



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 12, 2023

PUBLIC ACCESS OPINION 23-001
(Request for Review 2022 PAC 73904)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Frederick D. Franzwa
2422 West Martindale Drive
Westchester, Illinois 60154

Ms. Tiffany N. Jenkins
Executive Assistant to Board of Education and Superintendent
Proviso Township High School District 209
8601 West Roosevelt Road
Forest Park, Illinois 60130

Dear Mr. Franzwa and Ms. Jenkins:

This binding opinion is 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 2020)). For the reasons discussed below, this office concludes that Proviso Township High School District 209 (District) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2020)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Frederick D. Franzwa.

BACKGROUND

On August 12, 2022, Mr. Franzwa submitted by e-mail a FOIA request to the District seeking any records relating to staffing levels for teachers in school year 2023, including e-mails to or from eight identified individuals containing certain key words, and analysis or recommendations regarding the decision to approve 253 full-time teachers for that school year.¹

¹E-mail from Fred Franzwa to "FOIA" and Tiffany Jenkins, [Executive Assistant to Board of Education and Superintendent, Proviso Township High School District 209] (August 12, 2022).

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On October 13 and October 14, 2022, Mr. Franzwa submitted the records required to file a Request for Review with the Public Access Counselor, in which he alleged that the District had failed to respond to his FOIA request.² In his Request for Review, Mr. Franzwa alleged that the District acknowledged having received his FOIA request in its FOIA report to the District's Board of Education in connection with its September 13, 2022, meeting; he attached a copy of the report, which indicated "information will be provided."³ However, Mr. Franzwa asserted that the District had not provided responsive records or otherwise responded to his request.⁴

On October 21, 2022, the Public Access Bureau e-mailed Ms. Tiffany Jenkins, Executive Assistant to the Board of Education and Superintendent for the District, a copy of the Request for Review and a letter asking whether the District had received and responded to Mr. Franzwa's FOIA request.⁵ The October 21, 2022, letter also requested that if the District had not yet responded to Mr. Franzwa, it do so and provide this office with a copy of its response.⁶ The District did not respond to the Public Access Bureau's October 21, 2022, correspondence.

On November 15, 2022, the Public Access Bureau sent an e-mail to the e-mail address identified on the District's website as the designated address for FOIA requests⁷ and explained that the Public Access Bureau had not received a response to its October 21, 2022, letter to Ms. Jenkins.⁸ This office also attached to the e-mail a copy of the October 21, 2022,

²E-mail from Fred Franzwa to Public Access [Bureau, Office of the Attorney General] (October 14, 2022); e-mail from Fred Franzwa to Public Access [Bureau, Office of the Attorney General] (October 13, 2022).

³E-mail from Fred Franzwa to Public Access [Bureau, Office of the Attorney General] (October 13, 2022); Proviso Township High School District 209 Board of Education, Agenda Item 13, FOIA Report – August 2022 (September 13, 2022).

⁴E-mail from Fred Franzwa to Public Access [Bureau, Office of the Attorney General] (October 13, 2022).

⁵Letter from Leah Bartelt, Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Tiffany Jenkins, Executive Assistant to Board of Education and Superintendent, Proviso Township High School District 209 (October 21, 2022).

⁶Letter from Leah Bartelt, Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Tiffany Jenkins, Executive Assistant to Board of Education and Superintendent, Proviso Township High School District 209 (October 21, 2022).

⁷Proviso Township High School District 209, Public and Community Relations: FOIA Requests, available at <https://www.pths209.org/Page/2139> (last visited December 19, 2022).

⁸E-mail from Leah Bartelt, Public Access Counselor, Illinois Attorney General's Office, to FOIA Officer, [Proviso Township High School District 209] (November 15, 2022).

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letter.⁹ The District did not respond to that e-mail. On that same date, Mr. Franzwa confirmed for this office that he had not received a response from the District to his August 12, 2022, request.¹⁰ On November 16, 2022, the Public Access Bureau sent to the District via U.S. Postal Mail a letter¹¹ stating that this office had not received a response to its October 21, 2022, letter, attaching a copy of that letter, and requesting a response to that letter. The District did not respond to the Public Access Bureau's November 16, 2022, letter.

