



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 9, 2016

PUBLIC ACCESS OPINION 16-006
(Request for Review 2016 PAC 41657)

FREEDOM OF INFORMATION ACT:
Disclosure of E-Mails from Public
Employees' Personal E-Mail Accounts
Pertaining to Transaction of Public Business;
Duty to Conduct Reasonable
Search for Responsive Records

Mr. Drew Shenkman
Counsel, CNN
One CNN Center
Atlanta, Georgia 30303

Ms. Charise Valente
General Counsel
Chicago Police Department
Office of Legal Affairs
3510 South Michigan, 5th Floor
Chicago, Illinois 60653

Dear Mr. Shenkman and Ms. Valente:

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 the requirements of FOIA by failing to conduct an adequate search for all e-mails responsive to a January 28, 2016, FOIA request submitted by Ms. Courtney Yager of Cable News Network, Inc. (CNN).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 2

BACKGROUND

On January 28, 2016, Ms. Yager, on behalf of CNN, submitted a FOIA request to CPD seeking "all emails related to Laquan McDonald from Police Department email accounts and personal email accounts where business was discussed" for 12 named CPD officers¹ for the date ranges of October 19 through October 24, 2014, and November 19 through November 29, 2015^{2,3}. On February 5, 2016, Ms. Yager agreed to extend the deadline for responding to her request for e-mails to March 4, 2016. On April 19, 2016, CPD sent a series of e-mails with attachments totaling over 500 pages to Ms. Yager in response to her request.⁴ CPD's response did not cite any exemptions or provide any explanation of the records provided.

On April 28, 2016, Mr. Drew Shenkman, Counsel for CNN, filed a Request for Review with the Public Access Counselor and the Public Access Bureau alleging that the records that CNN had received from CPD, although voluminous, were unresponsive to CNN's FOIA request:

Upon receipt, Ms. Yager contacted the Department's FOIA officer * * * and noted the lack of any responsive records to which she was told over the phone that the records provided were all of the records found in their search. Thus, we must deem our request to have been denied, in clear violation of FOIA. Indeed, it appears to us that the Department may not have even conducted an adequate search for such records, since not a single responsive email was actually produced.^{5]}

¹Officer Jason Van Dyke, Officer Joseph Walsh, Officer Janet Mondragon, Officer Dora Fontaine, Officer Daphne Sebastian, Officer Ricardo Viramontes, Officer Thomas Gaffney, Officer Joseph Mcelligott, Officer Leticia Velez, Officer Arturo Bacerra, Deputy Chief David McNaughton, and Detective David March.

²On October 20, 2014, Laquan McDonald was shot and killed by Chicago Police Officer Jason Van Dyke. The shooting was recorded on video by a CPD dashboard camera. A civil action was filed in Cook County Circuit Court related to the release of the video. *Smith v. Chicago Police Department*, Docket No. 2015 CH 11780 (Circuit Court, Cook County). On November 19, 2015, the circuit court ordered the release of the video recording on or before November 25, 2015. Memorandum Opinion and Order, *Smith v. Chicago Police Department*, Docket No. 2015 CH 11780, slip op. at 18 (Circuit Court, Cook County). CPD publicly released the video recording on November 24, 2015.

³E-mail from Courtney Yager, Producer, CNN, to Chicago Police Department, Attn: Freedom of Information Officer (January 28, 2016).

⁴E-mail from foia@chicagopolice.org to Courtney Yager (April 19, 2016).

⁵E-mail from Drew Shenkman, Counsel, CNN, to Public Access [Bureau] (April 28, 2016).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 3

On May 5, 2016, the Public Access Bureau sent a copy of the Request for Review to CPD and asked it to provide a detailed description of the processing of Ms. Yager's FOIA request and the measures taken by CPD to search for responsive records, including a description of the specific recordkeeping systems that were searched, the method of that search, and the specific individuals who were consulted.⁶ On June 1, 2016, CPD submitted a written response to this office.⁷ CPD explained that it had searched the CPD e-mail system for the 12 named officers for the requested time periods and the search resulted in 47 e-mails. CPD described some of the responsive e-mails as being "News Clips" produced by CPD's Office of News Affairs that contained references to Laquan McDonald. According to CPD, 24 of the other e-mails were 12 identical copies of two CPD office-wide e-mails sent on November 24, 2015, and November 25, 2015, regarding the release of the dashboard camera video.⁸ CPD provided this office with copies of the records in both redacted and un-redacted forms.⁹

