



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 12, 2023

PUBLIC ACCESS OPINION 23-011
(Request for Review 2023 PAC 76017)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Ellen P. Brewin
11441 Prescott Lane
Westchester, Illinois 60154

Dr. James L. Henderson
Superintendent
Proviso Township High School District 209
8601 West Roosevelt Road
Forest Park, Illinois 60130

Dear Ms. Brewin and Dr. Henderson:

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 2022)). For the reasons discussed below, this office concludes that Proviso Township High School District 209 (District) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2022)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Ms. Ellen P. Brewin.

BACKGROUND

On March 15, 2023, Ms. Brewin submitted by e-mail¹ a FOIA request to the District dated March 16, 2023, seeking copies "of any and all records * * * related to legal or other kinds of settlements reached by the district or any of its employees from June 30, 2020 to

¹E-mail from Ellen P. Brewin to Proviso FOIA Compliance Officer and/or [Kristi] Vanden[B]roek (March 15, 2023).

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February 28, 2023."² On March 27, 2023, Ms. Brewin submitted a Request for Review with the Public Access Counselor, in which she alleged that the District had failed to respond to her FOIA request.³

On March 31, 2023, the Public Access Bureau e-mailed the FOIA Officer for the District a copy of the Request for Review and a letter asking whether the District had received and responded to Ms. Brewin's FOIA request.⁴ This office sent the e-mail to the e-mail address identified on the District's website as the designated address for FOIA requests.⁵ The March 31, 2023, letter also requested that if the District had not yet responded to Ms. Brewin, it do so and provide this office with a copy of its response.⁶ The District did not respond to the Public Access Bureau's March 31, 2023, correspondence.

On April 27, 2023, the Public Access Bureau sent a letter via U.S. Postal Mail to Dr. James Henderson, the District's Superintendent,⁷ stating that this office had not received a response to its March 31, 2023, letter and reiterating the request for a response.⁸ This office attached to the letter a copy of the March 31, 2023, letter and Ms. Brewin's Request for Review. On the same day, this office also sent via e-mail copies of the letter to Dr. Henderson, the FOIA Officer, and Ms. Tiffany Jenkins, Executive Assistant to the Board of Education and

²PTHS District 209 Request to Inspect Records form signed by Ellen P. Brewin (March 16, 2023).

³FOIA – Request for Review by Public Access Counselor (PAC) form signed by Ellen P. Brewin (March 27, 2023).

⁴E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [FOIA Officer, Proviso Township High School District 209] (March 31, 2023).

⁵Proviso Township High School D209, Public and Community Relations, <https://www.pths209.org/Page/2139> (last visited July 5, 2023).

⁶Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to FOIA Officer, Proviso Township High School District 209 (March 31, 2023), at [1].

⁷This office designated the Superintendent as the recipient of this office's correspondence pursuant to the District's Board of Education policy 2:250, which states, in relevant part: "The Superintendent or designee shall respond to requests made under the Illinois Freedom of Information Act[.]" Proviso Township High School District 209 Board of Education Policy Manual, section 2:250, <https://www.pths209.org/cms/lib/IL50000037/Centricity/Domain/3325/PDFs/PTHSBoardPolicyAccessToPublicRecords.pdf> (last visited July 5, 2023).

⁸Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to James L. Henderson, Superintendent, Proviso Township High School District 209 (April 27, 2023).

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Superintendent.⁹ The District did not respond to the Public Access Bureau's April 27, 2023, letter. Later the same day, Ms. Brewin e-mailed this office¹⁰ a copy of an April 19, 2023, letter from the District's FOIA Officer stating that the District was extending its time to respond to the March 15, 2023, FOIA request and would do so by April 30, 2023.¹¹

On May 2, 2023, the Public Access Bureau sent an e-mail to Ms. Brewin asking if she had received a response from the District.¹² The same day, Ms. Brewin informed this office she had not received any further correspondence from the District.¹³ In a May 4, 2023, telephone call with an Assistant Attorney General (AAG) in the Public Access Bureau, the District's FOIA officer, Ms. Janessa Salgado, informed this office that she had recently taken over as the FOIA officer and was trying to catch up on requests.¹⁴ She confirmed that the District had received Ms. Brewin's FOIA request and indicated that she was waiting for a response from the District's attorney.¹⁵ She noted that the District's Board of Education was meeting that week,¹⁶ and indicated that she may receive a response from the District's attorney afterwards.¹⁷ On May 16, 2023, the Public Access Bureau sent an e-mail to Ms. Salgado asking if she had provided Ms.

