



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 21, 2018

PUBLIC ACCESS OPINION 18-003
(Request for Review 2017 PAC 50370)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Kaley J. Martin
Cyber-Path Integrated IT Solutions
28 South 87th, Suite 001
Belleville, Illinois 62223

The Honorable Dorene Hoosman
City Clerk/FOIA Officer
City of East St. Louis
301 River Park Drive
East St. Louis, Illinois 62201

Dear Mr. Martin and Ms. Hoosman:

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 City of East St. Louis (City) 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 Mr. Kaley J. Martin.

BACKGROUND

On October 26, 2017, Mr. Martin submitted a FOIA request to the City seeking copies of "all records responsive to Courtney Logan's meeting schedule for the months of March 2016, April 2016, May 2016 and June 2016[,]" specifying that the records should include "correspondence and communication in regards to dates, time, place and who the meetings were

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with[.]"¹ Mr. Martin sent the request via e-mail to "d.moore@cesl.us," which, according to the City's webpage,² is the e-mail address of City Manager Daffney Moore, and to Mike Wagner, who, the City previously explained to this office in a separate, unrelated matter,³ has served as the City Attorney.⁴ Mr. Martin also copied, among others, City Clerk Dorene Hoosman on the request.

On November 6, 2017, Mr. Martin e-mailed a Request for Review to the Public Access Bureau alleging that the City had failed to respond to his FOIA request.⁵

On November 8, 2017, the Public Access Bureau forwarded a copy of the Request for Review to the City, together with a letter asking it to advise this office whether it had received and responded to Mr. Martin's FOIA request. If it had not yet responded to Mr. Martin, this office requested that the City do so and provide this office with a copy of the response.⁶ The City did not respond to the Public Access Bureau's November 8, 2017, correspondence.

On November 21, 2017, Mr. Martin sent an e-mail to the Public Access Bureau stating that the City had not responded to his request.⁷ On November 22, 2017, an Assistant Attorney General (AAG) in the Public Access Bureau sent a letter to Clerk Hoosman, which inquired as to the status of the City's response.⁸ Copies of the Request for Review and this office's November 8, 2017, letter were attached to the correspondence. The City did not respond to this letter.

¹E-mail from Kaley J. Martin, CYBER-PATH Integrated IT Solutions, to 'Mike Wagner' <mwagner@cswlawllp.com>; 'd.moore@cesl.us' <d.moore@cesl.us> (October 26, 2017).

²See East St. Louis City Hall, Departments, <http://www.cesl.us/> (last visited January 17, 2018).

³See Request for Review file No. 2017 PAC 45923.

⁴E-mail from Dorene Hoosman to Laura Harter, Michael Hubbard, and mwagnereswlawllp.com (February 3, 2017).

⁵E-mail from Kaley J. Martin, CYBER-PATH Integrated IT Solutions, to ATG Office (November 6, 2017).

⁶Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Dorene] Hoosman, City Clerk/FOIA Officer, City of East St. Louis (November 8, 2017).

⁷E-mail from Kaley Martin to Barbara Yattoni, [Public Access Bureau, Office of the Attorney General] (November 21, 2017).

⁸Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Dorene Hoosman, City Clerk/FOIA Officer, City of East St. Louis (November 22, 2017).

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On December 8, 2017, the AAG left a voicemail for Clerk Hoosman to check the status of the City's response. Later that same day, Clerk Hoosman returned the call and explained that she forwards all FOIA requests from Mr. Martin to the City Attorney and that the City had provided Mr. Martin with the records he requested in response to a previous request. The AAG stated that the City was required to respond to this FOIA request, whether by providing responsive records or denying the request as an unduly burdensome repeated request under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)). Clerk Hoosman stated that she would forward the request to the new City Attorney and that the City would respond to Mr. Martin by Monday, December 11, 2017.⁹

On January 2, 2018, the AAG left a voicemail with Clerk Hoosman asking about the status of the City's response. Clerk Hoosman did not respond.

