



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 18, 2017

PUBLIC ACCESS OPINION 17-002
(Request for Review 2017 PAC 45923)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Kelsey Landis
Reporter
Belleville News-Democrat
120 South Illinois Street
P.O. Box 427
Belleville, Illinois 62222

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

Dear Ms. Landis 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 2014)). 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 2014)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Ms. Kelsey Landis.

BACKGROUND

On January 4, 2017, Ms. Landis, on behalf of the *Belleville News-Democrat*, submitted a FOIA request to the City's FOIA Officer, Dorene Hoosman, seeking:

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a copy of the police report from and any documents related to a police pursuit that began in East St. Louis on the morning of Dec. 13, 2016. The chase ended in north St. Louis. East St. Louis and Washington Park police pursued a Ford Taurus in the chase. Two people were involved in the pursuit and were injured when their vehicle crashed in St. Louis.^[1]

Ms. Landis sent the request via e-mail to "dhoosm@cesl.us," the e-mail address of the City's FOIA Officer provided on the City's Freedom of Information Act webpage.²

On January 16, 2017, Ms. Landis e-mailed a Request for Review to the Public Access Bureau alleging that the City had failed to respond to her FOIA request.³

On January 19, 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 Ms. Landis's FOIA request. If it had not yet responded to Ms. Landis, the January 19 letter requested that the City do so and provide this office with a copy of the response.⁴ The City did not respond to the Public Access Bureau's January 19, 2017, correspondence.

On February 2, 2017, an Assistant Attorney General in the Public Access Bureau sent an e-mail to Ms. Hoosman at the e-mail address "dhoosm@cesl.us" inquiring as to the status of the City's response. Copies of the Request for Review and this office's January 19, 2017, letter were attached to the e-mail.⁵ On February 3, 2017, Ms. Hoosman responded via e-mail, stating:

¹Letter from Kelsey Landis to Dorene Hoosman, East St. Louis Freedom of Information Act Officer (January 4, 2017).

²See City of East St. Louis Freedom of Information Act (FOIA) Request http://www.cesl.us/sub_category.php?id=MTk= (last visited March 13, 2017).

³E-mail from Kelsey Landis, Reporter, *Belleville News-Democrat*, to Public Access [Bureau, Office of the Illinois Attorney General] (January 16, 2017).

⁴Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Dorene Hoosman, City Clerk/FOIA Officer, City of East St. Louis (January 19, 2017).

⁵E-mail from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Dorene Hoosman (February 2, 2017).

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I sent your request to our Police [Chief] Michael Hubbard and to our City Attorney Michael Wagner. The documents that you are requesting have to be release[d] from The Police Department. I have no control over this department. I am resending your request back to them[.]^[6]

Michael Hubbard and "mwagner@cswlawllp.com" were included as recipients of Ms. Hoosman's February 3, 2017, e-mail response.⁷ To date, the Public Access Bureau, has not received further correspondence from the City.

On February 27, 2017, an Assistant Attorney General in the Public Access Bureau sent an e-mail to Ms. Landis asking whether the City had responded to her FOIA request.⁸ On March 1, 2017, Ms. Landis responded by e-mail to the Public Access Bureau and indicated that she had not yet received a response to her FOIA request. Ms. Landis included Ms. Hoosman in her e-mail response. Ms. Landis also stated that she believed that the e-mail address for Ms. Hoosman that she had used to submit her January 4, 2017, FOIA request, "dhoosm@cesl.us," was incorrect. Ms. Landis sent her March 1, 2017, e-mail to "dorene.hoosman@cesl.us" and attached the initial FOIA request to the e-mail.⁹ The same day, Ms. Hoosman, using the "dhoosm@cesl.us" e-mail address, responded to Ms. Landis by stating:

[y]our request has been sent to the proper personnel. I don't have any records regarding police matters. Atty. Michael Wagner, City Manager Courtney R. Logan, Police Chief Michael Hubbard, LaToya Greenwood[,] Public Safety Chairmen. I hope that this matter will be taken care of.^[10]

Ms. Landis reported to this office that later on March 1, 2017, City Manager Courtney Logan left her a voicemail indicating that "he would work with the police department to fulfill [her] request

⁶E-mail from Dorene Hoosman to Laura Harter; Michael Hubbard; mwagner@cswlawllp.com (February 3, 2017).