⁹E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Superintendent209@pths209.org, foia@pths209.org, tjenkins@pths209.org, 217park@gmail.com (April 27, 2023).

¹⁰E-mail from Ellen P. Brewin to [Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (April 27, 2023).

¹¹Letter from Janessa Salgado, FOIA Compliance Officer, Proviso Township High School District 209, to Ellen P. Brewin (April 19, 2023).

¹²E-mail from Victoria Frazier, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] to [Ellen] Brewin (May 2, 2023).

¹³E-mail from Ellen Brewin to [Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (May 2, 2023).

¹⁴Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 4, 2023).

¹⁵Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 4, 2023).

¹⁶This office notes that the FOIA Report in the agenda for the District's Board of Education Regular Meeting on April 11, 2023, which lists FOIA requests received by the District for the prior month, included Ms. Brewin's March 15, 2023, FOIA request. Board of Education of Proviso Township High School District 209, Regular Meeting, Agenda Item 15 (April 11, 2023), <https://meetings.boardbook.org/Public/Agenda/1791?meeting=577410> (last visited July 3, 2023).

¹⁷Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 4, 2023).

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Brewin with a response and requesting a copy of the response, if it had been provided.¹⁸ The District did not respond.

In a May 18, 2023, telephone call with Ms. Salgado, an AAG asked if she had received this office's most recent e-mail and asked for an update on a response to Ms. Brewin's request.¹⁹ Ms. Salgado asked if the e-mail had been sent on Wednesday, May 17, 2023, and if so, stated she was waiting for approval to send the response.²⁰ On May 19, 2023, after reviewing this office's files and confirming that no correspondence had been sent to the District on May 17, 2023, the AAG left a voicemail message for Ms. Salgado, asking her to return the call to clarify the status of the responses to the outstanding Requests for Review. In a May 25, 2023, telephone call with Ms. Salgado, the AAG noted that there were two pending Requests for Review²¹ filed by Ms. Brewin alleging that the District had failed to respond to her FOIA requests. The AAG asked Ms. Salgado whether the District had provided a response to either of those two FOIA requests.²² Ms. Salgado indicated that information for a response for Ms. Brewin's March 15, 2023, FOIA request would likely come from the District's attorney and information for the other FOIA request would likely come from the District's business office.²³ Additionally, Ms. Salgado informed the AAG that Ms. Kristi VandenBroek was now the District's FOIA Officer and would be able to provide more information.²⁴ Ms. Salgado then transferred the AAG to Ms. VandenBroek's telephone line; the AAG left a voicemail asking Ms. VandenBroek to return her call.

¹⁸E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to [Janessa] Salgado, [FOIA Compliance Officer, Proviso Township High School District 209] (May 16, 2023).

¹⁹Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 18, 2023).

²⁰Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Office of the Attorney General (May 18, 2023).

²¹In addition to the Request for Review at issue in this matter, Ms. Brewin alleged that the District failed to respond to the FOIA request that underlies Request for Review 2023 PAC 75733.

²²Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 25, 2023).

²³Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (May 25, 2023).

²⁴Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Office of the Attorney General (May 25, 2023).

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On May 26, 2023, this office extended the time for issuing a binding opinion for 30 business days, pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2022)).²⁵

On June 8, 2023, an AAG called the District's main phone number seeking to identify the District's FOIA officer. The AAG was routed to Ms. Salgado, who reiterated that Ms. VandenBroek was the FOIA officer, but she was not in the office.²⁶ Ms. Salgado provided the AAG with Ms. VandenBroek's direct telephone number.²⁷ On June 14, 2023, and June 22, 2023, the AAG left messages on Ms. VandenBroek's voicemail asking for her to contact this office to discuss the outstanding Requests for Review. Ms. VandenBroek has not returned this office's messages.

On July 3, 2023, the Public Access Bureau sent an e-mail to Ms. Brewin asking if she had received a response to her March 15, 2023, FOIA request.²⁸ In a subsequent telephone call that day with an AAG, Ms. Brewin confirmed that she has not received a response to her March 15, 2023, FOIA request. Also on July 3, 2023, the Public Access Bureau sent an e-mail to Ms. VandenBroek explaining that this office has received neither a response to its voicemail messages nor any indication that Ms. Brewin's FOIA request has been addressed. This office requested a response as to when the District would respond to Ms. Brewin's March 15, 2023, FOIA request.²⁹ On July 10, 2023, Ms. VandenBroek replied via e-mail by indicating that she would work with the Superintendent on a response to Ms. Brewin's March 15, 2023, FOIA request.³⁰ As of the date of the issuance of this binding opinion, this office has not received a further response from the District, nor has it received any indication that the District has responded to Ms. Brewin's March 15, 2023, FOIA request.

