



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 30, 2019

PUBLIC ACCESS OPINION 19-011
(Request for Review 2019 PAC 59091)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Brian J. Massimino
Lavelle Law
141 West Jackson Boulevard, Suite 2800
Chicago, Illinois 60604

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

Dear Mr. Massimino 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 2018)). 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 2018), as amended by Public Act 101-081, effective July 12, 2019) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Brian J. Massimino.

BACKGROUND

On July 9, 2019, Mr. Massimino, on behalf of Lavelle Law, e-mailed a FOIA request to the Assessor's Office seeking "all applications for permits, permits, denials of permits

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and correspondence related to"¹ five specified properties located at five indicated street addresses in Lincolnwood, Illinois for the period of January 1, 1950, to July 9, 2019, the date the FOIA request was submitted. On July 16, 2019,² and July 18, 2019,³ Mr. Massimino e-mailed the Assessor's Office asking for status updates on the response to his FOIA request. Mr. Massimino also stated that he attempted to determine the status of his request by telephone, but he was unable to leave a message because "the system indicated that your office [the Assessor's Office] [was] out of storage[.]"⁴

On July 26, 2019, Mr. Massimino submitted a Request for Review to the Public Access Bureau alleging that the Assessor's Office had failed to respond to his FOIA request.⁵ On August 1, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the Assessor's Office and asked whether it had received and responded to Mr. Massimino's FOIA request.⁶ The August 1, 2019, letter also requested that, if the Assessor's Office had received the request but not yet responded to Mr. Massimino, it do so and provide this office with a copy of its response. The Assessor's Office did not respond to the Public Access Bureau's August 1, 2019, correspondence.

On August 22, 2019, Mr. Massimino inquired whether this office had received a response from the Assessor's Office.⁷ An Assistant Attorney General (AAG) in the Public Access Bureau informed Mr. Massimino that the Assessor's Office had not responded to this office's correspondence.⁸ On August 23, 2019, the Public Access Bureau sent a second copy of Mr. Massimino's Request for Review to the Assessor's Office via e-mail and the United States Postal Service, and again asked it to respond to the FOIA request and to provide this office with

¹Request for Records [submitted to Cook County Assessor's Office] by Brian Massimino, Exhibit A (July 9, 2019).

²E-mail from Brian Massimino to foia@cookcountyassessor.com (July 16, 2019).

³E-mail from Brian Massimino to foia@cookcountyassessor.com (July 18, 2019).

⁴E-mail from Brian Massimino to foia@cookcountyassessor.com (July 18, 2019).

⁵Letter from Brian J. Massimino, Attorney at Law, Lavelle Law, Ltd. to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 26, 2019).

⁶Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mark Kos, FOIA Officer, Cook County Assessor's Office (August 1, 2019).

⁷E-mail from Brian Massimino to [Laura] Harter (August 22, 2019).

⁸E-mail from Laura S. Harter, Deputy Bureau Chief, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Brian Massimino (August 22, 2019).

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a copy of its response.⁹ The Assessor's Office did not respond to the Public Access Bureau's August 23, 2019, correspondence.

On September 6, 2019, Mr. Massimino informed this office that he still had not received a response from the Assessor's Office.¹⁰ On September 6, 2019, an AAG in the Public Access Bureau left a voicemail message for Mr. Mark Kos, the FOIA Officer for the Assessor's Office, asking him to contact this office regarding Mr. Massimino's Request for Review.¹¹ Mr. Kos did not contact this office.

On September 23, 2019, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to November 6, 2019, pursuant to section 9.5(f) of FOIA.¹²

In an October 28, 2019, telephone conversation with an Assistant Attorney General in the Public Access Bureau, Mr. Massimino stated that he had still not received a response to his July 9, 2019, FOIA request.¹³

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. Massimino that he has received a response to his July 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 2018). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2018)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying."

⁹Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mark Kos, FOIA Officer, Cook County Assessor's Office (August 23, 2019).

¹⁰E-mail from Brian J. Massimino, Attorney at Law, [Lavelle Law], to [Laura] Harter (September 6, 2019).

¹¹Voice message from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mark Kos, FOIA Officer, Cook County Assessor's Office (September 6, 2019).

¹²Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Brian Massimino, Lavelle Law, and Mark Kos, FOIA Officer, Cook County Assessor's Office (September 23, 2019).

¹³Telephone conversation between Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Brian J. Massimino (October 28, 2019).

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Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) 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).

The Assessor's Office did not respond to Mr. Massimino'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 2018), as amended by Public Act 101-081, effective July 12, 2019), 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 July 9, 2019, Mr. Brian Massimino, on behalf of Lavelle Law, submitted a FOIA request to the Cook County Assessor's Office seeking copies of applications for permits, permits, denials of permits, and related correspondence for five specified properties located at five indicated street addresses in Lincolnwood, Illinois, for the time period of January 1, 1950, to July 9, 2019. Mr. Massimino did not receive a response to his request.

2) On July 26, 2019, Mr. Massimino 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 2018)).

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3) On August 1, 2019, the Public Access Bureau forwarded a copy of Mr. Massimino's Request for Review to the Assessor's Office along with a letter asking the Assessor's Office to advise this office whether it had received and responded to Mr. Massimino's July 9, 2019, FOIA request. The Assessor's Office did not respond to this office's inquiry.

4) On August 23, 2019, this office sent the Assessor's Office an additional copy of the Request for Review and this office's August 1, 2019, letter, along with a letter inquiring as to the status of the Assessor's Office's response to this office. The Assessor's Office did not respond to that inquiry, either.

5) On September 23, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to November 6, 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) 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 information indicating that the Assessor's Office has responded to Mr. Massimino's request.

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. Massimino's July 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 Assessor's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Massimino with all records responsive to his July 9, 2019, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2018), as amended by Public Act 101-455, effective August 23, 2019).¹⁴ 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 2018)).

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 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County

¹⁴Because the Assessor's Office did not comply with the statutory requirements for responding to Mr. Massimino'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 2018), as amended by Public Act 101-081, effective July 12, 2019.

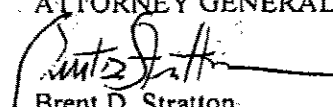
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within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Brian J. Massimino as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy 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 19-011) upon:

Mr. Brian J. Massimino
Lavelle Law
141 West Jackson Boulevard, Suite 2800
Chicago, Illinois 60604
bmassimino@lavellelaw.com

Mr. Mark Kos
Freedom of Information Act Officer
Cook County Assessor's Office
118 North Clark Street
Chicago, Illinois 60602
mark.kos@cookcountyil.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 October 30, 2019.


SARAH L. PRATT
Public Access Counselor

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