



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 3, 2023

PUBLIC ACCESS OPINION 23-006
(Request for Review 2023 PAC 75510)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Brian Slodysko
National Political Reporter
Associated Press
1100 13th Street N.W.
Washington, District of Columbia 20005

Mr. Patrick Molloy
Director of Government & Public Affairs
Chicago Public Library
400 South State Street
Chicago, Illinois 60605

Dear Mr. Slodysko and Mr. Molloy:

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 Chicago Public Library (Library) 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. Brian Slodysko.

BACKGROUND

On December 13, 2022, Mr. Slodysko, on behalf of the Associated Press, submitted a FOIA request to the Library seeking copies of certain correspondence related to Supreme Court Justice Sonia Sotomayor's appearance at an October 12, 2018, Library event.¹ In particular, Mr. Slodysko sought e-mail correspondence from April 1, 2018, through November 1,

¹E-mail from CPL Webmaster to CPL FOIA (December 13, 2022).

Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 2

2018, between the Library and Justice Sotomayor or her staff concerning the justice's visit.² On December 14, 2022, the Library's Director of Marketing and Communications sent Mr. Slodysko an e-mail acknowledging receipt of his FOIA request and notifying him that the Library was extending its time to respond by up to five business days. The Library stated that it would respond to Mr. Slodysko's request by December 27, 2022.³ On February 1, 2023, Mr. Slodysko sent an e-mail to the Library noting that he had not received a response and asking for a timeframe in which the Library would provide the requested records.⁴

On February 15, 2023, Mr. Slodysko submitted a Request for Review to the Public Access Counselor alleging that the Library had failed to provide a substantive response to his FOIA request.⁵ On February 21, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Library and asked whether the Library had provided a substantive response to Mr. Slodysko's FOIA request.⁶ The February 21, 2023, letter also requested that if the Library had not yet responded to Mr. Slodysko, it do so and provide this office with a copy of its response.⁷

On March 3, 2023, Mr. Patrick Molloy, the Library's Director of Government & Public Affairs, e-mailed Mr. Slodysko, and copied this office, to provide an update on the Library's response. Mr. Molloy stated that the Library planned to expand its search for responsive records by including certain e-mail addresses in its search and would "respond with records responsive to the entire FOIA as soon as possible."⁸ On March 14, 2023, this office replied to Mr. Molloy's e-mail to ask whether the Library had completed its response to Mr.

²E-mail from CPL Webmaster to CPL FOIA (December 13, 2022).

³E-mail from Shamil Clay, M.A., Director of Marketing & Communications, Chicago Public Library, to Brian Slodysko, [National Political Reporter, Associated Press] (December 14, 2022).

⁴E-mail from Brian Slodysko, National Political Reporter, Associated Press, to Shamil [Clay, Director of Marketing & Communications, Chicago Public Library] (February 1, 2023).

⁵E-mail from Brian Slodysko, National Political Reporter, Associated Press, to Public Access [Bureau, Office of the Attorney General] (February 15, 2023).

⁶Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Shamil Clay, Director of Marketing and Communications, Chicago Public Library (February 21, 2023).

⁷Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Shamil Clay, Director of Marketing and Communications, Chicago Public Library (February 21, 2023).

⁸E-mail from Patrick Molloy, Director of Government & Public Affairs, Chicago Public Library, to Brian [Slodysko, National Political Reporter, Associated Press] (March 3, 2023).

Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 3

Slodysko's FOIA request.⁹ This office did not receive a response to its March 14, 2023, e-mail. On March 17, 2023, Mr. Slodysko informed this office that he had not yet received a substantive response to his FOIA request despite exchanging e-mails with Mr. Molloy to set parameters for a search of its records.¹⁰ This office then e-mailed the Library to ask for an estimate as to when it would respond to Mr. Slodysko.¹¹ This office did not receive a response to its March 17, 2023, e-mail.

On March 24, 2023, the Public Access Bureau e-mailed Mr. Molloy a letter explaining that the Public Access Bureau had not received any indication that the Library had substantively responded to Mr. Slodysko's FOIA request.¹² This office also attached to the e-mail copies of our March 17, 2023, correspondence to the Library and Mr. Slodysko's Request for Review.¹³ On April 12, 2023, Mr. Slodysko e-mailed Mr. Molloy, copying this office, seeking a status update on the Library's response: "Can you provide a sense of timeline for providing the documents we requested? I understand this is a time consuming task and we want to be accommodating. At the same time, this matter has been pending since December and we are eager to get the documents we seek."¹⁴ Neither Mr. Slodysko nor this office received a response to their correspondence.¹⁵

⁹E-mail from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Patrick] Molloy, [Director of Government & Public Affairs, Chicago Public Library] (March 14, 2023).

¹⁰E-mail from Brian [Slodysko, National Political Reporter, Associated Press] to Laura [Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (March 17, 2023).

¹¹E-mail from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Patrick] Molloy, Director of Government & Public Affairs, Chicago Public Library] (March 17, 2023).