The Public Access Bureau forwarded a copy of CPD's response to Mr. Shenkman on June 2, 2016.¹⁰ On June 9, 2016, Mr. Shenkman replied to CPD's response. With respect to CPD's search for records on personal e-mail accounts, Mr. Shenkman contended:

[i]t appears that the Department only searched for emails on the officers' city-issued email address, and not on any other platforms or devices, including personal email accounts. Even if the Department does not retain control over personal email or devices, it still has a duty to request copies of such communications that

⁶Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Ralph Price, General Counsel, Chicago Police Department (May 5, 2016).

⁷Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, City of Chicago, to Office of the Attorney General, Neil Olson, Assistant Attorney General, (June 1, 2016).

⁸Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, City of Chicago, to Office of the Attorney General, Neil Olson, Assistant Attorney General (June 1, 2016).

⁹CPD asserted that it made some limited redactions to the records under sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2015 Supp.)). In an e-mail to the Public Access Bureau on July 28, 2016, Mr. Shenkman confirmed that he was not seeking review of those redactions. Therefore, this office does not address the redactions in this binding opinion.

¹⁰Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Drew Shenkman, Counsel, CNN (June 2, 2016).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 4

relate to the officer's public service role and/or in the performance of their government function.^[11]

Mr. Shenkman also questioned the adequacy of CPD's search for responsive records:

Regardless of the email accounts and devices actually searched, it is entirely unclear to us the search terms and/or parameters the Department actually undertook in conducting its search. Obviously, the search terms used, and the review procedures utilized that would identify highly-relevant documents that might not be found using a search term, are crucial to obtaining CNN's satisfaction that the Department has engaged in a fulsome search responsive to CNN's FOIA request.^[12]

On June 10, 2016, the Public Access Bureau sent CPD a letter requesting additional information about the measures taken by CPD to search for responsive records.¹³ The letter requested that CPD "describe the methods used to search CPD e-mail accounts, and in particular, which search terms were used[]" and address whether CPD "conducted a search of personal email accounts to discover emails in which CPD business was discussed."¹⁴

On July 19, 2016, CPD submitted a supplemental response to this office.¹⁵ Documentation provided by CPD with that submission indicates that the CPD e-mail accounts of the 12 named police officers were searched for the term "Laquan McDonald." Two searches were conducted, one for each of the specified time frames requested. CPD also confirmed that it had not conducted a search of personal e-mail accounts for responsive records, asserting that e-mails on those accounts are not "public records."

¹¹Letter from Drew E. Shenkman, Counsel, CNN, to Neil Olson, Assistant Attorney General, Public Access Bureau (June 9, 2016).

¹²Letter from Drew E. Shenkman, Counsel, CNN, to Neil Olson, Assistant Attorney General, Public Access Bureau (June 9, 2016).

¹³Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Ryan Nelligan, Chicago Police Department, Office of Legal Affairs (June 10, 2016).

¹⁴Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Ryan Nelligan, Chicago Police Department, Office of Legal Affairs (June 10, 2016), at 1.

¹⁵Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, City of Chicago, to Office of the Attorney General, Neil Olson, Assistant Attorney General (July 19, 2016).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 5

On July 19, 2016, the Public Access Bureau forwarded a copy of CPD's supplemental response to Mr. Shenkman.¹⁶ On July 27, 2016, Mr. Shenkman provided CNN's reply to CPD's supplemental response and addressed the search for responsive records on personal e-mail accounts:

In refusing to request emails from City police officers concerning official police business, the City essentially contends that any correspondence sent or received by Chicago police officers is not a public record unless it resides on the city's servers. * * *

