



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 15, 2022

PUBLIC ACCESS OPINION 22-014
(Request for Review 2022 PAC 74070)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Patrick W. Morrissey
Thomas G. Morrissey, Ltd.
10257 South Western Avenue
Chicago, Illinois 60643

Ms. Elyssa Shull
Freedom of Information Act Officer
Cook County State's Attorney's Office
50 West Washington Street, 3rd Floor
Chicago, Illinois 60602

Dear Mr. Morrissey and Ms. Shull:

This binding opinion is 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 2020)). For the reasons discussed below, this office concludes that the Cook County State's Attorney's Office (State's Attorney's Office) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2020)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Patrick Morrissey.

BACKGROUND

On September 29, 2022, Mr. Morrissey used the State's Attorney's Office's online FOIA Center to submit a FOIA request seeking a list of the attorney's fees and litigation costs paid to the law firm Johnson & Bell, Ltd. for serving as the State's Attorney's Office's outside

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counsel in the lawsuit *Kellum v. Dart*, 20-cv-3795.¹ On the same day, Mr. Morrissey received, via the FOIA Center, an automated message from the State's Attorney's Office confirming receipt of his request and assigning it reference number R000219-092922.² On October 4, 2022, the State's Attorney's Office informed Mr. Morrissey via the FOIA Center that it was "submitting the statutory request for a five-day extension beyond the initial five days provided by law[.]"³ On October 19, 2022, Mr. Morrissey sent the State's Attorney's Office a message via the FOIA Center noting that he had not yet received a response to his FOIA request and asking for the status of the response.⁴

On October 24, 2022, Mr. Morrissey submitted a Request for Review to the Public Access Counselor alleging that the State's Attorney's Office had failed to respond to his FOIA request or his October 19, 2022, request for the status of the response.⁵ On October 28, 2022, the Public Access Bureau e-mailed Ms. Jeaneane Booker, FOIA Officer for the State's Attorney's Office, attaching a copy of the Request for Review and a letter asking whether the State's Attorney's Office had provided a substantive response to Mr. Morrissey's FOIA request.⁶ The October 28, 2022, letter also requested that if the State's Attorney's Office had not yet responded to Mr. Morrissey, it do so and provide this office with a copy of its response.⁷ Later that day, Ms. Booker replied via e-mail that Mr. Morrissey's FOIA request was assigned to a

¹FOIA Request, Reference No. R000219-092922, from pwm@morrisseylawchicago.com to [Cook County State's Attorney's Office] (undated). The State's Attorney's Office's online FOIA submission form can be accessed from its FOIA Center at [https://cookcountystatesattorney.govqa.us/WEBAPP/_rs/\(S\(jjvtnp4cjuc3sjzmhrql5tsp\)\)/SupportHome.aspx](https://cookcountystatesattorney.govqa.us/WEBAPP/_rs/(S(jjvtnp4cjuc3sjzmhrql5tsp))/SupportHome.aspx).

²FOIA Center Message from Cook County State's Attorney[']s Office to [P]atrick [M]orrissey (September 29, 2022).

³FOIA Center Message from Elyssa Shull, FOIA Officer, [Cook County State's Attorney's Office], to [R]equestor [Patrick Morrissey] (October 4, 2022).

⁴FOIA Center Message from Pat Morrissey to [Cook County State's Attorney's Office] (October 19, 2022).

⁵Letter from Patrick Morrissey to Public Access Counselor, Office of the Attorney General (October 24, 2022).

⁶E-mail from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Jeaneane Booker, Freedom of Information Act Officer, Cook County State's Attorney's Office (October 28, 2022).

⁷Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Jeaneane Booker, Freedom of Information Act Officer, Cook County State's Attorney's Office (October 28, 2022) at [1].

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different FOIA Officer in the State's Attorney's Office, Ms. Elyssa Shull.⁸ Ms. Booker stated that she would forward this office's correspondence to Ms. Shull for a response.⁹ Shortly thereafter, Ms. Shull sent this office an e-mail stating that she was working on Mr. Morrissey's request.¹⁰ The State's Attorney's Office did not provide any additional response to the Public Access Bureau's October 28, 2022, correspondence.

On November 15, 2022, the Public Access Bureau e-mailed Ms. Shull a letter explaining that the Public Access Bureau had not received any indication that the State's Attorney's Office had substantively responded to Mr. Morrissey's FOIA request.¹¹ This office also attached to the e-mail copies of our October 28, 2022, correspondence and Ms. Booker's and Ms. Shull's responses to that correspondence.¹² The November 15, 2022, letter requested that if the State's Attorney's Office had not yet responded to Mr. Morrissey's request, it do so and provide this office with a copy of its response.¹³ On November 16, 2022, the Public Access Bureau sent to the State's Attorney's Office via the United States Postal Service a hardcopy version of the November 15, 2022, letter and the October 28, 2022, correspondence. The State's Attorney's Office did not respond to the Public Access Bureau's November 15, 2022, letter.

On November 22, 2022, Mr. Morrissey sent the State's Attorney's Office a message via the FOIA Center asking for the status of its response to his FOIA request.¹⁴ On November 28, 2022, Mr. Morrissey confirmed for this office that he had not received a response

⁸E-mail from Jeaneane Booker, FOIA Officer, [Cook County State's Attorney's Office], to [Laura] Harter, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 28, 2022).

