



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 5, 2017

PUBLIC ACCESS OPINION 17-008
(Request for Review 2017 PAC 47743)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Monica Stabile and Mr. Patrick Yeagle
Springfield Business Journal
Post Office Box 398
Springfield, Illinois 62705

Ms. Christina M. McClernon
Associate General Counsel, FOIA Officer
Office of Governor Bruce Rauner
100 West Randolph Street, 16-100
Chicago, Illinois 60601

Dear Ms. Stabile, Mr. Yeagle, and Ms. McClernon:

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 2016)). For the reasons discussed below, this office concludes that the Office of the Governor (Governor's Office) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Ms. Monica Stabile.

BACKGROUND

On March 10, 2017, Ms. Stabile, on behalf of *Springfield Business Journal*, submitted a FOIA request to the Governor's Office via an e-mail to its FOIA officer, Christina McClernon, which stated:

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I request that a copy of the following documents or documents concerning the following subject matter be provided to me: emails that Deputy Governor Leslie Munger sent or received since she became Deputy Governor; and Munger's daily schedule for the next six months.^[1]

On March 20, 2017, Ms. Stabile sent a follow-up e-mail to Ms. McClernon stating that she had not received a response to her FOIA request.² On May 5, 2017, Ms. Stabile and Mr. Patrick Yeagle, one of the editors of the *Springfield Business Journal*, e-mailed a Request for Review, dated May 3, 2017, to the Public Access Bureau alleging that the Governor's Office had not provided the requested records or otherwise responded to Ms. Stabile's FOIA request.³ Specifically, the Request for Review states that Ms. Stabile:

[d]id not receive a public response from the agency until two weeks after [the FOIA request] was submitted, when [the] FOIA officer called to clarify the request and stated she could provide the requested documents. Have tried to contact the FOIA officer since then, but haven't received a response after multiple emails and calls."^[4]

¹Letter from Monica Stabile to Christina McClernon, [Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner] (March 10, 2017).

²E-mail from Monica Stabile to Christina McClernon (March 20, 2017).

³FOIA – Request for Review by Public Access Counselor (PAC) form submitted by Monica Stabile and Patrick Yeagle, *Springfield Business Journal* (dated May 3, 2017).

⁴FOIA – Request for Review by Public Access Counselor (PAC) form submitted by Monica Stabile and Patrick Yeagle, *Springfield Business Journal* (dated May 3, 2017).

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Ms. Stabile's submissions to this office also included e-mails that she had sent to Ms. McClernon dated April 18, 2017,⁵ April 20, 2017,⁶ April 21, 2017,⁷ April 24, 2017,⁸ April 27, 2017,⁹ and May 4, 2017.¹⁰ In each of those e-mails, Ms. Stabile attached another copy of her March 10, 2017, FOIA request and stated either that she had not received a reply or she had not received the requested records. Ms. Stabile also noted in her e-mails that she looked forward to hearing from Ms. McClernon soon.

On May 15, 2017, the Public Access Bureau forwarded a copy of the Request for Review to Ms. McClernon at the Governor's Office and asked the Governor's Office to notify this office whether it had "received and responded to this FOIA request from Ms. Stabile. If the Governor's Office has not yet responded to this request, please respond to Ms. Stabile and provide a copy of your response to this office."¹¹ The Governor's Office did not respond to the Public Access Bureau.

On May 26, 2017, the Public Access Bureau forwarded a second copy of the Request for Review to the Governor's Office and asked the Governor's Office to respond as soon as possible to the May 15, 2017, letter of inquiry, noting that section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2016)) requires a public body to fully cooperate with the Public Access Counselor within 7 business days of receiving a Request for Review.¹² Again, the Governor's Office did not respond. As of the date of this binding opinion, this office has received no

⁵E-mail from Monica Stabile to Christina McClernon (April 18, 2017).

⁶E-mail from Monica Stabile to Christina McClernon (April 20, 2017).