* * *

Illinois FOIA exists to protect the public's right to know what its government is up to. Giving public officials like police officers carte blanche to evade FOIA laws by using personal email for public purposes would eviscerate Illinois FOIA. Moreover, public officials would have an incentive to avoid FOIA by deliberately communicating about sensitive or controversial topics on private email. This flies in the face of the very purpose of public information laws.^{17]}

Pursuant to section 9.5(f) of FOIA, on June 27, 2016, the Public Access Bureau properly extended the time in which to issue a binding opinion by 30 business days, to August 9, 2016.¹⁸

ANALYSIS

Communications on Public Employees' Personal E-Mail Accounts Pertaining to the Transaction of Public Business

To analyze the adequacy of the CPD's response to CNN's FOIA request, it must first be determined whether e-mails on the personal e-mail accounts of CPD employees are

¹⁶Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Drew Shenkman, Counsel, CNN (July 19, 2016).

¹⁷E-mail from Drew Shenkman, Counsel, CNN, to Neil Olson (July 27, 2016).

¹⁸Letter from Neil P. Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Drew Shenkman, Counsel, CNN, and Ryan Nelligan, Chicago Police Department (June 27, 2016).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 6

subject to the requirements of FOIA. 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 2(c) of FOIA (5 ILCS 140/2(c) (West 2015 Supp.)) defines "[p]ublic records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body. (Emphasis added.)

In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶38, 992 N.E.2d 629, 638 (2013), the appellate court stated that "to qualify as a 'public record' under [section 2(c) of] FOIA, a communication must (1) 'pertain[] to the transaction of public business' and have either been (2) prepared by, (3) prepared for, (4) used by (5) received by, (6) possessed by, or (7) controlled by a public body." The court stated that if a communication pertaining to public business was sent to and received by members of a city council on personal electronic devices during a city council meeting when the individual "members were functioning collectively as the 'public body,' then the communication is a 'public record' and thus subject to FOIA." *City of Champaign*, 2013 IL App (4th) 120662, ¶ 42, 992 N.E.2d at 639-40. The court added: "To hold otherwise would allow members of a public body, convened as the public body, to subvert the Open Meetings Act [] and FOIA requirements simply by communicating about city business during a city council meeting on a personal electronic device." (Internal citation omitted.) *City of Champaign*, 2013 IL App (4th) 120662, ¶43, 992 N.E.2d at 640.

Citing *City of Champaign*, as well as *Quinn v. Stone*, 211 Ill. App. 3d 809, 812 (1st Dist. 1991), CPD argued in its supplemental response to this office that e-mails exchanged by its employees on personal e-mail accounts are not CPD's "public records":

Because the communications sought, if any exist, would have been prepared by or sent to individual officers and employees rather than the City, they are not communications "prepared by or for" a public body. And because the communications would not be stored on a City server or account, they cannot be "used by," were not "received by," and are not "in the possession of, or under the control of," a public body. Thus, the requested communications, if

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 7

any, do not fall within the FOIA's definition of a "public record" and are not subject to production under the Act.¹⁹

When an individual public employee such as a CPD officer acts in an official capacity, he or she transacts public business as a member of a municipal police department, which clearly is a public body subject to the requirements of FOIA.²⁰ CPD's interpretation would undercut the principle that public bodies act through their employees, by excluding from the definition of "public records" communications sent or received by employees of a public body on personal devices or accounts, regardless of whether the communications pertain to the transaction of public business. Such an interpretation erroneously focuses not on the content of a communication but on the method by which it is transmitted.

CPD's supplemental response to this office also contended that e-mails exchanged through personal e-mail accounts are not subject to the requirements of FOIA because CPD does not possess or control those records. Citing *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 152 (1980) (because "possession or control is a prerequisite to FOIA disclosure duties[,] transcripts of telephone conversations removed from the State Department were not "agency records" of the State Department subject to the requirements of federal FOIA), CPD maintained that FOIA does not provide a mechanism by which it could compel employees to grant it access to their personal e-mail accounts within the time requirements for a response.

