



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 14, 2015

PUBLIC ACCESS OPINION 15-012
(Request for Review 2015 PAC 37849)

FREEDOM OF INFORMATION ACT:
Failure to Respond to FOIA Request;
Extension of the Response Period

Ms. Kathy McConnell
Director of Programming
University Professionals of Illinois
Local 4100
11 East Adams, Suite 1106
Chicago, Illinois 60603

Ms. Sarah Leah Tarlow
Field Service Director
Illinois Federation of Teachers
11 East Adams, Suite 1106
Chicago, Illinois 60603-6303

Ms. Robin M. Hawkins
Associate Vice President &
Senior Associate General Counsel
Chicago State University
9501 South King Drive/ADM 318
Chicago, Illinois 60628-1598

Dear Ms. McConnell, Ms. Tarlow, and Ms. Hawkins:

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 Chicago State University (CSU) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) by failing to comply with, deny, or otherwise respond appropriately to a FOIA request submitted by Ms. Kathy McConnell.

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BACKGROUND

On September 11, 2015, Ms. McConnell, on behalf of University Professionals of Illinois, submitted a FOIA request to CSU via an e-mail to Ms. Robin M. Hawkins, CSU's FOIA Officer, seeking copies of "all the records pertaining to all positions presently included and excluded in collective bargaining agreements for the period beginning of the 2015 - 2016 academic year."¹ Ms. McConnell sent the same FOIA request to CSU by certified mail on September 14, 2015, and the return receipt was signed on September 17, 2015.² The request indicated that the records sought by Ms. McConnell included 16 specific categories of information related to CSU's employees. On September 25, 2015, Ms. McConnell sent a follow-up e-mail to Ms. Hawkins in which Ms. McConnell stated that she had not received a response to her September 11, 2015, FOIA request.³ On October 5, 2015, Ms. Sarah Leah Tarlow, on behalf of the Illinois Federation of Teachers,⁴ submitted a Request for Review to the Public Access Bureau alleging that CSU had failed to produce the requested records or otherwise respond to Ms. McConnell's FOIA request.⁵

On October 8, 2015, the Public Access Bureau forwarded a copy of the Request for Review to CSU and asked CSU to notify this office whether it had received and responded to Ms. McConnell's FOIA request; if it had not yet responded, this office asked CSU to respond to Ms. McConnell and to provide a copy of its response to this office.⁶ No response was received from CSU. On November 3, 2015, an Assistant Attorney General in the Public Access Bureau sent an e-mail to Ms. Hawkins inquiring about the status of CSU's response to this office and to

¹E-mail from Kathy McConnell, UPI, Local 4100, Director of Programming, University Professionals of Illinois, to [Robin] Hawkins (September 11, 2015).

²E-mail from Sarah Leah Tarlow, Field Service Director, Illinois Federation of Teachers, to [Sarah] Pratt, Public Access (October 5, 2015).

³E-mail from Kathy McConnell, UPI, Local 4100, Director of Programming, University Professionals of Illinois, to [Robin] Hawkins (September 25, 2015).

⁴University Professionals of Illinois, Local 4100, is an affiliate of the Illinois Federation of Teachers. See University Professionals of Illinois, Local 4100, IFT, AFT, AFL-CIO, <http://www.upilocal4100.org> (last visited November 13, 2015).

⁵E-mail from Sarah Leah Tarlow, Field Service Director, Illinois Federation of Teachers, to [Sarah] Pratt, Public Access (October 5, 2015).

⁶Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, to Robin Hawkins, Associate Vice President & Senior Associate General Counsel, Chicago State University (October 8, 2015).

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the FOIA request.⁷ On November 11, 2015, CSU sent this office an e-mail with a copy of a response letter to Ms. McConnell attached.⁸ The letter to Ms. McConnell indicates that CSU had received the FOIA request on September 17, 2015, and was providing salary information for union members, but also states that CSU "will require additional time to comply with all of the remaining items included in your request."⁹ On November 11, 2015, Ms. Tarlow responded on behalf of McConnell by agreeing to "extend the due date and expect to receive the outstanding information by the close of business on Wednesday, November 25, 2015."¹⁰ On November 30, 2015, Ms. Tarlow sent a follow-up e-mail to CSU stating: "We did not receive the information we requested by November 25th. Unfortunately this leaves us no choice but to pursue this matter further with the Attorney General's Office."¹¹ In a telephone conversation with an Assistant Attorney General on December 11, 2015, Ms. Tarlow confirmed that CSU had not provided any additional response or records.

