



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

December 28, 2017

**PUBLIC ACCESS OPINION 17-015
(Request for Review 2017 PAC 49833)**

**FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests**

Ms. Sarah Jackson
1 North State Street
Suite 1500
Chicago, Illinois 60602

Ms. Christina McClermon
Associate General Counsel, FOIA Officer
Office of the Governor, State of Illinois
James R. Thompson Center
100 West Randolph Street, Suite 16-100
Chicago, Illinois 60601

Dear Ms. Jackson and Ms. McClermon:

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. Sarah Jackson.

BACKGROUND

On September 14, 2017, Ms. Jackson submitted a FOIA request via e-mail to the FOIA Officer for the Governor's Office seeking "a log only of FOIA requests received by the Office of the Governor since July 1, 2017. This log should include fields such as the name of the

Ms. Sarah Jackson
Ms. Christina McClernon
December 28, 2017
Page 2

person or entity making the request, the date of request, the full description of the request and whatever fields are used to indicate its status such as denial, records released, or in progress."¹ Ms. Jackson requested that the records be provided in an unlocked electronic spreadsheet format.

On September 26, 2017, Ms. Jackson filed a Request for Review with the Public Access Counselor, alleging that the Governor's Office had failed to respond to her FOIA request.² On October 2, 2017, the Public Access Bureau forwarded a copy of the Request for Review to the Governor's Office, together with a letter asking whether the Governor's Office had received and responded to Ms. Jackson's FOIA request and, if not, to do so and provide this office with a copy of the response.³ The Governor's Office did not respond to the Public Access Bureau's October 2, 2017, correspondence.

On October 16, 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 this office's October 2, 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 seven business days of receiving a Request for Review.⁴ Again, the Governor's Office did not respond.

On November 22, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to January 9, 2018, pursuant to section 9.5(f) of FOIA.⁵ As of the date of this binding opinion, this office has not received a response from the Governor's Office or any information indicating that it has responded to Ms. Jackson's September 14, 2017, FOIA request.

¹E-mail from Sarah Jackson to christina.mcclernon@illinois.gov (September 14, 2017).

²E-mail from Sarah Jackson to [Sarah Pratt], Public Access [Counselor, Office of the Attorney General] (September 26, 2017).

³Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Christina McClernon, Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner, State of Illinois (October 2, 2017).

⁴Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Christina McClernon, Associate General Counsel, FOIA Officer, Office of Governor Bruce Rauner, State of Illinois (October 16, 2017).

⁵Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, to Sarah Jackson and Christina McClernon, Associate General Counsel, FOIA Officer, Office of the Governor (November 22, 2017).

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). 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).^[6]

The Governor's Office did not, within five business days after its receipt of Ms. Jackson'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 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:

⁶Section 3.5(a)(4) of FOIA (5 ILCS 140/3.5(a)(4) (West 2016)) also requires FOIA officers, upon the receipt of a request for public records, to "create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications." In addition, public bodies are required to retain "copies of all notices of denial * * * in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested." 5 ILCS 140/9(b) (West 2016).

Ms. Sarah Jackson
Ms. Christina McCleron
December 28, 2017
Page 4

1) On September 14, 2017, Ms. Sarah Jackson submitted a FOIA request to the Office of the Governor via e-mail seeking an electronic spreadsheet containing a log of specified information regarding the FOIA requests received by the Governor's Office since July 1, 2017. In particular, for each FOIA request, Ms. Jackson sought the name of the requester, the date of the request, the full description of the request, and the status of the Governor's Office's response to the request. Ms. Jackson did not receive a response to her request.

2) On September 26, 2017, Ms. Jackson asked the Public Access Counselor to review the Governor's Office's failure to respond to 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 2016)).

3) On October 2, 2017, the Public Access Bureau forwarded a copy of Ms. Jackson's Request for Review to the Governor's Office, and asked the Governor's Office to advise this office whether it had received and responded to Ms. Jackson's September 14, 2017, FOIA request. The Governor's Office did not respond to this office's inquiry.

4) On October 16, 2017, this office sent the Governor's Office a second copy of the Request for Review and another letter requesting a response to the October 2, 2017, letter of inquiry. Again, the Governor's Office did not respond.

5) On November 22, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to January 9, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may 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. Jackson's request.

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. Jackson'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. Jackson with all records responsive to her September 14, 2017, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017).⁷ If the Governor's Office determines that any portion of the responsive records is exempt from disclosure under section 7,

⁷Because the Governor's Office did not comply with the statutory requirements for responding to Ms. Jackson'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 responsive records.

Ms. Sarah Jackson
Ms. Christina McClernon
December 28, 2017
Page 5

the Governor's Office is directed to issue a written denial that complies fully 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 and Ms. Sarah Jackson as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

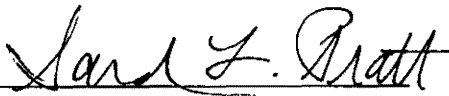
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 17-015) upon:

Ms. Sarah Jackson
1 North State Street
Suite 1500
Chicago, Illinois 60602
sjackson4371@gmail.com

Ms. Christina McClernon
Associate General Counsel, FOIA Officer
Office of the Governor, State of Illinois
James R. Thompson Center
100 West Randolph Street, Suite 16-100
Chicago, Illinois 60601
christina.mcclernon@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 December 28, 2017.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548