OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 18, 2018

PUBLIC ACCESS OPINION 18-014
(Request for Review 2018 PAC 53997)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Greg Gaura
18 Foxhurst Lane
Millbrook, Illinois 60536

Mr. Mark Kos
Freedom of Information Act Officer
Cook County Assessor's Office
118 North Clark Street
Chicago, Illinois 60602

Dear Mr. Gaura and Mr. Kos:

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 Cook County Assessor's Office (Assessor'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 Mr. Greg Gaura.

BACKGROUND

On June 22, 2018, Mr. Gaura submitted a FOIA request to the Assessor's Office seeking certain information regarding the 2017 property tax exemptions for a specific parcel of property located in Cook County. Mr. Gaura provided the Property Index Number for the property in question and then sought:

500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (877) 844-5461 • Fax: (217) 782-7046
100 West Randolph Street, Chicago, Illinois 60601 • (312) 814-3000 • TTY: (800) 964-3013 • Fax: (312) 814-3806
601 South University Avenue, Suite 102, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (877) 675-9339 • Fax: (618) 529-6416

> the persons [*sic*] name the exemptions are stated for. Also I would like a copy of the completed 2017 Homeowner & Senior Citizen Exemption Document and the Senior Freeze Exemption Document that was submitted for this property.[1]

On July 11, 2018, Mr. Gaura e-mailed the Public Access Bureau a Request for Review alleging that the Assessor's Office had failed to respond to his FOIA request.[2] On July 18, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the Assessor's Office, together with a letter asking it to advise this office whether it had received and responded to Mr. Gaura's FOIA request. If it had received the request but not yet responded to Mr. Gaura, the July 18, 2018, letter requested that the Assessor's Office do so and provide this office with a copy of its response.[3] The Assessor's Office did not respond to the Public Access Bureau's July 18, 2018, correspondence.

On July 30, 2018,[4] and August 1, 2018,[5] Mr. Gaura informed this office via e-mail that he had not yet received a response from the Assessor's Office. On August 2, 2018, the Public Access Bureau sent a second copy of the Request for Review to the Assessor's Office via e-mail and the United States Postal Service, and asked it to respond by advising this office whether it had received or responded to Mr. Gaura's request. If it had received the request but not yet responded, this office asked it to respond and to provide this office with a copy of its response.[6] In an August 2, 2018, telephone conversation with an Assistant Attorney General in

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[1]Cook County Assessor's Office, Freedom of Information Department, WEB BASED FOIA REQUEST form, submitted by Greg Gaura by certified mail (June 22, 2018).

[2]E-mail from Greg Gaura to Sarah Pratt [Public Access Counselor, Office of the Attorney General] (July 11, 2018).

[3]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mark Kos, Freedom of Information Officer, Cook County Assessor's Office (July 18, 2018).

[4]E-mail from Greg Gaura to [Jodi] Carnes, [Paralegal, Public Access Bureau, Office of the Attorney General] (July 30, 2018).

[5]E-mail from Greg Gaura, to [Jodi] Carnes, [Paralegal, Public Access Bureau, Office of the Attorney General] (August 1, 2018).

[6]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mark Kos, Freedom of Information Officer, Cook County Assessor's Office (August 2, 2018).

the Public Access Bureau, Mr. Mark Kos, the FOIA Officer for the Assessor's Office, stated that he had received Mr. Gaura's FOIA request and this office's letters related to Mr. Gaura's Request for Review and that the Assessor's Office would respond.[7]

On August 20, 2018, the AAG contacted Mr. Gaura by e-mail and inquired whether he had received a response from the Assessor's Office.[8] Mr. Gaura stated that he had not received a response.[9] As of the date of the issuance of this binding opinion, this office has not received a written response from the Assessor's Office or confirmation from Mr. Gaura that he has received a response to his June 22, 2018, FOIA request.

On September 6, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to October 22, 2018, pursuant to section 9.5(f) of FOIA.[10]

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

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[7]Telephone conversation between Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Mark Kos, Freedom of Information Officer, Cook County Assessor's Office (August 2, 2018).

[8]E-mail from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Greg] Gaura (August 20, 2018).

[9]E-mail from Greg Gaura to [Laura] Harter, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (August 20, 2018).

[10]Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Greg Gaura, and Mark Kos, Freedom of Information Act Officer, Cook County Assessor's Office (September 6, 2018).

> 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 Assessor's Office did not respond to Mr. Gaura's FOIA request within five business days of its receipt by either complying with his 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 Assessor'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 June 22, 2018, Mr. Greg Gaura submitted a FOIA request to the Cook County Assessor's Office seeking copies of property tax exemption records pertaining to a specific Property Index Number. Mr. Gaura did not receive a response to his request.

2) On July 11, 2018, Mr. Gaura submitted a Request for Review to the Public Access Counselor and the Public Access Bureau because the Assessor's Office had not responded to his 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 July 18, 2018, the Public Access Bureau forwarded a copy of Mr. Gaura's Request for Review to the Assessor's Office, together with a letter asking the Assessor's Office to advise this office whether it had received and responded to Mr. Gaura's June 22, 2018, FOIA request. The Assessor's Office did not respond to this office's inquiry.

4) On August 2, 2018, this office sent the Assessor's Office an additional copy of the Request for Review and this office's July 18, 2018, letter, along with a letter inquiring as to the status of the Assessor's Office's response to this office. In an August 2, 2018, telephone

conversation with an AAG in the Public Access Bureau, the Assessor's Office's FOIA Officer stated that the Assessor's Office intended to respond to Mr. Gaura's FOIA request and this office's letters.

5) On August 20, 2018, Mr. Gaura confirmed to this office by e-mail that the Assessor's Office had not responded to his request.

6) On September 6, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to October 22, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) As of the date of the issuance of this binding opinion, this office has not received confirmation that the Assessor's Office has responded to Mr. Gaura's request, nor has this office received a written response to its inquiries.

Therefore, it is the opinion of the Attorney General that the Assessor's Office has violated section 3(d) of FOIA by failing, within five business days after receiving Mr. Gaura's June 22, 2018, FOIA request, to provide the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part. Accordingly, the Assessor's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Gaura with all records responsive to his June 22, 2018, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018).[11] If the Assessor's Office determines that any portion of the responsive records is exempt from disclosure under section 7, it 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

[11]Because the Assessor's Office did not comply with the statutory requirements for responding to Mr. Gaura's FOIA request, the Assessor's Office is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2016)

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 Mr. Greg Gaura 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 18-014) upon:

Mr. Greg Gaura
18 Foxhurst Lane
Millbrook, Illinois 60536
ggaura4224@aol.com

Mr. Mark Kos
Freedom of Information Act Officer
Cook County Assessor's Office
118 North Clark Street
Chicago, Illinois 60602
mkos@cookcountyassessor.com

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 October 18, 2018.

Sarah L. Pratt

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