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

⁷E-mail from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Robin] Hawkins (November 3, 2015).

⁸E-mail from Veronica Scates, Executive Assistant to the Vice President and General Counsel, Labor and Legal Affairs, Chicago State University, to [Steve] Silverman (November 11, 2015).

⁹Letter from Robin M. Hawkins, Associate Vice President & Senior Associate General Counsel, Chicago State University, to Kathy McConnell, Director of Programming, UPI, Local 4100 (November 11, 2015).

¹⁰E-mail from Sarah Leah Tarlow, Field Service Director, Illinois Federation of Teachers, to Robin Hawkins (November 11, 2015).

¹¹E-mail from Sarah Tarlow to Robin Hawkins (November 30, 2015).

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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).

If a public body extends the time for responding to a request by 5 business days for any of the seven reasons enumerated in section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)), the public body must "notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming." 5 ILCS 140/3(f) (West 2014). Alternatively, the "person making a request and the public body *may agree in writing* to extend the time for compliance for a period to be determined by the parties." (Emphasis added.) 5 ILCS 140/3(e) (West 2014).

The facts are undisputed that CSU did not, within 5 business days of receiving the request, comply with Ms. McConnell's request, deny the request in writing, or provide notice to the requester that it was extending the time for response pursuant to section 3(e) of FOIA. Moreover, section 3(e) does not authorize a public body to unilaterally and indefinitely extend its time for responding to a FOIA request. Thus, CSU's November 11, 2015, response to Ms. McConnell failed to comply with the requisite procedures for extending the response period. Accordingly, by failing to issue a timely response to Ms. McConnell's September 11, 2015, FOIA request, CSU violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On September 11, 2015, Ms. Kathy McConnell, on behalf of University Professionals of Illinois, submitted a FOIA request to CSU seeking copies of various records concerning employment positions. CSU acknowledged receipt of the FOIA request on September 17, 2015. CSU did not, within 5 business days after receipt, 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.

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2) On October 5, 2015, Ms. Sarah Leah Tarlow, on behalf of the Illinois Federation of Teachers, which is affiliated with University Professionals of Illinois, asked the Public Access Counselor to review CSU's denial of the 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.

3) On October 8, 2015, the Public Access Bureau forwarded a copy of Ms. Tarlow's Request for Review to CSU, together with a letter asking CSU to advise this office whether it had received and responded to Ms. McConnell's September 11, 2015, FOIA request. CSU did not respond or otherwise provide the Public Access Counselor with an explanation of its reasons for failing to respond to the FOIA request.

4) On November 3, 2015, this office sent CSU an e-mail inquiring about the status of CSU's response to this office and to the FOIA request.

5) On November 11, 2015, CSU sent Ms. McConnell salary information concerning union members together with a letter stating that it required additional time to compile the remaining records responsive to her FOIA request. On November 11, 2015, Ms. Tarlow responded on behalf of Ms. McConnell by agreeing to extend the time for CSU to complete its response to the FOIA request until November 25, 2015. However, CSU did not provide any additional response.

6) The failure of CSU to 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, within 5 business days after receiving the request, violated the requirements of section 3(d) of FOIA.

7) In order to extend the period for responding to a FOIA request beyond an additional 5 business days, a public body and a requester must agree to the extension in writing. Ms. Tarlow agreed in writing to extend CSU's time to complete its response until November 25, 2015, but did not receive any additional responsive records. FOIA does not authorize a public body to unilaterally and indefinitely extend the time for responding to a FOIA request.

Therefore, it is the opinion of the Attorney General that CSU has violated section 3(d) of FOIA by failing to respond to Ms. McConnell's request for public records as required by the Act. Accordingly, while CSU provided certain records to Ms. McConnell on November 11th, the university is hereby directed to take immediate and appropriate action to comply with this binding opinion by providing Ms. McConnell with all remaining records responsive to her

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September 11, 2015, FOIA request, subject only to permissible redactions, if any, of "private information"¹² under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014), as amended by Public Act 99-298, effective August 6, 2015).¹³

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. Kathy McConnell and Ms. Sarah Leah Tarlow as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹²Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) 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.

¹³Because CSU did not comply with the statutory requirements for responding to Ms. McConnell's FOIA request, CSU 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).").