



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 31, 2018

PUBLIC ACCESS OPINION 18-017
(Request for Review 2018 PAC 55035)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Tracey Thompson
P.O. Box 379364
Chicago, Illinois 60637-9364

Ms. Charise Valente
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Dear Ms. Thompson and Ms. Valente:

This is a binding opinion 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 2016)). For the reasons discussed below, this office concludes that the Chicago Police Department (CPD) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Ms. Tracey Thompson.

BACKGROUND

On July 27, 2018, Ms. Thompson submitted a FOIA request to CPD seeking seven categories of records concerning a vehicle accident that occurred at a specific address on July 16, 2018.¹ CPD confirmed receipt of the FOIA request later that day, and furnished Ms.

¹E-mail from Tracey Thompson to foia@chicagopolice.org (July 27, 2018).

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Thompson the FOIA Center reference number it had assigned to her request.² On August 7, 2018, Ms. Thompson sent an e-mail asking CPD for "an explanation for not producing responsive information and [the] expected date of production."³

On September 24, 2018, Ms. Thompson e-mailed a Request for Review to the Public Access Bureau alleging that CPD had failed to respond to her FOIA request.⁴ On October 2, 2018, the Public Access Bureau forwarded a copy of the Request for Review to CPD, together with a letter asking it to advise this office whether it had received and responded to Ms. Thompson's FOIA request. If it had received the request but not yet responded to Ms. Thompson, the letter further requested that CPD do so and provide this office with a copy of its response.⁵ CPD did not respond to the Public Access Bureau's October 2, 2018, correspondence.

On October 23, 2018, the Public Access Bureau sent a second copy of the Request for Review to CPD, and asked it to respond to this office's prior correspondence concerning the response to Ms. Thompson's FOIA request.⁶ On October 24, 2018, a CPD FOIA Officer sent an e-mail to the Public Access Bureau that indicated that "[t]he FOIA officer assigned to this is currently on furlough but will be back next week. I will follow up with him on the status of this when he returns."⁷ The following week, on October 30, 2018, the same CPD FOIA Officer sent an e-mail to an Assistant Attorney General in the Public Access Bureau stating that "there are 2 body w[o]rn camera video[s] that are currently in review. * * * I'll keep you posted as to the status of that review."⁸

²E-mail from Chicago Public Safety to Tracey [Thompson] (July 27, 2018).

³E-mail from Tracey Thompson to Chicago Public Safety (August 7, 2018).

⁴E-mail from Tracey Thompson to Public Access [Bureau, Office of the Attorney General] (September 24, 2018).

⁵Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Charise Valente, General Counsel, Chicago Police Department (October 2, 2018).

⁶Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Charise Valente, General Counsel, Chicago Police Department (October 23, 2018).

⁷E-mail from Sally (Sarah) Bown, FOIA Officer, Chicago Police Department, to Leah Bartelt (October 24, 2018).

⁸E-mail from Sally (Sarah) Bown, FOIA Officer, Chicago Police Department, to Leah Bartelt, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (October 30, 2018).

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On November 19, 2018, Ms. Thompson sent an e-mail to the Public Access Bureau asserting that CPD still had not responded to her request.⁹ As of the date of the issuance of this binding opinion, this office has not received a written response from CPD or confirmation from Ms. Thompson that she has received a response to her July 27, 2018, FOIA request.

On November 21, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to January 8, 2019, pursuant to section 9.5(f) of FOIA.¹⁰

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 2016). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)), "[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 2016)) 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).

⁹E-mail from Tracey Thompson to Leah Bartelt and Public Access [Bureau, Office of the Attorney General] (November 19, 2018).

¹⁰Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Tracey Thompson and Charise Valente, General Counsel, Chicago Police Department (November 21, 2018).

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CPD did not respond to Ms. Thompson's 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 (5 ILCS 140/3(e) (West 2016)), or denying the request in writing. CPD's failure to comply with the requisite 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 July 27, 2018, Ms. Tracey Thompson submitted a FOIA request to CPD seeking copies of records related to a vehicle accident and the vehicles involved in that accident. Although an e-mail was generated confirming CPD's receipt of Ms. Thompson's FOIA request, Ms. Thompson did not receive any further response to her request.

2) On September 24, 2018, Ms. Thompson submitted a Request for Review to the Public Access Bureau alleging that CPD had not responded to her FOIA request. The 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 2016)).

3) On October 2, 2018, the Public Access Bureau forwarded a copy of Ms. Thompson's Request for Review to CPD, together with a letter asking CPD to advise this office whether it had received and responded to Ms. Thompson's July 27, 2018, FOIA request. CPD did not respond to this office's inquiry.

4) On October 23, 2018, this office sent another copy of the Request for Review and this office's October 2, 2018, letter, along with a letter inquiring as to the status of CPD's response to this office, to CPD. On October 30, 2018, CPD stated that it was still reviewing the video recordings responsive to the request.

5) On November 19, 2018, Ms. Thompson notified this office by e-mail that CPD still had not responded to her request.

6) On November 21, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to January 8, 2019, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) As of the date of the issuance of this binding opinion, this office has not received confirmation that CPD has responded to Ms. Thompson's request.

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Therefore, it is the opinion of the Attorney General that CPD has violated section 3(d) of FOIA by failing, within five business days after receiving Ms. Thompson's July 27, 2018, FOIA request, to provide the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part. Accordingly, CPD is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Thompson with all records responsive to her July 27, 2018, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)), as amended by Public Act 100-732, effective August 3, 2018).¹¹ If CPD 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 2016)).

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 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Tracey Thompson as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹¹Because CPD did not comply with the statutory requirements for responding to Ms. Thompson's FOIA request, CPD is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2016).


CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-017) upon:

Ms. Tracey Thompson
P.O. Box 379364
Chicago, Illinois 60637-9364
tracey611@yahoo.com

Ms. Charise Valente
General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653
pacola@chicagopolice.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 Springfield, Illinois on December 31, 2018.


SARAH L. PRATT
Public Access Counselor

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