



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 25, 2016

PUBLIC ACCESS OPINION 16-003
(Request for Review 2016 PAC 39853)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Marlon Conway
9311 South Wabash Avenue
Chicago, Illinois 60619

Ms. Sirlena Thomas
FOIA Officer
Harvey School District 152
16001 Lincoln Avenue
Harvey, Illinois 60424

Dear Mr. Conway and Ms. Thomas:

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 2014)). For the reasons discussed below, this office concludes that Harvey School District 152 (District) violated section 3(f) of FOIA (5 ILCS 140/3(f) (West 2014)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Marlon Conway.

BACKGROUND

On December 10, 2015, Mr. Conway, submitted a four-part FOIA request to the District seeking:

District emails
Michael Allen, Principal

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Keesha Buchannan, Social Worker
Period of request: August 1, 2015 to November 25, 2015

District cellular calls and text messages of
Michael Allen, Principal
Keesha Buchannan, Social Worker
Period of request: August 1, 2015 to November 25, 2015

**Applitrack use dates, employment requests, positions sought
for employment etc. made by**
Michael Allen
Period of request: April 1, 2007 to May 31, 2014

**Employment Applicant Interview Reports for Lowell-
Longfellow School**
Conducted by Principal Marlon Conway
Period of request: September 1, 2007 to June 1, 2011^[1] (Emphasis
in original.)

On December 18, 2015, the District sent an e-mail to Mr. Conway with an attached letter stating that it had received his FOIA request on December 11, 2015, and that it was extending the time period for its response by 5 additional business days pursuant to section 3 of FOIA (5 ILCS 140/3 (West 2014)) to December 29, 2015.² The District's letter contained check marks in front of four of seven reasons listed on the letter, asserting that the "reasons for the delay" were:

- (2) The request requires the collection of a large number of records;

¹E-mail from Marlon Conway to Sirlena Thomas, Ralph H. Lowenstein, and Betsy Pawlicki [Harvey Public Schools District Number 152] (December 10, 2015).

²Letter from Sirlena Thomas, District Freedom of Information Officer, Harvey Public Schools District Number 152, to Marlon Conway (December 18, 2015).

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(3) The request is categorical in nature and requires an extensive search;

* * *

(5) The requested records require examination by a person competent to determine which, if any, are exempt under Section 7 of the Act;

(6) It would unduly burden or interfere with the operations of the public body to fill the request within the initial five (5) business days[.]^[3]

On January 27, 2016, Mr. Conway submitted a Request for Review to the Public Access Bureau alleging that the District had failed to respond to his FOIA request.⁴

On February 1, 2016, the Public Access Bureau forwarded a copy of the Request for Review to the District and asked the District to notify this office whether it had received and responded to Mr. Conway's FOIA request; if it had not yet responded to Mr. Conway, this office asked the District to do so and to provide a copy of its response to this office.⁵ The District did not respond to the letter from this office.

On February 18, 2016, the Public Access Bureau sent the District a second copy of the February 1, 2016, letter and requested that it advise this office of the status of its response to Mr. Conway's FOIA request.⁶ As of the date of this binding opinion, this office has not received any confirmation or indication that the District has responded to Mr. Conway's FOIA request.

³Letter from Sirlena Thomas, District Freedom of Information Officer, Harvey Public Schools District Number 152, to Marlon Conway (December 18, 2015).

⁴E-mail from Marlon Conway to Public Access Bureau, Office of the Illinois Attorney General (January 27, 2016).

⁵Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to Sirlena Thomas, FOIA Officer, Harvey School District 152 (February 1, 2016).

⁶E-mail from Jodi Carnes, Paralegal, Office of the Attorney General, Public Access Bureau, to [Sirlena] Thomas, [FOIA Officer], [Harvey Public Schools District Number 152] (February 18, 2016).

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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 2014). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2014)), "[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 2014)) 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 (5 ILCS 140/3(d) (West 2014)) provides that "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." Pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)), a public body may extend the time for its response "for not more than 5 business days from the original due date" for any of the seven enumerated reasons in that section. Section 3(f) of FOIA further provides that:

When additional time is required for any of the above reasons, the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. A public body that fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies. A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome under subsection (g).

The facts are undisputed that the District extended the time for response pursuant to section 3(e) of FOIA. Although the District properly sent notification of the extension within 5 business days after its receipt of the request, the District erroneously extended the time by six business days, to December 29, 2015, rather than five business days, to December 28, 2015. The District properly accounted for December 25, 2015, as a non-business day, but still extended the time for response by six business days. More importantly, however, the District did not respond within the time permitted for the extension, and as of the date of this binding opinion has not responded to Mr. Conway's FOIA request or to the Public Access Bureau. The District's failure to respond within the time permitted by the extension constitutes a denial of the request, and a violation of section 3(f) 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 December 10, 2015, Mr. Marlon Conway submitted a FOIA request to the District seeking copies of all e-mails, cellular telephone calls and text messages of Michael Allen and Keesha Buchannan from August 1, 2015, to November 25, 2015, all Applitrak information made by Michael Allen from April 1, 2007, to May 31, 2014, and all employment applicant interview reports for Lowell-Longfellow School conducted by Mr. Conway from September 1, 2007, to June 1, 2011.
- 2) On December 18, 2015, the District e-mailed a letter to Mr. Conway informing him that it had received his FOIA request on December 11, 2015, and that it was extending the time for its response by 5 business days, pursuant to section 3 of FOIA, to December 29, 2015. The District did not subsequently respond to Mr. Conway's FOIA request.
- 3) On January 27, 2016, Mr. Conway asked the Public Access Counselor to review the District's denial of 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 2014)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 4) On February 1, 2016, the Public Access Bureau forwarded a copy of Mr. Conway's Request for Review to the District, together with a letter asking the District to advise this office whether it had received and responded to Mr. Conway's December 10, 2015, FOIA request. The District did not respond to this office's inquiry.
- 5) On February 18, 2015, this office sent the District an e-mail, asking that the District advise this office of the status of the District's response to Mr. Conway's December 10, 2015, FOIA request.
- 6) To date, this office has received no confirmation or indication that the District has responded to Mr. Conway's request.

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Therefore, it is the opinion of the Attorney General that the District has violated section 3(f) of FOIA by failing to respond to Mr. Conway's request for public records within the time permitted by the extension authorized by the Act. Accordingly, the District is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Conway with all records responsive to his December 10, 2015, FOIA request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016).⁷ If the District determines that any portion of the responsive records is exempt from disclosure under section 7, the District 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 2014)).

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 2014). 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 Mr. Marlon Conway as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

⁷Because the District did not comply with the statutory requirements for responding to Mr. Conway'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(f) (West 2014) ("A public body that fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies. A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome under subsection (g).").

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 16-003) upon:

Mr. Marlon Conway
9311 South Wabash Avenue
Chicago, Illinois 60619
marlonconway@yahoo.com

Ms. Sirlena Thomas
FOIA Officer
Harvey School District 152
16001 Lincoln Avenue
Harvey, Illinois 60424
sthomas@harvey152.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 March 25, 2016.



SARAH L. PRATT
Public Access Counselor

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