



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 19, 2019

PUBLIC ACCESS OPINION 19-003
(Request for Review 2018 PAC 55659)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Margaret Schohn
251 Barn Swallow Drive
Woodstock, Illinois 60098

The Honorable Roni Gaddis
Village Clerk
Village of Ringwood
6000 Barnard Mill Road
Ringwood, Illinois 60072

Dear Ms. Schohn and Ms. Gaddis:

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 Ringwood (Village) 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. Margaret Schohn.

BACKGROUND

On October 30, 2018, Ms. Schohn submitted a FOIA request to the Village. Ms. Schohn's FOIA request sought certain records that she had requested previously from the Village but did not receive. The records concern public meetings of the Village's Board of Trustees (Board) and its committees, as well as Village newsletters. Specifically, Ms. Schohn sought copies of: (1) "all recordings for all Village meeting[s] and committee meetings that this Village has had since April of 2016 [through October 30, 2018];]" (2) "all Village meeting minutes and

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committee meeting minutes from the village board meetings and subcommittee meetings from April of 2016 till" October 30, 2018; and (3) "[a]ll Village voices[.]" [a newsletter] that you control[.] * * * from April of 2016 through" October 30, 2018.¹

On November 8, 2018, Ms. Schohn e-mailed a Request for Review to the Public Access Bureau alleging that the Village had failed to respond to her October 30, 2018, FOIA request.² On November 15, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the Village, together with a letter asking it to advise this office whether it had received and responded to Ms. Schohn's FOIA request. If it had received the request but not yet responded to Ms. Schohn, the November 15, 2018, letter requested that the Village do so and provide this office with a copy of its response.³ The Village did not respond to the Public Access Bureau's November 15, 2018, correspondence.

On November 29, 2018,⁴ and November 30, 2018,⁵ Ms. Schohn informed this office via e-mail that she had not yet received a response from the Village. On November 30, 2018, the Public Access Bureau sent a second copy of the Request for Review to the Village via e-mail and the United States Postal Service, and again asked the Village to respond to the FOIA request and to provide this office with a copy of its response.⁶ The Village did not respond to the Public Access Bureau's November 30, 2018, correspondence.

¹E-mail from Margaret Schohn to Roni Gaddis (October 30, 2018).

²E-mail from Margaret Schohn to Public Access [Bureau, Office of the Attorney General] (November 8, 2018).

³Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Roni Bushroe, Village of Ringwood (November 15, 2018).

⁴E-mail from Margaret Schohn to Hattie Bryant, [Office Assistant, Public Access Bureau, Office of the Attorney General] (November 29, 2018).

⁵E-mail from Margaret Schohn to Hattie Bryant, [Office Assistant, Public Access Bureau, Office of the Attorney General] (November 30, 2018).

⁶Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Roni Bushroe, Village of Ringwood (November 30, 2018).

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On December 12, 2018,⁷ and December 16, 2018,⁸ Ms. Schohn informed this office via e-mail that she had not yet received a response from the Village. On December 17, 2018, an Assistant Attorney General in the Public Access Bureau left a voicemail message for the Village Clerk and requested that she contact this office.⁹ The Village Clerk did not contact this office.

On January 3, 2019, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to February 21, 2019, pursuant to section 9.5(f) of FOIA.¹⁰ In a telephone conversation with an Assistant Attorney General in the Public Access Bureau on the same date, Ms. Schohn stated that she had still not received a response to her FOIA request.¹¹

As of the date of the issuance of this binding opinion, this office has not received a written response from the Village or confirmation from Ms. Schohn that she has received a response to her October 30, 2018, 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). 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:

⁷E-mail from Margaret Schohn to Hattie Bryant, [Office Assistant, Public Access Bureau, Office of the Attorney General] (December 12, 2018).

⁸E-mail from Margaret Schohn to Public Access [Bureau, Office of the Attorney General] (December 16, 2018).

⁹Voice mail message from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Roni Gaddis, Village Clerk, Village of Ringwood (December 17, 2018).

¹⁰Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Margaret Schohn, and The Honorable Roni Gaddis, Village Clerk, Village of Ringwood (January 3, 2019).

¹¹Telephone conversation between Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Margaret Schohn (January 3, 2019).

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 Village did not respond to Ms. Schohn's FOIA request within five business days of its receipt by either complying with her 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 Village'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 October 30, 2018, Ms. Margaret Schohn submitted a FOIA request to the Village of Ringwood seeking copies of recordings of meetings of the Village of Ringwood Board of Trustees and its committees, minutes of meetings of the Village Board of Trustees and its committees, and issues of the Village Voices newsletter from April 2016, to October 30, 2018. Ms. Schohn did not receive a response to her request.

2) On November 8, 2018, Ms. Schohn submitted a Request for Review to the Public Access Bureau because the Village had not responded 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 November 15, 2018, the Public Access Bureau forwarded a copy of Ms. Schohn's Request for Review to the Village, together with a letter asking the Village to advise this office whether it had received and responded to Ms. Schohn's October 30, 2018, FOIA request. The Village did not respond to this office's inquiry.

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4) On November 30, 2018, this office sent the Village another copy of the Request for Review and this office's November 15, 2018, letter, together with a letter inquiring as to the status of the Village's response to this office. The Village did not respond to that inquiry, either.

5) On January 3, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to February 21, 2019, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) On January 3, 2019, Ms. Schohn informed this office by telephone that the Village had not responded to her request.

7) As of the date of the issuance of this binding opinion, this office has not received a response to its inquiries nor has this office received any confirmation indicating that the Village has responded to Ms. Schohn's request.

Therefore, it is the opinion of the Attorney General that the Village has violated section 3(d) of FOIA by failing, within five business days after receiving Ms. Schohn's October 30, 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 Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Schohn with all records responsive to her October 30, 2018, FOIA request.^{12, 13}

¹²Because the Village did not comply with the statutory requirements for responding to Ms. Schohn's FOIA request, the Village is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2016).

¹³Although Ms. Schohn's FOIA request did not specifically state that she was seeking copies of verbatim recordings or minutes of closed sessions of the Board, this office notes that section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)) provides, in pertinent part:

Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act.

Further, section 7(1)(I) of FOIA (5 ILCS 140/7(1)(I) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), exempts from disclosure "[m]inutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act." Because the Village failed to respond to this office's correspondence, we have no basis upon which to determine whether any of the records requested by Ms. Schohn are exempt from disclosure.

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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. Margaret Schohn as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

KWAME RAOUL
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 19-003) upon:

Ms. Margaret Schohn
251 Barn Swallow Drive
Woodstock, Illinois 60098
mschohn1@gmail.com

The Honorable Roni Gaddis
Village Clerk
Village of Ringwood
6000 Barnard Mill Road
Ringwood, Illinois 60072
roni.gaddis@ringwood-il.us

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 February 19, 2019.


SARAH L. PRATT
Public Access Counselor

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