With respect to the control of the records, the Court of Appeals for the District of Columbia Circuit recently considered a federal agency's argument that e-mails pertaining to the agency's business and policymaking "were 'beyond the reach of FOIA'" because the agency's director maintained them "in an 'account' that 'is under the control of the Woods Hole Research Center, a private organization.'" *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128, 2016 WL 3606551, at *1 (D.C. Cir. July 5, 2016). The court disagreed, stating that there was no indication that the private organization had exclusive control of the e-mails or that the agency director was unable to access the e-mail account: "If the agency head controls what would otherwise be an agency record, then it is still an agency record and still

¹⁹Letter from Ryan Nelligan, Office of Legal Affairs, Department of Police, City of Chicago, to Office of the Attorney General, Neil Olson, Assistant Attorney General (July 19, 2016), at 1.

²⁰Section 2(a) of FOIA (5 ILCS 140/2(a) (West 2015 Supp.)) defines public body as:

all * * * executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing[.]

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 8

must be searched or produced." *Competitive Enterprise Institute*, No. 15-5128, 2016 WL 3606551, at *4. The court added that the agency's position was incompatible with the purpose of federal FOIA (5 U.S.C. § 552 *et seq.* (2012)):

The Supreme Court has described the function of FOIA as serving "the citizens' right to be informed about what their government is up to." [Citations.] If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served. It would make as much sense to say that the department head could deprive requestors of hard-copy documents by leaving them in a file at his daughter's house and then claiming that they are under her control. *Competitive Enterprise Institute*, No. 15-5128, 2016 WL 3606551, at *4.

The court distinguished the United States Supreme Court's decision in *Kissinger* on the bases that former Secretary of State Henry Kissinger held the relevant records under a claim of right and that the State Department had ceded legal control of those records to him. *Competitive Enterprise Institute*, No. 15-5128, 2016 WL 3606551, at *2-3. In rejecting the agency's argument that it lacked control of the records, the court emphasized that "***an agency always acts through its employees and officials***. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door[.]" (Emphasis added.) *Competitive Enterprise Institute*, No. 15-5128, 2016 WL 3606551, at *3.²¹

This reasoning is equally applicable to the Illinois FOIA, which is intended to ensure public access to "full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act." 5 ILCS 140/1 (West 2014). Further, the General Assembly expressly contemplated that because "technology may advance at a rate that outpaces its ability to address those advances legislatively[] * * * this Act should nonetheless be interpreted to further the declared policy of this Act that public records shall be made

²¹See also *O'Neill v. City of Shoreline*, 170 Wash. 2d 138, 150, 240 P.3d 1149, 1155 (Washington 2010) (concluding that metadata from a chain of e-mails which a city's deputy mayor sent to her personal e-mail account and accessed on her home computer constituted public records under Washington's Public Records Act (PRA) (RCW 42.56.001 *et seq.* (2005)): "If government employees could circumvent the PRA by using their home computers for government business, the PRA could be drastically undermined.").

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 9

available upon request except when denial of access furthers the public policy underlying a specific exemption." 5 ILCS 140/1 (West 2014).

FOIA was enacted by Public Act 83-1013, effective July 1, 1984 – before e-mail and other forms of electronic communication became common. Despite these and other advances in technology, the original definition of "[p]ublic records" has remained largely unchanged.²² Interpreting the definition of "public records" in FOIA to exclude communications pertaining to the transaction of public business which were sent from or received on personal e-mail accounts of public officials and public employees would be contrary to the General Assembly's intent of ensuring public access to full and complete information regarding the affairs of government. Such an interpretation would yield absurd results by enabling public officials to sidestep FOIA and conceal how they conduct their public duties simply by communicating via personal electronic devices. *People v. Hunter*, 2013 IL 114100, ¶13, 986 N.E.2d 1185, 1189 (2013) (a reviewing body "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results."). The fact that FOIA does not include an express requirement that public bodies search and recover responsive records in personal e-mail accounts of its officers and employees is not material given the statute's absence of any express directives about how a public body must search relevant recordkeeping systems.

