



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2016

PUBLIC ACCESS OPINION 16-008
(Request for Review 2016 PAC 43069)

FREEDOM OF INFORMATION ACT:
Improper Denial of a Request for Records
as Unduly Burdensome

Ms. Mary Drumm
116 Kingsbury Court
Collinsville, Illinois 62234

Ms. Kim Wasser
Administrative Coordinator/City Clerk
Freedom of Information Officer
City of Collinsville
125 South Center Street
Collinsville, Illinois 62234

Dear Ms. Drumm and Ms. Wasser:

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 City of Collinsville (City) violated FOIA by improperly denying Ms. Mary Drumm's request as unduly burdensome.

BACKGROUND

On July 12, 2016, Ms. Drumm submitted a FOIA request¹ to the City seeking

¹The request was submitted via e-mail at 10:26 p.m. on July 12, 2016, therefore the City considered the e-mail received on July 13, 2016.

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"digital copies of emails between Mitch Bair^[2] and PGAV planners^[3] from June 1 through July 1[,] 2016."⁴ On July 20, 2016, the City's FOIA Officer responded by stating that she was "of the opinion the request is broad and consequently could be unduly burdensome in that there are over 50 emails consisting of over 100 pages plus numerous pages of attachments."⁵ The City's response stated that "[e]ach individual page would need to be retrieved by our IT personnel and reviewed by the FOIA Officer to determine if such information is exempt under 5 ILCS 140/7 in whole or in part, and redactions may be necessary."⁶ The City requested that Ms. Drumm narrow her FOIA request by July 27, 2016, "so that it would no longer be unduly burdensome and/or interfere with operations."⁷

On July 21, 2016, Ms. Drumm submitted a Request for Review to the Public Access Bureau contesting the City's denial of her FOIA request as unduly burdensome.⁸ On July 25, 2016, the Public Access Bureau forwarded a copy of the Request for Review to the City and asked the City to provide a detailed explanation of its assertion that Ms. Drumm's request was unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2014)).⁹

²Mitch Bair is the City Manager of Collinsville. See City of Collinsville, <http://www.collinsvilleil.org/Departments/citymanager.htm> (last visited October 28, 2016).

³PGAV Planners is a private firm that specializes in urban planning, architecture, and destination consulting with governmental and private entities. See PGAV PLANNERS, <http://www.pgavplanners.com/about/overview/> (last visited October 28, 2016).

⁴E-mail from Mary Drumm to Kimberly Wasser (July 12, 2016).

⁵Letter from Kim Wasser, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Mary Drumm (July 20, 2016).

⁶Letter from Kim Wasser, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Mary Drumm (July 20, 2016).

⁷Letter from Kim Wasser, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Mary Drumm (July 20, 2016).

⁸E-mail from Mary Drumm to Public Access [Bureau, Office of the Attorney General] (July 21, 2016).

⁹Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, City of Collinsville (July 25, 2016).

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On August 1, 2016, the City responded by stating that it "did not deny nor intend for the responsive letter to Ms. Drumm to imply a denial of [the] request[ed] documents."¹⁰ The City asserted that its July 20, 2016, response sought to narrow the scope of Ms. Drumm's request by obtaining "a clarification of the requested documents" because "a subject matter was not listed in the initial FOIA request."¹¹ The City further stated that it "located 50 individual emails consisting of 77 pages and several attachments within the emails consisting of approximately 97 pages for an overall total of 174 pages that are responsive to Ms. Drumm's request."¹² In order to provide Ms. Drumm with copies of the 50 e-mails, the City stated that its information technology (IT) employee would have to run a report through the City's e-mail archival system, review the e-mails produced by the report to remove any duplicates, and print copies of the e-mails and attachments.¹³ The City explained that:

Once printed, the documents are presented to the FOIA Officer for review to determine if it is exempt from disclosure in whole or in part, and to determine if redaction of exempted information is appropriate. The City has only one employee who is available to review and determine whether documents or information are exempt and/or entitled to redactions. Requiring the FOIA Officer to review approximately 174 pages of documents burdens the operations of the City because the FOIA Officer also has duties as a City Clerk and Administrative Coordinator.^[14]

¹⁰Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 1.

¹¹Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 1.

¹²Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 1.

¹³Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 2.

¹⁴Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 2.

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The City asserted that Ms. Drumm's request was an unduly burdensome request because "[t]he entire process of retrieving and review[ing] such documents could take several hours by two City employees[.]"¹⁵

On August 1, 2016, this office forwarded a copy of the City's response to Ms. Drumm.¹⁶ On August 4, 2016, Ms. Drumm replied by stating that she did "not believe that the request is unduly burdensome as it may take an hour or two rather than a few minutes for the City to fulfill [her] request."¹⁷

On September 15, 2016, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.

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). All public records in the possession or custody of a public body "are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Dep't. of Public Health*, 218 Ill. 2d 390, 415 (2006). 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." The limited exceptions to access to public records are to be construed narrowly. *See* 5 ILCS 140/1 (West 2014).

