



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 26, 2012

PUBLIC ACCESS OPINION No. 12-004
(Request for Review 2011 PAC 17090)

FREEDOM OF INFORMATION ACT:
Requests for Records May Properly Be Submitted
to a Public Body via Personal Delivery

Mr. Vernon Ford
1004 E. Walnut
Canton, Illinois 61520

Mr. Tim Orwig
Freedom of Information Officer
Village of Smithfield
PO Box 25
Smithfield, Illinois 61477

Dear Mr. Ford and Mr. Orwig:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2010), as amended by Public Act 97-579, effective August 26, 2011). For the reasons set forth below, we conclude that the Village of Smithfield (Village) has violated FOIA by refusing to accept a FOIA request personally delivered by Mr. Vernon Ford to the Village President at a Village Board meeting on October 12, 2011.

BACKGROUND

At a regular meeting of the Village Board held on October 12, 2011, Mr. Ford approached Village President Bill Mustread and attempted to hand him a FOIA request for public records.¹ President Mustread initially refused to take possession of the request. He later took the request from Mr. Ford and set it aside, orally indicating to Mr. Ford that all FOIA requests to the Village must be submitted by mail, therefore his request was denied.

¹E-mail from Vernon Ford to Public Access Counselor (October 12, 2011).

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On October 13, 2011, the Public Access Bureau received Mr. Ford's request for review challenging the Village's refusal to accept his FOIA request via personal delivery. This office forwarded a copy of Mr. Ford's request for review to the Village on October 19, 2011, and asked for an explanation of its basis for refusing to accept Mr. Ford's FOIA request by hand delivery.²

On November 16, 2011, the Village responded to the Public Access Bureau's request for an explanation, in part, as follows:

The Village of Smithfield has made a determination that we would accept FOIA requests *by mail only*, and have posted this on our information page in three places in the Village. As we have no office hours or full-time employees, we cannot accept FOIA or OMA Requests at our office.³ (Emphasis in original.)

The Village further asserted that it had changed its policy from accepting hand delivered requests to accepting mailed requests only because Mr. and Mrs. Ford had hand-delivered FOIA requests to Board members in person on private property and on public streets, and the Village viewed this as harassment. Thus, the Village agrees that it refused to accept Mr. Ford's FOIA request via personal delivery at a Board meeting, and acknowledges that the Village has no office hours or full-time employees.

We forwarded a copy of the Village's response letter to Mr. Ford on November 29, 2011.⁴ On December 4, 2011, Mr. Ford responded to the Village's answer explaining that his wife had entered private property to hand deliver a FOIA request to Tim Orwig on only one occasion, and would not do so again.⁵ Mr. Ford also acknowledged that Mrs. Ford had, on one occasion, hand-delivered a FOIA request to Village President Mustread while Mr. Mustread was on a Village street. Mr. Ford asserted that hand delivery of FOIA requests to Board members is necessary because the Village has no office hours, nor is the mail picked up in a timely manner. According to Mr. Ford, the Board has stated in response to questioning at meetings that mail is picked up from the post office either close to the date of a Village Board meeting, which could

²Letter from Amanda M. Lundeen, Assistant Attorney General, Public Access Bureau, to Tim Orwig, Freedom of Information Officer, Village of Smithfield (October 19, 2011).

³Letter from Tim Orwig, Open Meetings Act Officer, Village of Smithfield, to Amanda Lundeen, Assistant Attorney General, Public Access Bureau (November 16, 2011).

⁴Letter from Amanda M. Lundeen, Assistant Attorney General, Public Access Bureau, to Vernon L. Ford and Tim Orwig (November 29, 2011).

⁵E-mail from Vernon L. Ford to Amanda Lundeen, Office of the PAC (December 4, 2011)

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mean every two or three weeks, or every one to two weeks. The Village did not dispute this assertion.

ANALYSIS

In order to determine whether the Village violated the requirements of FOIA by refusing to accept personal delivery of Mr. Ford's FOIA request, we need only examine the plain language of the Act. In interpreting a statute, the "primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning." *People v. Perry*, 224 Ill.2d 312, 323, (2007). Section 3(c) of FOIA provides that FOIA requests for inspection or copies of public records "shall be made in writing and directed to the public body" and that "[w]ritten requests may be submitted to a public body via *personal delivery*, mail, telefax, or other means available to the public body." (Emphasis added.) 5 ILCS 140/3(c) (West 2010). Once a written request for records is received by a public body, FOIA requires that "[a]ll requests for inspection and copying received by a public body shall immediately be forwarded to its Freedom of Information officer or designee" (5 ILCS 140/3(c) (West 2010)) and that "[e]ach public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request[.]" (5 ILCS 140/3(d) (West 2010)).

The language of section 3(c) of FOIA expressly provides that a FOIA request may be submitted to a public body via personal delivery. The Village may not adopt a policy of refusing to accept hand delivered FOIA requests because such a policy is contrary to the plain language of the statute. Further, in this instance the evidence indicates that the Village does not maintain regular office hours or retrieve its mail on a regular basis. Consequently, hand delivery of a FOIA request to the Village President at a public meeting of the Board was a reasonable alternative under these circumstances.

This conclusion should not, however, be interpreted to mean that personal delivery at any time or place is acceptable. For example, we are not suggesting that a village officer would be obligated to accept delivery of a FOIA request during a chance encounter on the sidewalk, or at his or her private residence or place of business. Personal delivery upon the Village President at a meeting of the Village Board, however, is a significantly different scenario. We conclude, therefore, that the Village violated section 3(c) of FOIA when Mr. Ford personally tendered his October 12, 2011, FOIA request to Mr. Mustread at the Village Board meeting, and Mr. Mustread refused to accept the request for forwarding to the Village FOIA officer for response.

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FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

- 1) On October 12, 2011, the Village of Smithfield Board of Trustees held a regular meeting.
- 2) At the October 12, 2011, meeting Mr. Vernon Ford attempted to personally deliver a FOIA request to Village President Bill Mustread.
- 3) President Mustread informed Mr. Ford that his FOIA request would not be accepted based upon the Village's policy that all FOIA requests must be submitted by mail.
- 4) On October 13, 2011, Mr. Ford submitted to the Public Access Counselor a Request for Review of the Village's denial of his October 12, 2011, FOIA request. Mr. Ford's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011).
- 5) The Attorney General properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) (5 ILCS 140/ 9. 5(f) (West 2010), as amended by Public Act 97- 579, effective August 26, 2011), until January 26, 2012. Therefore, the Attorney General may issue a binding opinion with respect to the Village's denial of Mr. Ford's October 12, 2011, FOIA request.
- 6) The Village, as a matter of law, violated section 3(c) of FOIA by refusing to accept and respond to Mr. Ford's FOIA request which was submitted by personal delivery at a public meeting of the Village Board.

Therefore, it is the opinion of the Attorney General that the Village has improperly denied Mr. Ford's October 12, 2011, FOIA request. Accordingly, the Village is directed to take immediate and appropriate action to comply with this opinion by furnishing the records sought by Mr. Ford's October 12, 2011, FOIA request. We advise the Village that its practice of requiring FOIA requests to be submitted only by mail violates section 3(c) of FOIA and must be discontinued.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County

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within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Vernon Ford as defendants. *See* 5 ILCS 120/7.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General