



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 11, 2017

PUBLIC ACCESS OPINION 17-009
(Request for Review 2017 PAC 47126)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

The Honorable Carla Brockmeier
City Clerk
City of Carlinville
550 North Broad
Carlinville, Illinois 62626

Dear Mr. Kraft and Ms. Brockmeier:

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 Carlinville (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. John Kraft.

BACKGROUND

On March 18, 2017, Mr. Kraft submitted a FOIA request to the City's FOIA Officer, Carla Brockmeier, seeking the following records:

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- 1) Copy of all credit card, debit card, fuel charge card, p-card, purchase card statements (all pages) since October 1, 2016.
- 2) Copy of all cell/smart phone statements (all pages) since October 1, 2016.
- 3) Copy of Open Meetings Act and Freedom Of Information Act proofs of training for all elected officials of the City of Carlinville[.]^[1]

On March 28, 2017, Mr. Kraft e-mailed a Request for Review to the Public Access Bureau alleging that the City had failed to respond to his FOIA request.²

On March 29, 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. Kraft's FOIA request. If it had not yet responded to Mr. Kraft, the letter requested that the City do so and provide this office with a copy of the response.³ The City did not respond to the Public Access Bureau's March 29, 2017, correspondence.

On April 13, 2017, Mr. Kraft telephoned an Assistant Attorney General (AAG) in the Public Access Bureau to report that the City had not yet responded to his FOIA request. The AAG then telephoned Ms. Brockmeier inquiring as to the status of the City's response. Ms. Brockmeier referred the AAG to the City's attorney, Mr. Daniel Schuering. The AAG telephoned Mr. Schuering for information regarding the City's response. Mr. Schuering indicated that the City had sent records to Mr. Kraft on April 7, 2017. Mr. Schuering stated that he would provide a copy of the transmittal letter via e-mail to the AAG. Mr. Schuering, however, did not provide a copy of the letter to the AAG. On April 18, 2017, the AAG telephoned Mr. Schuering to inquire as to his submission of a copy of the transmittal letter. Mr. Schuering explained that he had not yet sent the letter to the AAG, but would do so.

On April 21, 2017, Mr. Kraft informed the AAG via telephone that the City still had not responded to his March 18, 2017, FOIA request.

¹E-mail from John Kraft to cbrockmeier@cityofcarlinville.com (March 18, 2017).

²E-mail from John Kraft, to Public Access (March 28, 2017).

³Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Carla Brockmeier, City Clerk, City of Carlinville (March 29, 2017).

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As of April 24, 2017, the Public Access Bureau had not received further correspondence from the City or its attorney. As a result, to follow up, the Public Access Bureau sent Mr. Schuering a letter stating that this office had not received confirmation that the City had responded to Mr. Kraft.⁴ The letter to Mr. Schuering also included a copy of the Public Access Bureau's March 29, 2017, letter to the City. Mr. Schuering did not respond to the letter from this office.

On May 5, 2017, Mr. Kraft informed the Public Access Bureau via telephone that he had not yet received a response to his March 18, 2017, FOIA request.

On May 11, 2017, the AAG e-mailed Ms. Brockmeier and Mr. Schuering, noting that the Public Access Bureau had not received a response to its March 29, 2017, letter or confirmation that the City had responded to Mr. Kraft. Along with the e-mail, the AAG also sent a copy of the March 29, 2017, letter. The AAG asked Ms. Brockmeier and Mr. Schuering to advise this office whether the City had received and responded to Mr. Kraft's March 18, 2017, FOIA request.⁵ Neither Ms. Brockmeier nor Mr. Schuering responded.

On May 18, 2017, Mr. Kraft informed the Public Access Bureau via e-mail that he had not yet received a response to his March 18, 2017, FOIA request.⁶

On May 18, 2017, 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.⁷

On July 11, 2017, Mr. Kraft informed an AAG in the Public Access Bureau via telephone that the City still had not responded to his March 18, 2017, FOIA request.

