



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 27, 2016

PUBLIC ACCESS OPINION 16-004
(Request for Review 2016 PAC 41880)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests; Duty
To Provide Timely Notification of Extension
For Responding to FOIA Requests

Mr. Dan Mihalopoulos
Staff Reporter
Chicago Sun-Times
350 North Orleans
10th Floor
Chicago, Illinois 60654

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

Dear Mr. Mihalopoulos 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, properly extend the time for response, or otherwise appropriately respond to a FOIA request submitted by Mr. Dan Mihalopoulos.

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BACKGROUND

On April 5, 2016, Mr. Mihalopoulos, on behalf of the *Chicago Sun-Times*, submitted a three-part FOIA request to CPD seeking:

- * The district-by-district sworn CPD staffing levels as of today. This should include a district-by-district breakdown of staffing levels by rank.
- * The district-by-district sworn CPD staffing levels as of Jan. 1, 2015 or the closest date to Jan. 1, 2015 for which that information is available. This should include a district-by-district breakdown of staffing levels by rank.
- * All personnel orders issued by the department since the time of our last Freedom of Information Act request for those records, which was filed Jan. 24, 2014. The information on the orders should include, but may not be limited to, the names of police officers who are being transferred, their star numbers, their employee numbers, the name of the units that officers were transferred from, and the name of the units that they are being transferred to. These records also include the names of police officers who were resigning, who were going on leaves of absence or who were hired by the CPD.^[1]

On April 20, 2016, CPD sent an e-mail to Mr. Mihalopoulos with an attached letter dated April 13, 2016, stating that it had received his FOIA request dated April 5, 2016, and that it was extending the time period for its response by 5 business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)).² CPD's letter referenced section 3(e)(ii) of FOIA (5 ILCS 140/3(e)(ii) (West 2014))³ by indicating that the basis for the extension was that "the

¹E-mail from Dan Mihalopoulos, Staff Reporter, *Chicago Sun-Times*, to Freedom of Information Officer, Chicago Police Department (April 5, 2016).

²Letter from P.O. Rodriguez #12243, Freedom of Information Officer, Chicago Police Department, to Dan Mihalopoulos, Staff Reporter, [*Chicago Sun-Times*] (April 13, 2016).

³Section 3(e)(ii) of FOIA, which is one of seven enumerated reasons for which a public body may unilaterally extend the time for response by 5 business days, authorizes such an extension when "the request requires the collection of a substantial number of specified records[.]"

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request may require the collection of a substantial number of specified records, if any exist[.]”⁴ On April 22, 2016, Mr. Mihalopoulos sent an e-mail to CPD stating: "I don't understand this. You already took one five-day extension. The letter you sent me on April 20 was dated 13. So we have passed 10 business days. Please let me know when the documents will be ready.”⁵ On April 25, 2016, CPD's FOIA Officer replied by e-mail, stating that he was waiting for records from another department and that he would update Mr. Mihalopoulos on April 29, 2016.⁶ On May 5, 2016, Mr. Mihalopoulos sent an e-mail to CPD asking about the status of CPD's response to his FOIA request.⁷ On May 11, 2016, CPD replied by e-mail requesting that Mr. Mihalopoulos grant it an extension of an additional week to respond to his FOIA request.⁸ On May 11, 2016, Mr. Mihalopoulos responded by requesting a specific date on which the records would be provided, adding that he would deny CPD's request for an extension if the requested date was not provided.⁹ The CPD responded to Mr. Mihalopoulos later that same day, but did not specify a date by which Mr. Mihalopoulos would receive the records responsive to his request.¹⁰

In an e-mail dated May 12, 2016, Mr. Mihalopoulos submitted a Request for Review to the Public Access Bureau alleging that CPD had failed to provide a specific date that it would provide the requested records or otherwise properly respond to his FOIA request.¹¹

⁴Letter from P.O. Rodriguez #12243, Freedom of Information Officer, Chicago Police Department, to Dan Mihalopoulos, Staff Reporter, [*Chicago Sun-Times*] (April 13, 2016).

⁵E-mail from Dan Mihalopoulos, [Staff Reporter, *Chicago Sun-Times*], to FOIA [Officer, Chicago Police Department] (April 22, 2016).

⁶E-mail from [FOIA Officer, Chicago Police Department], to [Dan Mihalopoulos, Staff Reporter, *Chicago Sun-Times*] (April 25, 2016).

⁷E-mail from Dan Mihalopoulos, [Staff Reporter, *Chicago Sun-Times*], to FOIA [Officer, Chicago Police Department] (May 5, 2016).

⁸E-mail from [FOIA Officer, Chicago Police Department], to [Dan Mihalopoulos, Staff Reporter, *Chicago Sun-Times*] (May 11, 2016).

