



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 30, 2020

PUBLIC ACCESS OPINION 20-010
(Request for Review 2020 PAC 65331)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Ralph DiFebo
1110 Thomas Avenue
Forest Park, Illinois 60130

Mr. Mark Kos
Manager, Freedom of Information Department
Cook County Assessor's Office
118 North Clark Street, Suite 301
Chicago, Illinois 60602

Dear Mr. DiFebo 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. Ralph DiFebo.

BACKGROUND

The information provided to this office indicates that on September 29, 2020, Mr. DiFebo submitted and the Assessor's Office received an undated FOIA request using the Assessor's Office's online FOIA submission form.¹ The request sought information regarding

¹Public Records Request, Reference No. R003482-092920, from RFDFJR@GMAIL.COM to [Cook County Assessor's Office] (undated). The Assessor's Office's online FOIA submission form can be accessed from <https://www.cookcountyassessor.com/foia-freedom-information>.



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who had filed for a division of an identified parcel of real property and a copy of the recent application relating to the parcel that Mr. DiFebo identified by its Property Index Number. Mr. DiFebo also sought the new legal descriptions and drawings showing where the parcel's new boundaries would be located.² On October 21, 2020, Mr. DiFebo submitted a Request for Review to the Public Access Bureau alleging that the Assessor's Office had failed to respond to his FOIA request.³ On October 30, 2020, by an e-mail sent to Mr. Mark Kos, Manager of the Freedom of Information Department of the Assessor's Office, the Public Access Bureau forwarded a copy of the Request for Review to the Assessor's Office along with a letter asking whether it had received and responded to Mr. DiFebo's FOIA request.⁴ The October 30, 2020, letter also requested that, if the Assessor's Office had received the request but had not yet responded to Mr. DiFebo, it do so and provide this office with a copy of its response.⁵ The Assessor's Office did not respond to the Public Access Bureau's October 30, 2020, correspondence.

On November 12, 2020, the Public Access Bureau sent an e-mail to Mr. Kos, notifying him that the Public Access Bureau had forwarded Mr. DiFebo's Request for Review to him on October 30, 2020, and explaining that the Public Access Bureau had not yet received a response to that letter.⁶ Mr. Kos did not respond to the Public Access Bureau's November 12, 2020, e-mail message.

On December 3, 2020, the Public Access Bureau sent a second copy of Mr. DiFebo's Request for Review to the Assessor's Office, this time through the United States Postal Service, along with another letter asking it to respond to the FOIA request and to provide this

²Public Records Request, Reference No. R003482-092920, from RFDFJR@GMAIL.COM to [Cook County Assessor's Office] (undated).

³E-mail from Ralph DiFebo to Sarah Pratt [Public Access Counselor, Office of the Attorney General] (October 21, 2020).

⁴Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to [Mark] Kos, Manager, Freedom of Information Department, Cook County Assessor's Office (October 30, 2020).

⁵Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Mark Kos, Manager, Freedom of Information Department, Cook County Assessor's Office (October 30, 2020), at [1].

⁶E-mail from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Illinois Attorney General's Office, to Mark Kos, [Manager, Freedom of Information Department, Cook County Assessor's Office] (November 12, 2020).

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office with a copy of its response.⁷ The Assessor's Office did not respond to the Public Access Bureau's December 3, 2020, correspondence.

On December 15, 2020, the Public Access Bureau sent an e-mail to Mr. Kos, notifying him that the Public Access Bureau had not received responses to its previously sent letters or e-mail message, and that Mr. DiFebo had not yet received a response to his FOIA request.⁸ Later that same day, Mr. Kos left a voicemail message for an Assistant Attorney General in the Public Access Bureau, stating that the Assessor's Office was preparing its response to the FOIA request, and it anticipated that it would issue a response within ten days.⁹

On December 18, 2020, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to February 3, 2021, pursuant to section 9.5(f) of FOIA.¹⁰

As of the date of the issuance of this binding opinion, this office has not received a written response from the Assessor's Office in response to its inquiry letters nor confirmation from Mr. DiFebo that he has received a response to his September 29, 2020, 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." 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

⁷Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Mark Kos, Freedom of Information Officer, Cook County Assessor's Office (December 3, 2020).

⁸E-mail from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Illinois Attorney General's Office, to [Mark] Kos, [Manager, Freedom of Information Department, Cook County Assessor's Office] (December 15, 2020).

⁹Voicemail message for Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Illinois Attorney General's Office, from Mark Kos, Manager, Freedom of Information Department, Cook County Assessor's Office (December 15, 2020).

¹⁰Letter from Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Ralph DiFebo and Mark Kos, Manager, Freedom of Information Department, Cook County Assessor's Office (December 18, 2020).

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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. DiFebo'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 failure of the Assessor's Office 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 September 29, 2020, Mr. Ralph DiFebo submitted and the Cook County Assessor's Office received a FOIA request seeking information regarding who filed for the division of an identified parcel of real property, along with a copy of the application and the new legal descriptions and drawings regarding the new boundaries of the parcel. Mr. DiFebo did not receive a response to his FOIA request.

2) On October 21, 2020, Mr. DiFebo submitted a Request for Review to the Public Access Counselor and the Public Access Bureau alleging 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 October 30, 2020, the Public Access Bureau forwarded a copy of Mr. DiFebo'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. DiFebo's FOIA request. The Assessor's Office did not respond to this office's inquiry.

4) On November 12, 2020, the Public Access Bureau sent an e-mail to the Manager of the Assessor's Office's Freedom of Information Department, explaining that the Public Access Bureau had not received a response to its October 30, 2020, letter. The Assessor's Office did not respond to that e-mail.

5) On December 3, 2020, this office sent the Assessor's Office an additional copy of the Request for Review and this office's October 30, 2020, 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.

6) On December 15, 2020, the Public Access Bureau sent a second e-mail message to the Manager of the Assessor's Office's Freedom of Information Department, explaining that the Public Access Bureau had not received a response to its inquiry letters or earlier e-mail message. Later that same day, the Manager of the Assessor's Office's Freedom of Information Department left a voicemail message for an Assistant Attorney General in the Public Access Bureau stating that the Assessor's Office's was preparing its response to Mr. DiFebo's request.

7) On December 18, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to February 3, 2021, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) As of the date of the issuance of this binding opinion, this office has not received a written response to its inquiries nor has this office received any information indicating that the Assessor's Office has responded to Mr. DiFebo'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. DiFebo's September 29, 2020, 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. DiFebo with all records responsive to his September 29, 2020 request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452,

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effective January 1, 2020; 101-455, effective August 23, 2019).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 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 within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Ralph DiFebo as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

¹¹Because the Assessor's Office did not comply with the statutory requirements for responding to Mr. DiFebo'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.

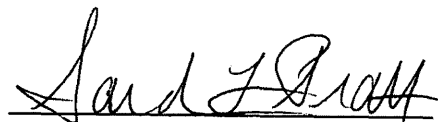
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 20-010) upon:

Mr. Ralph DiFebo
1110 Thomas Avenue
Forest Park, Illinois 60130
rfdjr@gmail.com

Mr. Mark Kos
Manager, Freedom of Information Department
Cook County Assessor's Office
118 North Clark Street, Suite 301
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 December 30, 2020.



SARAH L. PRATT
Public Access Counselor

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