



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 5, 2023

PUBLIC ACCESS OPINION 23-012
(Request for Review 2023 PAC 76732)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Rony Islam
2315 West Eastwood Avenue
Apartment #2E
Chicago, Illinois 60657

Ms. Erica Schroeder
FOIA Officer
Chicago Department of Transportation
2 North LaSalle Street, Suite 1110
Chicago, Illinois 60602

Dear Mr. Islam and Ms. Schroeder:

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 the City of Chicago Department of Transportation (Department) 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 Mr. Rony Islam.

BACKGROUND

On April 25, 2023, Mr. Islam submitted a FOIA request to the Department seeking copies of e-mail metadata from specified Department employees containing specified keywords from January 1, 2023, to April 24, 2023.¹ On May 25, 2023, Mr. Islam submitted a

¹FOIA portal message from City of Chicago Department of Transportation confirming receipt of FOIA request submitted by Rony Islam (April 25, 2023).

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Request for Review to the Public Access Counselor, in which he alleged that the Department had failed to respond to his FOIA request.²

On June 1, 2023, the Public Access Bureau e-mailed³ a FOIA Officer for the Department a copy of the Request for Review and a letter asking whether the Department had received and responded to Mr. Islam's FOIA request. The June 1, 2023, letter also requested that if the Department had not yet responded to Mr. Islam, it do so and provide this office with a copy of its response.⁴ The Department did not respond to the Public Access Bureau's June 1, 2023, correspondence.

On June 16, 2023, the Public Access Bureau sent the same FOIA Officer an additional copy of the Request for Review and another letter stating that this office had not received a response to its June 1, 2023, letter and reiterating the request for a response.⁵ The Department did not respond to the Public Access Bureau's June 16, 2023, letter.

On July 24, 2023, this office extended the time for issuing a binding opinion by 30 business days, pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2022)).⁶ The Public Access Bureau e-mailed⁷ copies of this letter to the Mr. Islam and the same FOIA Officer as well as to the e-mail address⁸ listed on the Department's website for FOIA.⁹

²E-mail from Rony Islam to Public Access [Bureau, Office of the Attorney General] (May 25, 2023).

³E-mail from Ben Silver, Assistant Attorney General, Public Access Bureau to [Erica] Schroeder, [FOIA Officer, Chicago Department of Transportation] (June 1, 2023).

⁴Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Erica Schroeder, FOIA Officer, Chicago Department of Transportation (June 1, 2023), at [1].

⁵Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Erica Schroeder, FOIA Officer, Chicago Department of Transportation (June 16, 2023).

⁶Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Rony Islam and Erica Schroeder, FOIA Officer, Chicago Department of Transportation (July 24, 2023).

⁷E-mail from Ben Silver, Assistant Attorney General, Public Access Bureau, to [Rony] Islam and [Erica] Schroeder [FOIA Officer, Chicago Department of Transportation] (June 24, 2023).

⁸CDOTfoia@cityofchicago.org.

⁹File a Transportation FOIA Request, Chicago, *available at* https://www.chicago.gov/city/en/depts/cdot/supp_info/cdot_foia.html (last visited August 25, 2023).

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On August 29, 2023, the Public Access Bureau sent an e-mail to Mr. Islam asking if he had received a response from the Department.¹⁰ On that same date, Mr. Islam informed this office he still had not received a response from the Department.¹¹

As of the date of the issuance of this binding opinion, this office has not received any response from the Department, nor has it received any indication that the Department has responded to Mr. Islam's April 25, 2023, 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 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).

¹⁰E-mail from Ben Silver, Assistant Attorney General, Public Access Bureau, to [Rony] Islam (August 29, 2023).

¹¹E-mail from Rony Islam to Benjamin Silver (August 29, 2023).

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It is undisputed that the Department did not respond to Mr. Islam's April 25, 2023, 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, or denying the request in writing. The failure of the Department 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 April 25, 2023, Mr. Rony Islam submitted a FOIA request to the City of Chicago Department of Transportation seeking copies of specified e-mail metadata between January 1, 2023, and April 24, 2023.
- 2) On May 25, 2023, Mr. Islam submitted the documents required to file a Request for Review with the Public Access Counselor alleging that the Department had not responded to his FOIA request. Mr. Islam'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 June 1, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Department along with a letter asking whether the Department had responded to Mr. Islam's FOIA request. The Department did not respond.
- 4) On June 16, 2023, the Public Access Bureau sent a second copy of the letter and Request for Review to the Department explaining that the Public Access Bureau had not received any indication that the Department had responded to Mr. Islam's FOIA request. The Department did not respond.
- 5) On July 24, 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.
- 8) As of the date of the issuance of this binding opinion, this office has received no information indicating that the Department has responded to Mr. Islam's April 25, 2023, FOIA request.

Therefore, it is the opinion of the Attorney General that the City of Chicago Department of Transportation has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Islam's April 25, 2023, FOIA request, to provide him with copies of

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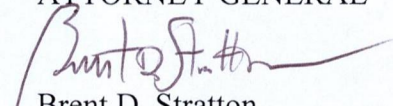
the requested records or to deny the request in writing in whole or in part. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Islam with copies of all records responsive to his April 25, 2023, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2022)).¹² If the Department determines that any portions of the responsive records are 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 Mr. Islam as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

¹²Because the Department did not comply with the statutory requirements for responding to Mr. Islam's FOIA request, the Department 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 23-012) upon:

Mr. Rony Islam
2315 West Eastwood Avenue
Apartment #2E
Chicago, Illinois 60657
Rony.islam1295@gmail.com

Ms. Erica Schroeder
FOIA Officer
Chicago Department of Transportation
2 North LaSalle Street, Suite 1110
Chicago, Illinois 60602
Erica.schroeder@cityofchicago.org
CDOTfoia@cityofchicago.org

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 September 5, 2023.



Steve Silverman
Bureau Chief

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Bureau Chief
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