⁹E-mail from Dan Mihalopoulos, [Staff Reporter, *Chicago Sun-Times*], to Officer Rodriguez, [Chicago Police Department] (May 11, 2016).

¹⁰E-mail from FOIA [Officer, Chicago Police Department], to Dan Mihalopoulos, [Staff Reporter, *Chicago Sun-Times*] (May 11, 2016).

¹¹E-mail from Dan Mihalopoulos, [Staff Reporter], *Chicago Sun-Times* to Public Access (May 12, 2016).

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On May 17, 2016, the Public Access Bureau forwarded a copy of the Request for Review to CPD and asked CPD to notify this office whether it had responded to Mr. Mihalopoulos' FOIA request; if it had not yet responded to Mr. Mihalopoulos, this office asked CPD to do so and to provide a copy of its response to this office.¹² On May 18, 2016, CPD's Office of Legal Affairs responded that "[a]fter consultation with the Department's FOIA Unit, it was determined that this request is still open under FOIA P046225 and the response should be forthcoming."¹³ As of the date of this binding opinion, this office has not received any confirmation or indication that the CPD has responded to Mr. Mihalopoulos' 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 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 response, 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).

Pursuant to section 3(e) of FOIA, a public body may extend the time for its response "for not more than 5 business days from the original due date" for any of the seven

¹²Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to Ralph Price, General Counsel, Chicago Police Department (May 17, 2016).

¹³Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, Chicago Police Department to Office of the Attorney General, Matt Hartman, Assistant Attorney General (May 18, 2016).

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enumerated reasons in that section. Section 3(f) of FOIA (5 ILCS 140/3(f) (West 2014)) states: "When additional time is required for any of the above reasons, ***the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for extension and the date by which the response will be forthcoming.***" (Emphasis added.)

CPD's letter dated April 13, 2016, stated that it was extending the time for response pursuant to section 3(e) of FOIA. The available information indicates, however, that CPD did not notify Mr. Mihalopoulos of the basis for the extension until it forwarded the letter to him on April 20, 2016, which was eleven business days after CPD received his request. Because CPD's notification to Mr. Mihalopoulos of the extension was untimely, the period for response was not properly extended. The facts are undisputed that CPD did not, within 5 business days of CPD's receipt thereof, comply with Mr. Mihalopoulos' request, properly extend the time period for response pursuant to section 3(e) of FOIA, or deny the request in writing. As of today's date CPD still has not substantively responded to Mr. Mihalopoulos' FOIA request. CPD's failure to comply with the requisite procedures violated sections 3(a) and 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 April 5, 2016, Mr. Dan Mihalopoulos, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Chicago Police Department seeking records of current district-by-district staffing levels, district-by-district staffing levels on January 1, 2015, and all personnel orders issued by CPD since January 24, 2014.

2) On April 20, 2016, CPD e-mailed a letter dated April 13, 2016, to Mr. Mihalopoulos informing him that it had received his April 5, 2016, FOIA request, and that it was extending the time for its response by 5 business days pursuant to section 3(e) of FOIA. CPD's notification of extension to Mr. Mihalopoulos was sent more than 5 business days after it received his FOIA request. CPD did not, within 5 business days after receipt, comply with the FOIA request, properly extend the time for response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as required by section 3(d) of FOIA. Pursuant to section 3(d) of FOIA, the failure to do so constituted a denial of the request.

3) On May 12, 2016, Mr. Mihalopoulos 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 Attorney General may properly issue a binding opinion with respect to this matter.

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4) On May 17, 2016, the Public Access Bureau forwarded a copy of Mr. Mihalopoulos' Request for Review to CPD, together with a letter asking CPD to advise this office whether it had responded to Mr. Mihalopoulos' April 5, 2016, FOIA request.

5) On May 18, 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 or indication that CPD has provided any records responsive to Mr. Mihalopoulos' request.

Therefore, it is the opinion of the Attorney General that CPD has violated sections 3(a) and 3(d) of FOIA by failing, within five business days after receiving Mr. Mihalopoulos' April 5, 2016, FOIA request, to provide the requested records, to properly 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. Mihalopoulos with all records responsive to his April 5, 2016, 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).¹⁴ 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 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Dan Mihalopoulos as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹⁴Because CPD did not comply with the statutory requirements for responding to Mr. Mihalopoulos' 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).").

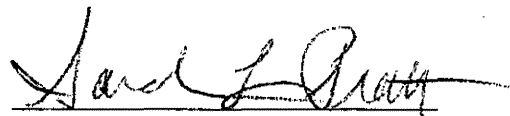
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-004) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on June 27, 2016.



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Public Access Counselor

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