



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 10, 2018

PUBLIC ACCESS OPINION 18-011
(Request for Review 2018 PAC 53375)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Kaley Johnson
Reporter
Belleville News-Democrat
120 South Illinois
P.O. Box 427
Belleville, Illinois 62222

Mr. David Clark
Chief of Police
Village of Alorton Police Department
4821 Bond Avenue
Alorton, Illinois 62207

Dear Ms. Johnson and Chief Clark:

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 Village of Alorton Police Department (Department) 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. Kaley Johnson.

BACKGROUND

On May 17, 2018, Ms. Johnson, on behalf of the *Belleville News-Democrat*, submitted a FOIA request to the Department seeking electronic copies of reports generated

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concerning three named individuals and one specific address.¹ On May 30, 2018, Ms. Johnson submitted a Request for Review to the Public Access Bureau alleging that the Department had not responded to her FOIA request.² The Request for Review further alleged that Ms. Johnson had sent follow-up emails to the Department on May 24 and 29, 2018, and had telephoned on May 24, 29, and 30, 2018. On June 8, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the Department, together with a letter asking the Department to notify this office whether it had received and responded to Ms. Johnson's FOIA request. If it had received the request but not yet responded, this office asked the Department to respond to Ms. Johnson and to provide this office a copy of the response.³ The Department did not respond to the Public Access Bureau's correspondence.

On July 9, 2018, an Assistant Attorney General (AAG) in the Public Access Bureau telephoned Mr. David Clark, the chief of police of the Department. An employee of the Department, who identified herself as "Jan," informed the AAG that the police chief had been out of the office for weeks and that the secretary was out of the office at an appointment. The AAG left a message asking for the police chief or his secretary to return her call. The employee also provided the AAG with the police chief's e-mail address, although she suggested that the AAG e-mail correspondence to her as well as the police chief, so she could provide the correspondence to another employee in the Department for a response.⁴ Neither the police chief nor his secretary returned the AAG's call.

Later that same day, the Public Access Bureau e-mailed a second letter to the Department's police chief and the employee with whom the AAG had spoken, together with a copy of this office's June 8, 2018, letter of inquiry and the Request for Review. The letter reminded the Department that it had not responded to this office's June 8, 2018, letter, and asked it to do so.⁵ The Department did not respond. On July 27, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days,

¹E-mail from Kaley Johnson, *Belleville News-Democrat* Reporter to [Alorton Police Department] records custodian (May 17, 2018).

²E-mail from Kaley Alyssa Johnson, *Belleville News-Democrat* Reporter, to Public Access [Bureau, Office of the Attorney General] (May 30, 2018).

³Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Chief David Clark, Chief of Police, Village of Alorton Police Department (June 8, 2018).

⁴Telephone conversation between Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and "Jan" (July 9, 2018).

⁵Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Chief David Clark, Chief of Police, Village of Alorton Police Department (July 9, 2018).

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to September 10, 2018, pursuant to section 9.5(f) of FOIA.⁶ As of the date of this binding opinion, this office has not received any response from the Department or any indication that the Department has responded to Ms. Johnson's FOIA request.

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 to 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 Department did not respond to Ms. Johnson's FOIA request within five business days after its receipt by either complying with the request, extending the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)), or denying the request in writing. The Department'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:

⁶Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Chief David Clark, Chief of Police, Village of Alorton Police Department, and Kaley Johnson, Reporter, *Belleville News-Democrat* (July 27, 2018).

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1) On May 17, 2018, Ms. Kaley Johnson, on behalf of the *Belleville News-Democrat*, submitted a FOIA request to the Department seeking copies of reports concerning three named individuals and one specific address. Ms. Johnson did not receive a response to her request.

2) On May 30, 2018, Ms. Johnson submitted a Request for Review and asked the Public Access Bureau to review the Department's failure to respond to her 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 June 8, 2018, the Public Access Bureau forwarded a copy of Ms. Johnson's Request for Review to the Department, together with a letter asking the Department whether it had responded to Ms. Johnson's May 17, 2018, FOIA request. The Department did not respond to this office's inquiry.

4) On July 9, 2018, the Public Access Bureau e-mailed the Department an additional copy of the Request for Review and a letter inquiring as to the status of the Village's response. The Department did not respond.

5) On July 27, 2018, this office properly extended the time within which to issue a binding opinion by 30 business days, to September 10, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) As of the date of issuance of this binding opinion, this office has not received confirmation that the Department has responded to Ms. Johnson's request.

For the reasons stated above, it is the opinion of the Attorney General that the Department has violated section 3(d) of FOIA by failing to respond to Ms. Johnson's request for public records as required by the Act. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Johnson with all records responsive to her May 17, 2018, FOIA request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)).⁷ If the Department determines that any portion of the responsive records is exempt from disclosure under section 7, the Department 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)).

⁷Because the Department did not comply with the statutory requirements for responding to Ms. Johnson's FOIA request, the Department is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d), (g) (West 2016).

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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. Kaley Johnson 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 18-011) upon:

Chief David Clark
Chief of Police
Village of Alorton Police Department
4821 Bond Avenue
Alorton, Illinois 62207
clark.dave@alorton-il.us

Ms. Kaley Johnson
Reporter
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120 South Illinois
P.O. Box 427
Belleville, Illinois 62222
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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 September 10, 2018.


SARAH L. PRATT
Public Access Counselor

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