⁷E-mail from Dorene Hoosman to Laura Harter; Michael Hubbard; mwagner@cswlawllp.com (February 3, 2017).

⁸E-mail from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Kelsey] Landis (February 27, 2017).

⁹E-mail from Kelsey Landis to Laura Harter and Dorene Hoosman (March 1, 2017).

¹⁰E-mail from Dorene Hoosman to Kelsey Landis (March 1, 2017).

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from Jan. 4."¹¹ As of the date of this binding opinion, this office has not received any information indicating that the City has responded to Ms. Landis's FOIA request.

On March 16, 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.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 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 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 Ms. Landis's FOIA request within five business days of 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 2014)), or denying the request in writing. The City's failure to comply with the requisite procedures violated section 3(d) of FOIA.

¹¹E-mail from Kelsey Landis to Laura Harter (March 1, 2017).

¹²Letter from Laura S. Harter, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Kelsey Landis, *Belleville News-Democrat*, and the Honorable Dorene Hoosman, City Clerk/FOIA Officer, City of East St. Louis (March 16, 2017).

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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 January 4, 2017, Ms. Kelsey Landis submitted a FOIA request to the City of East St. Louis via e-mail seeking copies of records pertaining to a police pursuit that began in East St. Louis on December 13, 2016. The City did not, within five business days after its receipt of Ms. Landis's FOIA request, comply with the FOIA request, extend the time for its response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as is required by section 3(d) of FOIA. Pursuant to section 3(d) of FOIA, the failure to do so constituted a denial of the FOIA request.

2) On January 16, 2017, Ms. Landis asked the Public Access Counselor and the Public Access Bureau to review the City's denial of 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 2014)).

3) On January 19, 2017, the Public Access Bureau forwarded a copy of Ms. Landis's Request for Review to the City, together with a letter asking the City to advise this office whether it had responded to Ms. Landis's January 4, 2017, FOIA request. The City did not respond to this office's inquiry.

4) On February 2, 2017, this office sent the City's FOIA Officer an e-mail inquiry regarding the status of the City's response to Ms. Landis's FOIA request. On February 3, 2017, the FOIA Officer responded that she had forwarded this office's letter to the City's police chief and the City's attorney.

5) On March 1, 2017, Ms. Landis again e-mailed her FOIA request to the City's FOIA Officer. The City's FOIA Officer responded that Ms. Landis's request had been sent to the appropriate City personnel for response. The same day, the City Manager contacted Ms. Landis and informed her that he would work with the police department to fulfill her request.

6) On March 16, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to April 28, 2017, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) To date, this office has received no confirmation or indication that the City has responded to Ms. Landis's request.

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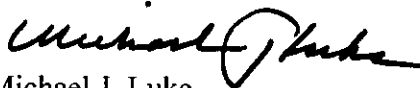
Therefore, it is the opinion of the Attorney General that the City has violated section 3(d) of FOIA by failing, within five business days after receiving Ms. Landis's January 4, 2017, FOIA request, to provide the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part. Accordingly, the City is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Landis with all records responsive to her January 4, 2017, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016).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 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 Ms. Kelsey Landis as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹³Because the City did not comply with the statutory requirements for responding to Ms. Landis's FOIA request, the City is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2014) ("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).").

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 17-002) upon:

Ms. Kelsey Landis
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P.O. Box 427
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klandis@bnd.com

The Honorable Dorene Hoosman
City Clerk/FOIA Officer
City of East St. Louis
301 River Park Drive
East St. Louis, Illinois 62201
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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 April 18, 2017.



SARAH L. PRATT
Public Access Counselor

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