⁴Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Daniel P. Schuering, Schuering Law, LTD (April 24, 2017).

⁵E-mail from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General – State of Illinois, to [Carla Brockmeier] and [Daniel] Schuering. (May 11, 2017).

⁶E-mail from John Kraft to Laura Harter (May 18, 2017).

⁷Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to John Kraft, and the Honorable Carla Brockmeier, City Clerk, City of Carlinville (May 18, 2017).

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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 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).

Based upon the information available to this office, the City did not, within five business days after its receipt of Mr. Kraft's request, either comply with his request, extend the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)), or deny 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 March 18, 2017, Mr. John Kraft submitted a FOIA request to the City of Carlinville via e-mail seeking copies of records pertaining to credit card, debit card, fuel charge card, p-card, and purchase card statements since October 1, 2016; cell and smart phone statements since October 1, 2016; and proof of Open Meetings Act and FOIA trainings completed by City officials. Mr. Kraft did not receive a response to his request.

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2) On March 28, 2017, Mr. Kraft 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 March 29, 2017, the Public Access Bureau forwarded a copy of Mr. Kraft's Request for Review to the City, together with a letter asking the City to advise this office whether it had responded to Mr. Kraft's March 18, 2017, FOIA request. The City did not respond to this office's inquiry.

4) On April 13, 2017, an Assistant Attorney General in the Public Access Bureau telephoned Ms. Brockmeier inquiring as to the status of the City's response. Ms. Brockmeier referred the AAG to the City's attorney, Mr. Daniel Schuering. The AAG telephoned Mr. Schuering for information regarding the City's response. Mr. Schuering indicated that the City had sent records to Mr. Kraft on April 7, 2017. Mr. Schuering also stated that he would provide a copy of the transmittal letter via e-mail to the AAG. Mr. Schuering, however, did not provide a copy of the letter to the AAG. On April 18, 2017, the AAG telephoned Mr. Schuering to inquire as to his submission of the transmittal letter. Mr. Schuering indicated that he had not yet sent the letter to the AAG, but would do so.

5) On April 24, 2017, this office sent the City's attorney a copy of this office's March 29, 2017, letter and informed him that the Public Access Bureau had not yet received proof of the City's response to Mr. Kraft. The City's attorney did not respond to this office's inquiry.

6) On May 11, 2017, this office sent the City's FOIA officer and attorney an e-mail inquiry regarding the status of the City's response to Mr. Kraft's FOIA request. The City did not respond.

7) On May 18, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to July 11, 2017, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) To date, this office has received no confirmation or indication that the City has responded to Mr. Kraft'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. Kraft'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. Kraft with all records responsive to his March 18,

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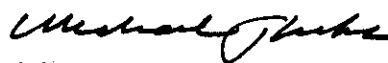
2017, request, subject only to permissible redactions, if any, of: (1) "private information" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2016));⁸ or (2) dates of birth pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2016)).⁹ If the City determines that any portion of the responsive records is exempt from disclosure under section 7(1)(b) or 7(1)(c) of FOIA, 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)).¹⁰

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 Mr. John Kraft as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

⁸Section 7(1)(b) of FOIA exempts from disclosure "private information." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2016)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

⁹Section 7(1)(c) of FOIA exempts "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12 (an individual's birth date is highly personal by its very nature and the individual's right to privacy outweighs any legitimate public interest in its disclosure).

¹⁰Because the City did not comply with the statutory requirements for responding to Mr. Kraft's FOIA request, section 3(d) of FOIA precludes the City from treating the request as unduly burdensome or imposing copying fees for the responsive records.

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 17-009) upon:

Mr. John Kraft
7060 Illinois Highway #1
Paris, Illinois 61944
john@illinoisleaks.com

The Honorable Carla Brockmeier
City Clerk, City of Carlinville
550 North Broad
Carlinville, Illinois 62626
cbrockmeier@cityofcarlinville.com

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 July 11, 2017.


SARAH L. PRATT
Public Access Counselor

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