On December 12, 2022, this office extended the time for issuing a binding opinion for 30 business days, pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2022)).¹² On December 19, 2022, and again on January 11, 2023, Mr. Franzwa confirmed for this office that he had not received a response to his August 12, 2022, FOIA request.¹³

As of the date of the issuance of this binding opinion, this office has not received confirmation from the District or Mr. Franzwa that the District has responded to the FOIA request at issue in this matter.

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 2020). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2020)), "[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 2020)) 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:

⁹E-mail from Leah Bartelt, Public Access Counselor, Office of the Attorney General, to FOIA Officer, [Proviso Township High School District 209] (November 15, 2022).

¹⁰E-mail from Fred Franzwa to Leah Bartelt, [Public Access Counselor, Office of the Attorney General] (November 15, 2022).

¹¹Letter from Leah Bartelt, Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Freedom of Information Act Officer, Proviso Township High School 209 (November 16, 2022).

¹²Letter from Leah Bartelt, Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Freedom of Information Act Officer, Proviso Township High School 209, and Fred Franzwa (December 12, 2022).

¹³E-mail from Fred Franzwa, to Leah Bartelt, [Public Access Counselor, Office of the Attorney General] (December 19, 2022); E-mail from Fred Franzwa, to Leah Bartelt, [Public Access Counselor, Office of the Attorney General] (January 11, 2023).

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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).

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2020)) permits a public body to extend its response time by no more than five business days for any of seven enumerated reasons. Any additional extension requires a written agreement between the requester and the public body. 5 ILCS 140/3(e) (West 2020).

The District did not respond to Mr. Franzwa's August 12, 2022, 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, or denying the request in writing. The failure of the District to comply with the requisite response 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 August 12, 2022, Mr. Frederick D. Franzwa submitted a FOIA request to Proviso Township High School District 209 seeking copies of records relating to staffing levels for teachers in school year 2023.

2) On October 13, 2022, and 14, 2022, Mr. Franzwa submitted the documents required to file a Request for Review with the Public Access Counselor alleging that the District had not substantively responded to his FOIA request. He also provided a copy of an August 2022 FOIA Report to the District's Board of Education, in which the District acknowledged having received Mr. Franzwa's August 12, 2022, FOIA request and stated that "information will be provided." Mr. Franzwa's 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 2020)).

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3) On October 21, 2022, the Public Access Bureau forwarded a copy of the Request for Review to the District along with a letter asking whether the District had responded to Mr. Franzwa's FOIA request. On November 15, 2022, the Public Access Bureau re-sent its October 21, 2022, to the District. The District did not respond to the October 21, 2022, letter or the November 15, 2022, e-mail.

4) On November 16, 2022, the Public Access sent a second letter to the FOIA Officer for the District, explaining that the Public Access Bureau had not received any indication that the District had responded to Mr. Franzwa's FOIA request. The District did not respond to the Public Access Bureau's November 16, 2022, letter.

5) On December 12, 2022, the Public Access Bureau extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f) (West 2020)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) As of the date of the issuance of this binding opinion, this office has received no information indicating that the District has responded to Mr. Franzwa's August 12, 2022, FOIA request.

Therefore, it is the opinion of the Attorney General that Proviso Township High School District 209 has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Franzwa's August 12, 2022, FOIA request, to provide him with copies of the requested records or to deny the request in writing in whole or in part. Accordingly, the District is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Franzwa with copies of all records responsive to his August 12, 2022, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022).¹⁴ If the District 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 2020)).

¹⁴Because the District did not comply with the statutory requirements for responding to Mr. Franzwa'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(d) (West 2020).

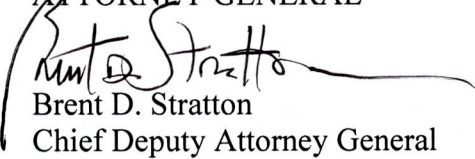
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This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Franzwa as defendants. *See* 5 ILCS 140/11.5 (West 2020).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-001) upon:

Mr. Frederick D. Franzwa
2422 West Martindale Drive
Westchester, Illinois 60154
ffranzwa@hotmail.com

Ms. Tiffany N. Jenkins
Executive Assistant to Board
of Education and Superintendent
Proviso Township High School District 209
8601 West Roosevelt Road
Forest Park, Illinois 60130
tjenkins@pths209.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 Chicago, Illinois on January 12, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
Public Access Bureau
Office of the Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-6756