CPD also argued that the search of personal e-mail accounts would subject employees to unreasonable and unnecessary invasions of personal privacy. Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2015 Supp.)) exempts information from disclosure when disclosure would be an "unwarranted invasion of personal privacy." This provision, however, expressly provides that the "disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2015 Supp.). Any e-mails exchanged by CPD employees concerning the shooting death of Mr. McDonald presumably pertain to those employees' public duties and therefore accessing them would not constitute an unwarranted invasion of personal privacy under the plain language of section 7(1)(c) of FOIA. Furthermore, communications concerning personal matters that are unrelated to the transaction of public business are not subject to the requirements of FOIA. 5 ILCS 140/2(c) (West 2015 Supp.) (limiting the definition of "public records" to "all records, * * * pertaining to the transaction of public business[.]"); *City of Champaign*, 2013 IL App (4th) 120662, ¶31, 992 N.E.2d at 637 ("to qualify as a public record a communication must first pertain to 'business or community interests as opposed to private

²²"Public records" was defined to include "all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body." Public Act 83-1013, effective July 1, 1984, codified at Ill. Rev. Stat. 1984, ch. 116, par. 202(c).

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 10

affairs.' Indeed, FOIA is not concerned with an individual's private affairs."). The fact that a personal e-mail account is used to send or receive public records does not transform all communications sent or received on that account, in particular those with no connection to the transaction of public business, into public records that must be disclosed in accordance with FOIA. CPD has not asserted that any employee objected to providing responsive e-mails or that it conducted a search calculated to balance the employees' personal privacy with the public body's obligations under FOIA, such as asking the employees whether they maintained responsive e-mails.

Accordingly, communications pertaining to the transaction of public business that were sent or received on the CPD employees' personal e-mail accounts are "public records" under the definition of that term in section 2(c) of FOIA.

Search for Responsive Records

FOIA requires a public body to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to "search every record system[.]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). "Any doubt about the adequacy of the search should be resolved in favor of the requester" and any search terms used by a public body must be reasonably calculated to discover all responsive records. *Negley v. Federal Bureau of Investigation*, 658 F. Supp. 2d 50, 59, 60-61 (D.D.C. 2009).

As described above, CPD did not conduct a search of personal e-mail accounts for responsive records, despite the requester's specific request for any e-mails from "personal email accounts where business was discussed." This office has concluded that those e-mail accounts could contain public records as defined by section 2(c) of FOIA. Therefore, this office further concludes that CPD has failed to demonstrate that it conducted an adequate search of personal e-mail accounts for responsive records.

CPD has expressed concerns about invading its employees' personal privacy by conducting a search of their personal e-mail accounts. CPD, however, has taken no action to ascertain whether the CPD employees named in the FOIA request might possess responsive records. Although FOIA does not specifically describe the manner in which a public body is required to perform its search, an automated search of the entirety of a personal e-mail account using a search term is not necessarily required. Depending on the circumstances, ordering CPD officers to produce any responsive records may satisfy the requirement that CPD conduct a reasonable search. *See Nissen v. Pierce County*, 183 Wash. 2d 863, 886-87, 357 P.3d 45, 57

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 11

(Wash. 2015) ("[A]gency employees are responsible for searching their files, devices, and accounts for records responsive to a relevant [public records] request. * * * When done in good faith, this procedure allows an agency to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees."); *see also Brophy v. United States Department of Defense*, No. CIV.A. 05-360 (RMC), 2006 WL 571901, at *8 (D.D.C. 2006) (absent evidence of a lack of good faith, a public employee's search of his personal e-mail account and confirmation that he did not locate responsive records satisfied the public body's obligation to conduct a reasonable search of that account). Under the requirements of FOIA, CPD may not decline to search for e-mails contained on personal accounts.

In addition, with respect to the search of the CPD e-mail accounts, CPD limited its search to any message containing the term "Laquan McDonald." This search term, however, does not account for other references to Mr. McDonald that might have been used in e-mail communications by CPD officers. At the time of the shooting in October 2014, Mr. McDonald's name may not have been widely known, but there may have been references to the incident either by the involved officer, the incident number, the incident's location, or a physical description of Mr. McDonald. In addition, both Mr. McDonald's first and last names may have been spelled differently in some e-mails. Under the circumstances, the use of a full proper name as the single search term was not reasonably calculated to discover all relevant records. Therefore, this office also concludes that CPD has failed to demonstrate that it conducted an adequate search of CPD e-mail accounts.