⁷E-mail from Monica Stabile to Christina McClernon (April 21, 2017) at 9:35 a.m; e-mail from Monica Stabile to Christina McClernon (April 21, 2017) at 2:58 p.m.

⁸E-mail from Monica Stabile to Christina McClernon (April 24, 2017).

⁹E-mail from Monica Stabile to Christina McClernon (April 27, 2017).

¹⁰E-mail from Monica Stabile to Christina McClernon (May 4, 2017).

¹¹Letter from S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Christina M. McClernon, Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner (May 15, 2017), at 1.

¹²Letter from S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Christina M. McClernon, Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner (May 26, 2017).

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response from the Governor's Office or any information indicating that it has responded to Ms. Stabile's March 10, 2017, FOIA request.

On July 3, 2017, 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.¹³

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 2016). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)), "[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 2016)) 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 Governor's Office did not, within five business days after its receipt of Ms. Stabile's FOIA request, either comply with her request, extend the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)), or deny her request in writing. The available information indicates that even after obtaining verbal clarification of the records that Ms. Stabile was seeking, the Governor's Office did not respond to her FOIA request. The

¹³Letter from S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Monica Stabile, *Springfield Business Journal*, and Christina M. McClernon, Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner (July 3, 2017).

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Governor's Office'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 10, 2017, Ms. Monica Stabile, on behalf of the *Springfield Business Journal*, submitted a FOIA request to the Governor's Office via an e-mail to its FOIA Officer, Christina McClernon, seeking copies of e-mails sent to or received by Leslie Munger during her time serving as Deputy Governor as well as her daily schedule for the six month period following the date of Ms. Stabile's FOIA request. The Governor's Office did not, within five business days after its receipt of Ms. Stabile's FOIA request, comply with the request, extend the time for 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.
- 2) On May 5, 2017, Ms. Stabile and Mr. Patrick Yeagle, one of the editors for the *Springfield Business Journal*, asked the Public Access Counselor to review the Governor's Office's failure to respond to Ms. Stabile's 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 2016)).
- 3) On May 15, 2017, the Public Access Bureau forwarded a copy of Ms. Stabile's Request for Review to the Governor's Office, together with a letter asking the Governor's Office to advise this office whether it had received and responded to Ms. Stabile's March 10, 2017, FOIA request. The Governor's Office did not respond to this inquiry.
- 4) On May 26, 2017, this office sent the Governor's Office a second copy of the Request for Review and a letter requesting a response to the May 15, 2017, letter of inquiry. Again, the Governor's Office did not respond.
- 5) On July 3, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to August 15, 2017, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 6) To date, this office has received no indication that the Governor's Office has responded to Ms. Stabile's FOIA request.

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Therefore, it is the opinion of the Attorney General that the Governor's Office has violated section 3(d) of FOIA by failing to respond to Ms. Stabile's request for public records as required by the Act. Accordingly, the Governor's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Stabile with all records responsive to her March 10, 2017, FOIA request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2016)).¹⁴ If the Governor's Office determines that any portion of the responsive records is exempt from disclosure under section 7, the Governor's Office 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 2016)).

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 2016). 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, Ms. Monica Stabile, and Mr. Patrick Yeagle as defendants. See 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

¹⁴Because the Governor's Office did not comply with the statutory requirements for responding to Ms. Stabile's FOIA request, section 3(d) of FOIA precludes the Governor's Office from treating the request as unduly burdensome or imposing copying fees for the responsive records.

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 17-008) upon:

Ms. Monica Stabile and Mr. Patrick Yeagle
Springfield Business Journal
Post Office Box 398
Springfield, Illinois 62705
intern@springfieldbusinessjournal.com
patrick@springfieldbusinessjournal.com

Ms. Christina M. McClermon
Associate General Counsel, FOIA Officer
Office of Governor Bruce Rauner
100 West Randolph Street, 16-100
Chicago, Illinois 60601
christina.mccclernon@illinois.gov

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 July 5, 2017.


SARAH L. PRATT
Public Access Counselor

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Public Access Counselor
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