⁹E-mail from Jeaneane Booker, FOIA Officer, [Cook County State's Attorney's Office], to [Laura] Harter, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 28, 2022).

¹⁰E-mail from Elyssa Shull, [FOIA Officer, Cook County State's Attorney's Office], to [Laura] Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 28, 2022).

¹¹Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Elyssa Shull, Freedom of Information Act Officer, Cook County State's Attorney's Office (November 15, 2022), at [1].

¹²E-mail from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Elyssa Shull, Freedom of Information Act Officer, Cook County State's Attorney's Office] (November 15, 2022).

¹³Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Elyssa Shull, Freedom of Information Act Officer, Cook County State's Attorney's Office (November 15, 2022), at [1].

¹⁴FOIA Center Message from Pat Morrissey to [Cook County State's Attorney's Office] (November 22, 2022).

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to his November 22, 2022, message or any additional correspondence from the State's Attorney's Office.¹⁵

As of the date of the issuance of this binding opinion, this office has not received confirmation from the State's Attorney's Office or Mr. Morrissey that the State's Attorney's Office has responded to the FOIA request at issue in this matter.

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 2020). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2020)), "[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 2020)) 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).

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2020)) permits a public body to extend its response time by no more than five business days for any of seven enumerated reasons. Any additional extension requires a written agreement between the requester and the public body. 5 ILCS 140/3(e) (West 2020).

On October 4, 2022, the State's Attorney's Office extended its time to respond to Mr. Morrissey's FOIA request by five business days, citing language in section 3(e) of FOIA that permits such an extension when "the requested records are stored in whole or in part at other

¹⁵E-mail from Pat Morrissey, to [Laura] Harter, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (November 28, 2022).

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locations than the office having charge of the requested records;" "the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions;" or "the request for records cannot be complied with by the public body within the time limits prescribed by subsection (d) of this Section without unduly burdening or interfering with the operations of the public body[.]" 5 ILCS 140/3(e)(i), (e)(v), (e)(vi) (West 2020).¹⁶ However, the State's Attorney's Office neither complied with the request nor denied the request in writing within the extended response period. Further, Mr. Morrissey did not agree in writing to extend the response period beyond five business days. The failure of the State's Attorney's Office to comply with the requisite response 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, 2022, Mr. Patrick Morrissey submitted a FOIA request to the Cook County State's Attorney's Office seeking a copy of a list of attorney's fees and litigation costs paid to outside counsel in *Kellum v. Dart*, 20-cv-3795. The same day, the State's Attorney's Office acknowledged receiving Mr. Morrissey's request. On October 4, 2022, the State's Attorney's Office extended its time to respond to the request by five business days pursuant to section 3(e)(i) of FOIA.

2) On October 24, 2022, Mr. Morrissey submitted his Request for Review to the Public Access Counselor alleging that the State's Attorney's Office had not responded to his FOIA request or to his request for an update on the status of the response. Mr. Morrissey's 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 2020)). Therefore, the Attorney General may issue a binding opinion with respect to this matter.

3) On October 28, 2022, the Public Access Bureau forwarded a copy of the Request for Review to the State's Attorney's Office along with a letter asking whether it had provided a substantive response to Mr. Morrissey's FOIA request. The same day, the State's Attorney's Office acknowledged receipt of this office's correspondence and Mr. Morrissey's September 29, 2022, FOIA request and indicated that it was working on a response to the FOIA request.

¹⁶Records Center Message from Elyssa Shull, FOIA Officer, [Cook County State's Attorney's Office], to [R]equestor [Patrick Morrissey] (October 4, 2022).

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4) On November 15, 2022, and November 16, 2022, the Public Access Bureau sent a second letter and copies of its previous correspondence to the FOIA Officer for the State's Attorney's Office, explaining that the Public Access Bureau had not received any indication that the State's Attorney's Office had provided a substantive response to Mr. Morrissey's FOIA request. The State's Attorney's Office did not respond to the Public Access Bureau's November 15, 2022, correspondence.

5) As of the date of the issuance of this binding opinion, this office has received no information indicating that the State's Attorney's Office has provided a substantive response to Mr. Morrissey's September 29, 2022, FOIA request.

Therefore, it is the opinion of the Attorney General that the Cook County State's Attorney's Office has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Morrissey's September 29, 2022, FOIA request, to provide him with copies of the requested records or to deny the request in writing in whole or in part. Accordingly, the State's Attorney's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Morrissey with copies of all records responsive to his September 29, 2022, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022).¹⁷ If the State's Attorney'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 2020)).

¹⁷Because the State's Attorney's Office did not comply with the statutory requirements for responding to Mr. Morrissey's FOIA request, the State's Attorney'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 2020).

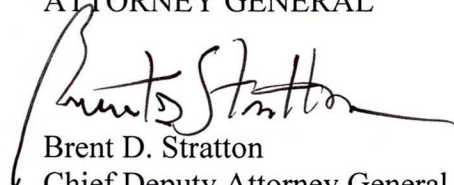
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This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the 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. Morrissey as defendants. *See* 5 ILCS 140/11.5 (West 2020).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

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 22-014) upon:

Mr. Patrick W. Morrissey
Thomas G. Morrissey, Ltd.
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Chicago, Illinois 60643
pwm@morrisseylawchicago.com

Ms. Elyssa Shull
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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 December 15, 2022.



Steve Silverman
Bureau Chief

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