FINDINGS AND CONCLUSIONS

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

1) On January 28, 2016, Ms. Courtney Yager, on behalf of CNN, submitted a FOIA request to CPD seeking "all emails related to Laquan McDonald from Police Department email accounts and personal email accounts where business was discussed" for 12 named CPD officers for the date ranges of October 19 through October 24, 2014, and November 19 through November 29, 2015.

2) On April 19, 2016, CPD furnished records to Ms. Yager that it deemed responsive to her request.

3) On April 28, 2016, Mr. Drew Shenkman, Counsel for CNN, filed a Request for Review with the Public Access Counselor and the Public Access Bureau alleging that CPD had not conducted an adequate search for responsive records. Mr. Shenkman's Request for

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 12

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)).

4) On May 5, 2016, the Public Access Bureau forwarded a copy of the Request for Review to CPD and asked it to provide a detailed description of the handling of Ms. Yager's request and the measures taken by CPD to search for responsive records, including a description of the specific recordkeeping systems that were searched, the method of that search, and the specific individuals who were consulted.

5) On June 1, 2016, CPD responded that it had searched the CPD e-mail accounts for the 12 named officers during the two specified time periods.

6) On June 10, 2016, the Public Access Bureau sent CPD a letter requesting additional information about the measures taken by CPD to search for responsive records. The letter requested that CPD "describe the methods used to search CPD e-mail accounts, and in particular, which search terms were used" and address whether CPD "conducted a search of personal email accounts to discover emails in which CPD business was discussed."

7) On July 19, 2016, CPD submitted a supplemental response to this office. CPD stated that it had not conducted a search of personal e-mail accounts for responsive records because e-mails on those accounts are not "public records" as defined in section 2(c) of FOIA. It also described its search of CPD e-mail accounts as using the term "Laquan McDonald" and provided records documenting that search.

8) On June 27, 2016, the Public Access Bureau properly extended the time in which to issue a binding opinion by 30 business days, to August 9, 2016, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

9) The e-mails pertaining to the transaction of public business on the personal e-mail accounts of public employees, such as the CPD officers, are "public records" as defined in section 2(c) of FOIA.

10) CPD has not demonstrated that it conducted a reasonably adequate search for all responsive records because it did not seek to obtain responsive records from the personal e-mail accounts of the named CPD officers.

11) Further, CPD has not demonstrated that it conducted a reasonably adequate search for all responsive records because it limited its search of CPD e-mail accounts to a single proper name.

Mr. Drew Shenkman
Ms. Charise Valente
August 9, 2016
Page 13

Therefore, it is the opinion of the Attorney General that CPD's response to Ms. Yager's Freedom of Information Act request violated the requirements of the Act. Accordingly, CPD is directed to take immediate and appropriate action to comply with this opinion by conducting a search of the personal e-mail accounts of the 12 named CPD officers. As described above, CPD may initially conduct this search by asking the 12 CPD officers whether they maintain any records responsive to the request, and, if so, by requiring the officers to provide copies of the records to CPD's FOIA Officer. CPD is also directed to expand the scope of its search of CPD e-mail accounts to include other search terms, such as alternate name spellings, the name of the involved officers, the incident number, the location of the incident, and a physical description of Mr. McDonald. Thereafter, CPD is directed to furnish Ms. Yager with any additional responsive records, subject to appropriate redactions under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.)).

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 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 Courtney Yager as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:


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 16-006) upon:

Mr. Drew Shenkman
Counsel, CNN
One CNN Center
Atlanta, Georgia 30303
drew.shenkman@turner.com

Ms. Charise Valente
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653
pacola@chicagopolice.org

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 August 9, 2016.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
500 South Second Street
Springfield, Illinois 62706
(217) 785-5526