



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 25, 2019

PUBLIC ACCESS OPINION 19-006
(Request for Review 2019 PAC 58242)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Richard Stomper
Field Representative
Illinois Fraternal Order of Police Labor Council
5600 South Wolf Road
Western Springs, Illinois 60058

The Honorable Mary Kay Duggan
Village Clerk
Village of Dolton
14122 Chicago Road
Dolton, Illinois 60419-1042

Dear Mr. Stomper and Ms. Duggan:

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 Dolton (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 Mr. Richard Stomper.

BACKGROUND

On April 9, 2019, Mr. Stomper, in his capacity as Field Representative for the Illinois Fraternal Order of Police Labor Council, submitted a FOIA request to the Village via e-mail seeking copies of:

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- 1) A current command staff bargaining unit seniority list;
- 2) The Village's latest budget;
- 3) The Village's Comprehensive Annual Financial Report (CAFR) for fiscal years: 2013-14, 2014-15, 2015-16, 2016-17, 2017-18;
- 4) A current report of the Village's expenditures and revenues, budgeted versus actual, across all funds;
- 5) All collective bargaining agreements between the Village and all unions other than the Illinois FOP Labor Council covering years 2008 to date;
- 6) Documents showing the command staff bargaining unit members' health insurance designation as to plan type and tier;
- 7) Documents showing the total health insurance premium costs for all plans and tiers for calendar years 2013-19;
- 8) Documents showing the command staff bargaining unit members actual and scheduled hour of work for calendar years 2013, 2014, 2015, 2016, 2017, 2018;
- 9) Documents showing the command staff sick leave and compensatory time balances;
- 10) The Village's most recent bond issue, including the summary evaluation pages; [and]
- 11) Documents showing the wage increases awarded to the Village's non-union employees from 2013 to date.^[1]

On May 21, 2019, Mr. Stomper e-mailed a Request for Review to the Public Access Bureau alleging that the Village had failed to respond to his April 9, 2019, FOIA request.² On May 28, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the Village and asked whether it had responded to Mr. Stomper's FOIA request.³ The May 28, 2019, letter also requested that, if the Village had not yet responded to Mr. Stomper, it do so and provide this office with a copy of the response. The Village did not respond to the Public Access Bureau's May 28, 2019, correspondence.

¹FOIA request from Richard Stomper, Field Representative, Illinois Fraternal Order of Police Labor Council, to [Mary Kay] Duggan (April 9, 2019).

²E-mail from Richard Stomper, Field Representative, Illinois Fraternal Order of Police Labor Council, to [Deputy Bureau] Chief [Joshua] Jones (May 21, 2019).

³Letter from Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Mary Kay Duggan, Village Clerk, Village of Dolton (May 28, 2019).

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On July 3, 2019, Mr. Stomper informed this office by e-mail that he still had not received a response to his FOIA request from the Village.⁴ On July 25, 2019, an Assistant Attorney General in the Public Access Bureau left a message for the Village's FOIA officer seeking to confirm that the Village had received the FOIA request from Mr. Stomper.⁵ Later on that same date, the FOIA officer returned the call and verified that the Village had received the FOIA request from Mr. Stomper, but stated that because of the volume of records involved, the Village could not provide a timeframe for issuing its response to Mr. Stomper.⁶

Pursuant to section 9.5(f) of FOIA, on July 18, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to August 30, 2019.

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 Mr. Stomper that he has received a response to his April 9, 2019, 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:

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

⁴E-mail from Richard Stomper, Field Representative, Illinois Fraternal Order of Police Labor Council, to [Joshua] Jones (July 3, 2019).

⁵Voicemail from Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to the Honorable Mary Kay Duggan, FOIA Officer, Village of Dolton (July 25, 2019).

⁶Telephone conversation between the Honorable Mary Kay Duggan, FOIA Officer, Village of Dolton, and Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (July 25, 2019).

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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 Mr. Stomper's FOIA request within five business days after 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 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 April 9, 2019, Mr. Richard Stomper, as Field Representative for the Illinois Fraternal Order of Police Labor Council, submitted a FOIA request to the Village of Dolton seeking copies of various records related to collective bargaining. Mr. Stomper did not receive a response to his request.

2) On May 21, 2019, Mr. Stomper submitted a Request for Review to the Public Access Bureau because the Village 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 May 28, 2019, the Public Access Bureau forwarded a copy of Mr. Stomper's Request for Review to the Village along with a letter asking the Village to advise this office whether it had responded to Mr. Stomper's April 9, 2019, FOIA request. The Village did not respond to this office's inquiry.

4) On July 18, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to August 30, 2019, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

5) As of the date of the issuance of this binding opinion, this office has not received a response to its inquiry nor has this office received any confirmation that the Village has responded to Mr. Stomper's request.

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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 Mr. Stomper's April 9, 2019, FOIA request, to provide copies of 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 Mr. Stomper with copies of all records responsive to his April 9, 2019, FOIA request.⁷

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 Mr. Richard Stomper as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent Stratton
Chief Deputy Attorney General

⁷Because the Village did not comply with the statutory requirements for responding to Mr. Stomper'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).

CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 19-006) upon:

Mr. Richard Stomper
Field Representative
Illinois Fraternal Order of Police Labor Council
5600 South Wolf Road
Western Springs, Illinois 60058
rstomper@fop.org

The Honorable Mary Kay Duggan
Village Clerk
Village of Dolton
14122 Chicago Road
Dolton, Illinois 60419-1042
mduggan@vodolton.org

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 Chicago, Illinois on July 25, 2019.


STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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