therefore, it is the opinion of the Attorney General that CPD has violated section 3(d) of FOIA by failing, within 5 business days after receiving Mr. Dumke's November 2, 2015, FOIA request, to provide the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part. Accordingly, CPD is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Dumke with all records responsive to his November 2, 2015, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016).⁶ If CPD determines that any portion of the responsive records is exempt from disclosure under section 7, CPD 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)).

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

⁶Because CPD did not comply with the statutory requirements for responding to Mr. Dumke's FOIA request, CPD 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).").

Mr. Mick Dumke
Mr. Ralph Price
January 14, 2016
Page 5

35 days of the date of this decision naming the Attorney General of Illinois and Mr. Mick Dumke as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read "Michael J. Luke". The signature is stylized with a large, sweeping initial "M" and a long, horizontal flourish extending to the right.

Michael J. Luke
Counsel to the Attorney General