On January 3, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to February 21, 2018, pursuant to section 9.5(f) of FOIA.¹⁰ On January 10, 2018, the AAG contacted Clerk Hoosman and left a message with one of her office staff. In a return telephone call, Deputy City Clerk Christopher Powell explained that Clerk Hoosman would forward the matter to the new City Attorney.¹¹ As of the issuance of this binding opinion, this office has not received a written response from the City or confirmation from Mr. Martin that he has received a response to his October 26, 2017, FOIA request.¹²

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). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) provides that "[e]ach

⁹Telephone conversation between Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and the Honorable Dorene Hoosman, City Clerk/FOIA Officer, City of East St. Louis (December 8, 2017).

¹⁰Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Kaley Martin, and the Honorable [Dorene] Hoosman, City Clerk/FOIA Officer, City of East St. Louis (January 3, 2018).

¹¹Telephone conversation between Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Christopher Powell, Deputy City Clerk, City of East St. Louis (January 10, 2018).

¹²In a February 14, 2018, telephone conversation with an AAG, Mr. C.J. Baricevic, counsel for the City, stated that the City would provide Mr. Martin with a response to his FOIA request before February 21, 2018.

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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).

The City did not respond to Mr. Martin's 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 (5 ILCS 140/3(e) (West 2016)), or denying the request in writing. The City'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 October 26, 2017, Mr. Kaley Martin submitted a FOIA request to the City of East St. Louis via e-mail seeking copies of records concerning Courtney Logan's meeting schedule for the months of March 2016, April 2016, May 2016, and June 2016. Mr. Martin did not receive a response to his request.

2) On November 6, 2017, Mr. Martin submitted a Request for Review and asked the Public Access Counselor and the Public Access Bureau to review the City's failure to respond to his 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 November 8, 2017, the Public Access Bureau forwarded a copy of Mr. Martin's Request for Review to the City, and asked the City to advise this office whether it had

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responded to Mr. Martin's October 26, 2017, FOIA request. The City did not respond to this office's inquiry.

4) On November 22, 2017, the Public Access Bureau sent a copy of the Request for Review and a letter inquiring as to the status of the City's response. The City did not respond.

5) In a December 8, 2017, telephone conversation with an AAG in the Public Access Bureau, Clerk Hoosman explained that she forwards all FOIA requests from Mr. Martin to the City Attorney and stated that the City had provided Mr. Martin with the records in response to a previous FOIA request. However, Clerk Hoosman stated that she would forward the request to the new City Attorney and that the City would respond to Mr. Martin by Monday, December 11, 2017.

6) On January 3, 2018, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) On January 16, 2018, Mr. Martin confirmed to this office by telephone that the City had not responded to his request.

8) As of the issuance of this binding opinion, this office has not received confirmation that the City has responded to Mr. Martin's request.

Therefore, it is the opinion of the Attorney General that the City has violated section 3(d) of FOIA by failing to respond to Mr. Martin's request for public records as required by the Act. Accordingly, the City is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Martin with all records responsive to his October 26, 2017, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017).¹³ If the City determines that any portion of the responsive records is exempt from disclosure under section 7, the City 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

¹³Because the City did not comply with the statutory requirements for responding to Mr. Martin's FOIA request, the City is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records.

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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 Mr. Kaley Martin as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

cc: Mr. C.J. Baricevic
Chatham & Baricevic
107 West Main Street
Suite 1
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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 18-003) upon:

Mr. Kaley J. Martin
Cyber-Path Integrated IT Solutions
28 South 87th, Suite 001
Belleville, Illinois 62223
kaleym@cyber-path.net

The Honorable Dorene Hoosman
City Clerk/FOIA Officer
City of East St. Louis
301 River Park Drive
East St. Louis, Illinois 62201
dhoosm@cesl.us

Mr. C.J. Baricevic
Chatham & Baricevic
107 West Main Street, Suite 1
Belleville, Illinois 62220
cj@chathamlaw.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 February 21, 2018.


SARAH L. PRATT
Public Access Counselor

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