Sections 3(d) and 3(g) of FOIA

The City asserted that in its July 20, 2016, letter, it did not deny or intend to deny Ms. Drumm's request for e-mails. Instead, the City stated that its letter asked Ms. Drumm to narrow her request to a specific subject in order to clarify which e-mails she was seeking. Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) states:

¹⁵Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 2.

¹⁶Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mary Drumm (August 1, 2016).

¹⁷E-mail from Mary Drumm to Jodi Carnes, [Paralegal, Public Access Bureau, Office of the Attorney General] (August 4, 2016).

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.

Section 3(g) of FOIA further provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. ***Such a response shall be treated as a denial of the request for information.*** (Emphasis added.)

Section 3(d) requires that in responding to a FOIA request, a public body must either comply with the request, deny it, or extend the time for response under section 3(e). In its response to Ms. Drumm, the City did not comply with the request or extend the time for response. Instead, the City explained to Ms. Drumm the burden of responding to her FOIA request and asked that she narrow the request "so that it would no longer be unduly burdensome and/or interfere with operations."¹⁸ Under section 3(g), when a public body responds to a request by stating that compliance would unduly burden its operation and asking a requester to narrow the request, that response "shall be treated as a denial of the request for information." As a result, although the City has explained that it did not intend to deny Ms. Drumm's request, by asking her to narrow it "so it would no longer be unduly burdensome," the City's response

¹⁸Letter from Kim Wasser, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Mary Drumm (July 20, 2016).

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constitutes a denial of the request under the plain language of section 3(g) of FOIA. Ms. Drumm chose not to narrow the request and sought review of the denial with the Public Access Bureau.

In considering whether a public body has properly determined complying with a FOIA request would be unduly burdensome, Illinois courts have employed a balancing test to determine whether the public interest in disclosure of the requested records outweighs the burden of compliance on the public body under section 3(g). In *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 15 (1st Dist. 2010), the appellate court explained that "[i]n order for the exemption to apply, compliance must be unduly burdensome, there must be no way to narrow the request, and the burden on the public body must outweigh the public interest in the information." The court in *National Ass'n* analyzed whether the production of records concerning a study on eyewitness identification procedures would pose an undue burden to the Chicago Police Department (CPD). Counsel for CPD estimated that redacting the responsive records would take 150 hours, equating to 20 personnel days. *National Ass'n*, 399 Ill. App. 3d at 14. The court found that there was a significant public interest in disclosing records concerning examining eyewitness identification procedures. *National Ass'n*, 399 Ill. App. 3d at 15. Moreover, the court found that the request was "specifically target[ed]" and that "the information requested [was] essential to a meaningful review of" the study on eyewitness identification procedures, distinguishing requests which necessitate extensive review of extraneous materials: "A request that is overly broad and requires the public body to locate, review, redact and arrange for inspection [of] a vast quantity of material that is largely unnecessary to the appellants' purpose constitutes an undue burden." *National Ass'n*, 399 Ill. App. 3d at 17, citing *American Federation of Gov't Employees, Local 2782 v. United States Dep't of Commerce*, 907 F. 2d 203, 208-09 (D.C. Cir. 1990). The court concluded that the burden of identifying and redacting the responsive records, although significant, did not outweigh the vital public interest in disclosure of the records. *National Ass'n*, 399 Ill. App. 3d at 17.

In contrast, in *Shehadeh v. Madigan*, 2013 IL App (4th) 120742, 996 N.E.2d 1243 (2013), the court concluded that the burden of compliance with a request outweighed the public interest in disclosure of the records. In that case, the requester sought any and all records that could be used for guidance on complying with FOIA. The Attorney General's Office responded that compliance with the request as submitted would be unduly burdensome because its search identified 9,200 potentially responsive files that would have to be reviewed manually to confirm whether the records were responsive to the request, and then the responsive records would have to be reviewed again for permissible redactions. *Shehadeh*, 2013 IL App (4th) 120742, ¶5, 996 N.E.2d at 1245. The court found the request to be "patently broad on its face, as it sought *any* publication or record that would or could be used by *any* public body to comply with Illinois's FOIA provisions." (Emphasis in original.) *Shehadeh*, 2013 IL App (4th) 120742, ¶28, 996 N.E.2d at 1248. The court also found that the requester failed to identify a public interest that

outweighed the burden of compliance on the Attorney General's Office. *Shehadeh*, 2013 IL App (4th) 120742, ¶35, 996 N.E.2d at 1249. Thus, the court concluded that the Attorney General's Office did not violate FOIA by denying the request as unduly burdensome. *Shehadeh*, 2013 IL App (4th) 120742, ¶35, 996 N.E.2d at 1249.

As discussed above, the City's response to this office stated that compliance with Ms. Drumm's request would require several hours to retrieve and review the approximately 174 pages of responsive documents for potentially exempt information. The City asserted that complying with the request would unduly burden the operations of the City because it "has one employee who handles all IT issues for the entire City[.]" and because "the FOIA Officer also has duties as a City Clerk and Administrative Coordinator."¹⁹ However, the General Assembly has determined that "compliance with the requirements of this Act is a primary duty of public bodies to the people of this State[.]" 5 ILCS 140/1 (West 2014). The City's response to this office did not demonstrate a clear and convincing basis for its assertion that requiring the IT employee and FOIA officer to devote several hours to reviewing the pertinent records would so burden its operations as to outweigh the public interest in the disclosure of those records.

