



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 26, 2016

PUBLIC ACCESS OPINION 16-005
(Request for Review 2016 PAC 41381)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Cynthia J. Mossuto
14115 South Western, #338
Blue Island, Illinois 60406

The Honorable Juanita Darden
Village Clerk/FOIA Officer
Village of Dixmoor
170 West 145th Street
Dixmoor, Illinois 60426

Dear Ms. Mossuto and Ms. Darden:

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 Village of Dixmoor (Village) 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 Ms. Cynthia J. Mossuto.

BACKGROUND

On March 16, 2016, Ms. Mossuto submitted a seven-part FOIA request to the Village seeking:

1. Positions of all employee[s] of the Village of Dixmoor.

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2. Salaries of all positions for all positions of all employee[s] of the Village of Dixmoor.
3. Salaries of all elected officials of the Village of Dixmoor.
4. All names and license numbers of all contractors; including independent contractors who have done any kind of work for the Village of Dixmoor and received payment from the Village of Dixmoor. All billing and payments made to contractors, including independent contractors made by the Village of Dixmoor; dating January 1, 2014 through and including January 31, 2016.
5. All billing from legislative counsel and attorney fees from Delgado Group; billing and fees dated July 1, 2015 through and including January 31, 2016.
6. Any monies owed to the Village by any elected official; including Village President; and any Village Trustee; January 1, 2010 through and including January 31, 2016.
7. Salary of Public Works Superintendent Hubert Darden, and hours worked per week for the Village of Dixmoor by Hubert Darden.^[1]

In a letter dated April 8, 2016, and received by the Public Access Bureau on April 15, 2016, Ms. Mossuto submitted a Request for Review alleging that the Village had failed to respond to her FOIA request.² As required by section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)), Ms. Mossuto provided this office with a copy of the FOIA request she submitted to the Village in support of her Request for Review. The FOIA request submitted by Ms. Mossuto bears a "received" stamp that has been initialed and dated March 16, 2016. Ms. Mossuto confirmed in a telephone conversation with this office that her FOIA request was stamped as received by the Village Clerk's Office when she hand-delivered it to the Village.

On April 18, 2016, the Public Access Bureau forwarded a copy of the Request for Review to the Village and asked the Village to advise this office whether it had responded to Ms.

¹FOIA request from Cynthia J. Mossuto to Village of Dixmoor (March 16, 2016).

²Letter from Cynthia J. Mossuto to Illinois Attorney General, Attn: Steve Silverman (April 8, 2016).

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Mossuto's FOIA request; if it had not yet responded to Ms. Mossuto, this office asked the Village to do so and to provide this office with a copy of its response.³ The Village did not respond to the Public Access Bureau's April 18, 2016, correspondence.

On May 6, 2016, the Public Access Bureau sent an e-mail to the Village Clerk, who serves as the Village's FOIA Officer, inquiring regarding the status of the Village's response. Copies of the Request for Review and this office's April 18, 2016, letter were attached.⁴ The Village did not respond to the Public Access Bureau's May 6, 2016, e-mail. On May 16, 2016, the Public Access Bureau sent a second letter to the Village noting that the Village was obligated under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2014)) to advise this office whether it had responded to Ms. Mossuto's request.⁵ As of the date of this binding opinion, this office has not received confirmation that the Village has responded in any way to Ms. Mossuto's FOIA request.

Pursuant to section 9.5(f) of FOIA, on June 14, 2016, this office properly extended the time in which to issue a binding opinion by 30 business days, to July 27, 2016.⁶

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

³Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Juanita Darden, Village Clerk/FOIA Officer, Village of Dixmoor (April 18, 2016).

⁴E-mail from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to [Juanita] Darden (May 6, 2016).

⁵Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Juanita Darden, Village Clerk/FOIA Officer, Village of Dixmoor (May 16, 2016).

⁶Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Cynthia J. Mossuto and Juanita Darden, Village Clerk/FOIA Officer, Village of Dixmoor (June 14, 2016).

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).^{17]}

The Village has not disputed that it failed, within 5 business days after its receipt of Ms. Mossuto's FOIA request, to comply with her request, to extend the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)), to notify Ms. Mossuto that the Village was treating the request as a voluminous request in accordance with section 3.6 of FOIA, or to deny the request in writing. The Village'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 March 16, 2016, Ms. Cynthia J. Mossuto submitted a seven-part FOIA request to the Village of Dixmoor seeking copies of records pertaining to Village salaries, payments to contractors, legal fees, and other Village expenditures. The Village did not, within 5 business days after receipt of her FOIA request, comply with the request, extend the time for its response pursuant to section 3(e) of FOIA, notify Ms. Mossuto that the Village was treating the request as a voluminous request in accordance with section 3.6 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.

2) On April 8, 2016, Ms. Mossuto asked the Public Access Counselor and the Public Access Bureau to review the Village's denial of her 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)).

¹⁷See also 5 ILCS 140/3.6 (West 2014) ("Notwithstanding any provision of this Act to the contrary, a public body shall respond to a voluminous request within 5 business days after receipt.").

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3) On April 18, 2016, the Public Access Bureau forwarded a copy of Ms. Mossuto's Request for Review to the Village, together with a letter asking the Village to advise this office whether it had responded to Ms. Mossuto's March 16, 2016, FOIA request. The Village did not respond to that inquiry.

4) On May 6, 2016, this office sent the Village's FOIA Officer an e-mail inquiring regarding the status of the Village's response to Ms. Mossuto's request. The FOIA Officer did not respond to that inquiry.

5) On May 16, 2016, this office sent the Village a second letter, reminding the Village that it is obligated under section 9.5(c) of FOIA to advise this office whether it has responded to Ms. Mossuto's request. To date, this office has received no confirmation or indication, official or otherwise, that the Village has responded to Ms. Mossuto's request.

6) On June 14, 2016, the Public Access Bureau properly extended the time period in which to issue a binding opinion to July 27, 2016. Accordingly, the Attorney General may issue a binding opinion with respect to this matter.

Therefore, it is the opinion of the Attorney General that the Village has violated section 3(d) of FOIA by failing, within 5 business days after receiving Ms. Mossuto's March 16, 2016, FOIA request, to provide the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, to notify Ms. Mossuto that the Village was treating the request as a voluminous request in accordance with section 3.6 of FOIA, or to deny the request in whole or in part. Accordingly, the Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Mossuto with all records responsive to her March 16, 2016, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.)).⁸ If the Village determines that any portion of the responsive records is exempt from disclosure under section 7, the Village 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

⁸Because the Village did not comply with the statutory requirements for responding to Ms. Mossuto's FOIA request, the Village 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).").

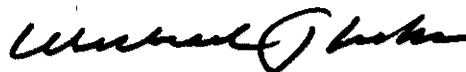
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complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Cynthia J. Mossuto as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read "Michael J. Luke", written over a horizontal line.

Michael J. Luke
Counsel to the Attorney General

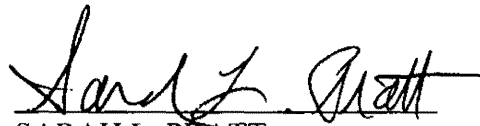
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-005) upon:

Ms. Cynthia J. Mossuto
14115 South Western, #338
Blue Island, Illinois 60406

The Honorable Juanita Darden
Village Clerk/FOIA Officer
Village of Dixmoor
170 West 145th Street
Dixmoor, Illinois 60426
clerk@villageofdixmoor.org

by causing a true copy thereof to be sent electronically to the address 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 July 26, 2016.


SARAH L. PRATT
Public Access Counselor

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