²⁵Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to James Henderson, Superintendent, Proviso Township High School District 209, and Ellen Brewin (May 26, 2023).

²⁶Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (June 8, 2023).

²⁷Telephone conversation between Janessa Salgado and Victoria Frazier, Assistant Attorney General, Office of the Attorney General (June 8, 2023).

²⁸E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Ellen] Brewin (July 3, 2023).

²⁹E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Kristi VandenBroek, Director of Public Communications Relations, Proviso Township High School District 209] (July 3, 2023).

³⁰E-mail from Kristin VandenBroek, Director of Public & Community Relations, Proviso Township High School District 209, to [Peggy] Frazier (July 10, 2023).

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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 2022). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2022)), "[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 2022)) 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 2022)) permits a public body to extend its response time by no more than five business days from the original due date 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 2022).

It is undisputed that the District did not respond to Ms. Brewin's March 15, 2023, FOIA request within five business days after its receipt by either complying with her request, extending the time for its response pursuant to section 3(e) of FOIA, or denying the request in writing. The failure of the District to comply with the requisite response procedures violated section 3(d) of FOIA.

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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 March 15, 2023, Ms. Ellen P. Brewin submitted a FOIA request to Proviso Township High School District 209 seeking copies of records relating to settlement agreements between June 30, 2020, and February 28, 2023.

2) On March 27, 2023, Ms. Brewin submitted the documents required to file a Request for Review with the Public Access Counselor alleging that the District had not responded to her FOIA request. Ms. Brewin'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 2022)).

3) On March 31, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the District along with a letter asking whether the District had responded to Ms. Brewin's FOIA request. The District did not respond.

4) On April 27, 2023, the Public Access Bureau sent a second copy of the letter and Request for Review to the District, including the District's Superintendent and his assistant, explaining that the Public Access Bureau had not received any indication that the District had responded to Ms. Brewin's FOIA request. The District did not respond. On April 27, 2023, Ms. Brewin provided this office a copy of an April 19, 2023, letter from the District indicating she would receive a response to her FOIA request on April 30, 2023. On May 2, 2023, Ms. Brewin confirmed she had not received a response or other correspondence from the District.

5) On May 4, 2023, in a telephone call, Ms. Janessa Salgado, the District's FOIA officer at the time, confirmed receipt of Ms. Brewin's March 15, 2023, FOIA request and indicated that the District was working on its response. On May 16, 2023, the Public Access Bureau re-sent its April 27, 2023, letter to the FOIA Officer and asked for an update. The District did not respond to the Public Access Bureau's May 16, 2023, e-mail. In a May 25, 2023, telephone call, Ms. Salgado informed the Public Access Bureau that she was no longer the District's FOIA officer.

6) On May 26, 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 2022)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

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7) On May 25, 2023, June 14, 2023, and June 22, 2023, the Public Access Bureau left voicemail messages for Ms. Kristi VandenBroek, the designated FOIA officer for the District, asking her to contact this office to discuss Ms. Brewin's Request for Review. The Public Access Bureau has received no response.

8) On July 3, 2023, the Public Access Bureau e-mailed Ms. VandenBroek asking for an update as to when the District would respond to Ms. Brewin's March 15, 2023, FOIA request. On July 10, 2023, Ms. VandenBroek replied via e-mail by indicating that she would work with the Superintendent on a response to the request. As of the date of the issuance of this binding opinion, this office has received no information indicating that the District has responded to Ms. Brewin's March 15, 2023, FOIA request.

Therefore, it is the opinion of the Attorney General that Proviso Township High School District 209 has violated section 3(d) of FOIA by failing, within the statutory time for responding to Ms. Brewin's March 15, 2023, FOIA request, to provide her with copies of the requested records or to deny the request in writing in whole or in part. Accordingly, the District is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Brewin with copies of all records responsive to her March 15, 2023, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2022)).³¹ If the District 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 2022)).

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 2022). 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 Ms. Brewin as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

³¹Because the District did not comply with the statutory requirements for responding to Ms. Brewin's FOIA request, the District is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2022).

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 23-011) upon:

Ms. Ellen P. Brewin
11441 Prescott Lane
Westchester, Illinois 60154
217park@gmail.com

Dr. James L. Henderson
Superintendent
Proviso Township High School District 209
8601 West Roosevelt Road
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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 July 12, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
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