Ms. Drumm's request sought all e-mails between Mr. Mitch Bair and PGAV Planners from June 1, 2016, through July 1, 2016. Mr. Bair, as the city manager, is the chief administrative officer of the City who "supervises all departments and the day-to-day operations of the City, ensuring that all laws and ordinances are enforced. He is responsible for making recommendations to the City Council regarding City operations and policies, and reviews the overall operations of the City with a focus on long term objectives regarding the City's future."²⁰ As previously noted, PGAV Planners is a private firm that specializes in urban planning, architecture, and destination consulting with governmental and private entities. On March 25, 2016, PGAV Planners prepared for the City a revised Tax Increment Financing District proposal for the Southwest Corridors Redevelopment Project Area,²¹ and on April 20, 2016, PGAV Planners drafted for the City a Business District Plan for the Southwest Corridors Business

¹⁹Letter from Kim Wasser, Administrative Coordinator/City Clerk, Freedom of Information Officer, Office of the City Clerk, City of Collinsville, to Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 1, 2016), at 2.

²⁰City of Collinsville, <http://www.collinsvilleil.org/Departments/citymanager.htm> (last visited October 28, 2016).

²¹SW Corridors TIF Plan – Revised, PGAV Planners Tax Increment Financing and Redevelopment Plan & Project, Southwest Corridors Redevelopment Project Area (March 25, 2016), <http://www.collinsvilleil.org/sw-corridors-tif>.

District.²² There is a significant public interest in the disclosure of communications between the chief administrative officer of the City and the private firm that has been actively assisting the City with several redevelopment projects.

It may be noted that the retrieval and review of approximately 174 pages of documents will impose a burden upon the City's operations. Compliance with any FOIA request entails an administrative burden, but "[t]he issue is whether the public interest in disclosure justifies the burden." Ill. Att'y Gen. Pub. Acc. Op. No. 15-011, issued November 9, 2015, at 8. In these circumstances, the City has not demonstrated that compliance with Ms. Drumm's request would be "*unduly* burdensome," for purposes of asserting section 3(g) of FOIA. Given the strong public interest in the disclosure of communications between a City administrator and the private firm hired to assist with redevelopment projects, coupled with the fact that the City did not demonstrate with specificity how the process of retrieving and reviewing these records would constitute a significant burden on its operations, this office finds that City has not shown that compliance with Ms. Drumm's request would so burden the operations of the City as to outweigh the public interest in the disclosure of the requested records. Accordingly, this office concludes that the City of Collinsville violated FOIA by improperly denying Ms. Drumm's request as unduly burdensome.

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 July 12, 2016, Ms. Mary Drumm submitted a FOIA request to the City of Collinsville seeking "digital copies of emails between Mitch Bair and PGAV planners from June 1 through July 1[,] 2016."
- 2) On July 20, 2016, the City responded to Ms. Drumm's FOIA request by asserting that compliance with her request could be unduly burdensome. The City also requested that Ms. Drumm narrow her FOIA request so that it would no longer be unduly burdensome.
- 3) On July 21, 2016, Ms. Drumm submitted a Request for Review letter to the Public Access Bureau, in which she disputed the denial of her FOIA request. Ms. Drumm's 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)).

²²2015 SW Corridors BD Plan, PGAV Planners, Business District Plan, Southwest Corridors Business District (April 20, 2016), <http://www.collinsvilleil.org/sw-corridors-tif>.

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4) On July 25, 2016, the Public Access Bureau forwarded a copy of the Request for Review to the City and asked it to provide a detailed explanation for the City's assertion that compliance with Ms. Drumm's request could be unduly burdensome.

5) On August 1, 2016, the City responded that it had not denied Ms. Drumm's request, but only asked Ms. Drumm to narrow her request so the City could obtain clarification about which records were being requested. The City also stated that compliance with the request, without further narrowing by Ms. Drumm, would be unduly burdensome because the City would have to review approximately 174 pages of responsive records for possible redactions.

6) Pursuant to section 9.5(f) of FOIA, this office properly extended the time for issuing a binding opinion by 30 business days to November 1, 2016. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) In responding to Ms. Drumm's FOIA request, the City did not comply with it or extend the time for response within 5 business days after its receipt. Instead, the City responded by asking Ms. Drumm to narrow her request so that it would not unduly burden its operations. Under section 3(g) of FOIA, the City's response constituted a denial of Ms. Drumm's request as unduly burdensome.

8) The City has not demonstrated by clear and convincing evidence that the burden of compliance with Ms. Drumm's request on the City's operations would outweigh the significant public interest in the communications of the city manager with the private firm assisting with redevelopment projects in the City.

Therefore, it is the opinion of the Attorney General that the City's response to Ms. Drumm's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the City is directed to take immediate and appropriate action to comply with this opinion by providing the requested e-mails, 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

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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 Mary Drumm as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Very truly yours,

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 16-008) 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 November 1, 2016.


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