¹²E-mail from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Patrick Molloy, Director of Government & Public Affairs, Chicago Public Library] (March 24, 2023).

¹³Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Patrick Molloy, Director of Government & Public Affairs, Chicago Public Library (March 24, 2023).

¹⁴E-mail from Brian Slodysko, National Political Reporter, Associated Press, to Patrick [Molloy, Director of Government & Public Affairs, Chicago Public Library] (April 12, 2023).

¹⁵E-mail from Brian [Slodysko, National Political Reporter, Associated Press] to Laura [Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (April 24, 2023).

Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 4

On April 17, 2023, this office extended the time within which to issue a binding opinion by 30 business days, to May 30, 2023, pursuant to section 9.5(f) of FOIA.¹⁶ On April 24, 2023, Mr. Slodysko confirmed for this office that he had not received a response to his December 13, 2023, FOIA request.¹⁷

As of the date of the issuance of this binding opinion, this office has not received confirmation from the Library or Mr. Slodysko that the Library 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

¹⁶Letter from Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Brian Slodysko, National Political Reporter, Associated Press, and Patrick Molloy, Director of Government & Public Affairs, Chicago Public Library (April 17, 2023).

¹⁷E-mail from Brian [Slodysko, National Political Reporter, Associated Press] to Laura [Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (April 24, 2023).

Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 5

additional extension requires a written agreement between the requester and the public body. 5 ILCS 140/3(e) (West 2020).

On December 14, 2022, the Library extended its time to respond to Mr. Slodysko's FOIA request by five business days, referencing 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 locations than the office having charge of the requested records;" "the request requires the collection of a substantial number of specified records;" "the request is couched in categorical terms and requires an extensive search for the records responsive to it;" and "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)(ii), (e)(iii), (e)(vi) (West 2020).¹⁸ However, the Library neither complied with the request nor denied the request in writing within the extended response period or thereafter. Further, Mr. Slodysko did not agree in writing to extend the response period beyond five business days. The failure of the Library 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 December 13, 2022, Mr. Brian Slodysko, on behalf of the Associated Press, submitted a FOIA request to the Chicago Public Library seeking copies of e-mail correspondence concerning Supreme Court Justice Sonia Sotomayor's appearance at an October 12, 2018, Library event. On December 14, 2022, the Library acknowledged receiving Mr. Slodysko's FOIA request and extended its time to respond by five business days.
- 2) On February 15, 2023, Mr. Slodysko submitted a Request for Review to the Public Access Counselor alleging that the Library had failed to respond to his FOIA request. Mr. Slodysko'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)).
- 3) On February 21, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Library and asked whether the Library had provided a substantive response to Mr. Slodysko's FOIA request. The February 21, 2023, letter also requested that if the Library had not yet responded to Mr. Slodysko, it do so and provide this office with a copy of its response.

¹⁸E-mail from Shamil Clay, Director of Marketing & Communications, Chicago Public Library, to [Brian Slodysko, National Political Reporter, Associated Press] (December 14, 2023).

Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 6

4) The Library did not directly respond to that letter but, on March 3, 2023, the Library's Director of Government and Public Affairs copied this office on an e-mail to Mr. Slodysko which stated that the Library planned to expand its search for responsive records and would respond as soon as possible.

5) On March 17, 2023, Mr. Slodysko informed this office that the Library still had not substantively responded to his request.

6) On March 24, 2023, the Public Access Bureau sent a second letter and copies of its previous correspondence to the Library's Director of Government and Public Affairs, explaining that the Public Access Bureau had not received any indication that the Library had provided a substantive response to Mr. Slodysko's FOIA request. The Library did not respond to that letter.

7) On April 17, 2023, the Public Access Bureau extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2020)). 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 received no information indicating that the Library has provided a substantive response to Mr. Slodysko's December 13, 2022, FOIA request.

Therefore, it is the opinion of the Attorney General that the Chicago Public Library has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Slodysko's December 13, 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 Library is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Slodysko with copies of all records responsive to his December 13, 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 102-752, effective January 1, 2023; 102-753, effective January 1, 2023; 102-776, effective January 1, 2023; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022).¹⁹ If the Library 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)).

¹⁹Because the Library did not comply with the statutory requirements for responding to Mr. Slodysko's FOIA request, the Library is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2020).

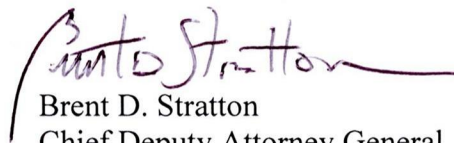
Mr. Brian Slodysko
Mr. Patrick Molloy
May 3, 2023
Page 7

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 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. Slodysko 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 23-006) upon:

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Associated Press
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Washington, District of Columbia 20005
bslodysko@ap.org

Mr. Patrick Molloy
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400 South State Street
Chicago, Illinois 60605
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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 May 3, 2023.



Steve Silverman
Bureau Chief

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