



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 31, 2021

PUBLIC ACCESS OPINION 21-008
(Request for Review 2021-PAC-C-0090)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Gregory Pratt
Chicago Tribune
560 West Grand Avenue
Chicago, Illinois 60654

Mr. Tom Skelton
FOIA Officer
Office of the Mayor, City of Chicago
121 North LaSalle Street, Suite 500
Chicago, Illinois 60602

Dear Mr. Pratt and Mr. Skelton:

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 2020)). For the reasons discussed below, this office concludes that the Office of the Mayor of the City of Chicago (Mayor's Office) 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. Gregory Pratt on behalf of the *Chicago Tribune*.

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BACKGROUND

On June 17, 2021 at 3:13 p.m., Mr. Pratt, a reporter who covers the Mayor's Office and Chicago City Hall for the *Chicago Tribune*,¹ submitted a FOIA request to the Mayor's Office seeking copies of:

All text messages between Mayor Lori Lightfoot and any/all of the following individuals, for the timeframe December 1, 2020 through March 29:

George Miller of Loretto Hospital
Anosh Ahmed of Loretto Hospital

Please note: This seeks texts she sent to any of these individuals, any texts they sent her, and any group chat texts including any of these individuals and the mayor. This also includes any messages sent through WhatsApp, Signal, or any other text messaging apps.

Also note: This request seeks texts sent and received by the mayor whether they were sent on personal or city-issued cellphones or any other device.^[2]

The request that underlies this Request for Review was one of 20 FOIA requests for copies of Mayor Lightfoot's text messages³ that Mr. Pratt re-submitted to the Mayor's Office on June 17, 2021.⁴

¹Gregory Pratt, CHICAGO TRIBUNE, <https://www.chicagotribune.com/chi-gregory-pratt-staff.html> (last visited August 20, 2021).

²FOIA request from Gregory Pratt, Chicago Tribune, to MOfoia@cityofchicago.org (June 17, 2021, 3:13 p.m.).

³FOIA requests from Gregory Pratt, Chicago Tribune, to MOfoia@cityofchicago.org (June 17, 2021).

⁴In an e-mail to a Deputy Bureau Chief in the Public Access Bureau, Mr. Pratt stated that he had previously submitted the requests to the Mayor's Office at different times over the course of several months but had withdrawn them after the Mayor's Office's failure to respond extended in some instances past the 60-day time period after the denial of a FOIA request within which a requester may submit a Request for Review to this office. See 5 ILCS 140/9.5(a) (West 2020). E-mail from Gregory Pratt, Chicago Tribune, to [Josh] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (August 13, 2021).

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On June 24, 2021, the Mayor's Office acknowledged that it had received the FOIA requests, including the 3:13 p.m. request at issue here, and extended its time to respond by five business days pursuant to section 3(e)(vii) of FOIA (5 ILCS 140/3(e)(vii) (West 2020)).⁵ After the extended period for response had expired on July 6, 2021, Mr. Pratt submitted this Request for Review to the Public Access Bureau contesting the Mayor's Office's failure to respond to his June 17, 2021, FOIA request submitted at 3:13 p.m., as well as 19 other Requests for Review concerning his other June 17, 2021, re-submitted FOIA requests.⁶

In submitting his Request for Review, Mr. Pratt explained that "Mayor Lightfoot has at least two cellphones. Some aldermen use [or call her on] the cellphone number and device she had before she was mayor. Some aldermen use [or call her on] the one she got once she became mayor."⁷ Mr. Pratt alleged that, although the Mayor's Office had provided him with copies of text messages from both of Mayor Lightfoot's known cell phones in response to FOIA requests he had submitted between August and November 2020, the Mayor's Office had "stopped providing personal device texts without explanation[.]" and had "even basically stopped responding to the FOIAs with city-issued devices[.]"⁸

On July 13, 2021, the Public Access Bureau forwarded a copy of each Request for Review to the Mayor's Office together with one letter asking whether it had received and responded to Mr. Pratt's FOIA requests.⁹ The July 13, 2021, letter also requested that, if the Mayor's Office had received the requests but had not yet responded to Mr. Pratt, it do so and provide this office with a copy of each response.¹⁰ The Mayor's Office did not respond to the Public Access Bureau's July 13, 2021, correspondence.

⁵E-mail from Thomas Skelton, FOIA Officer, Mayor's Office, to Gregory Pratt, Chicago Tribune (June 24, 2021).

⁶E-mails from Gregory Pratt, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 6, 2021). Although correspondence to the City about these FOIA requests references all of Mr. Pratt's Requests for Review of the June 17, 2021, re-submitted FOIA requests, this binding opinion is limited to the 3:13 p.m. request described in this opinion.

⁷E-mail from Gregory Pratt, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 6, 2021).

⁸E-mail from Gregory Pratt, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 6, 2021).

⁹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tom Skelton, FOIA Officer, City of Chicago Mayor's Office (July 13, 2021), at 1.

¹⁰Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tom Skelton, FOIA Officer, City of Chicago Mayor's Office (July 13, 2021), at 1.

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On July 26, 2021, the Public Access Bureau sent an e-mail to the Mayor's Office's FOIA Officer, Mr. Thomas Skelton, inquiring as to the status of the Mayor's Office's responses to the Requests for Review, including whether the Mayor's Office had "gathered the text messages responsive to any of the requests[.]"¹¹ As with this office's July 13, 2021, letter to the Mayor's Office and other correspondence with the Mayor's Office in this matter, this office copied Mr. Pratt on the e-mail.¹² On that same date, Mr. Skelton replied by e-mail: "I will check on the status of the search for responsive records on Mayor Lightfoot's personal cell phone. * * * I have gathered and review [sic] the records on Mayor Lightfoot's City issued device."¹³ Mr. Pratt replied to this office and Mr. Skelton, arguing:

FOIA rests upon the very basic premise that a government body must do the work to see if it has responsive records, before it decides whether to release them or withhold them. The mayor's FOIA officer has indicated he's not sure if that work has been done, for a FOIA that's already in the appeals stage. My strong suspicion here is that the mayor's office is not doing the work at all (they certainly aren't doing it in a timely manner) — otherwise, they'd be able to give formal responses saying no there are no records, yes there are records.¹⁴

After the passage of two more weeks without any update from the Mayor's Office, on August 12, 2021, the Public Access Bureau sent Mr. Skelton an e-mail inquiring whether "the Mayor's Office anticipate[s] responding to any of the 20 FOIA requests at issue in these files by end of day tomorrow, or, if not, by the end of next week?"¹⁵ Later that same day, Mr. Skelton responded by e-mail that he would "do [his] best to get the text messages on the Mayor's private

¹¹E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Tom] Skelton, [FOIA Officer, City of Chicago Mayor's Office] (July 26, 2021).

¹² 5 ILCS 140/9.5(d) (West 2020) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing to the answer within 7 business days and shall provide a copy of the response to the public body.").

¹³E-mail from Tom Skelton, FOIA Officer, Office of the Mayor, [City of Chicago], to [Josh] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (July 26, 2021).

¹⁴E-mail from Gregory Pratt, Chicago Tribune, to Joshua M. Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] and Thomas Skelton, [FOIA Officer, City of Chicago Mayor's Office] (July 27, 2021).

¹⁵E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Tom] Skelton, [FOIA Officer, City of Chicago Mayor's Office] (August 12, 2021).

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cell phone out to Mr. Pratt as soon as [he] can."¹⁶ Mr. Skelton stated in the e-mail that he had sent Mr. Pratt copies of text messages from the Mayor's City-issued cell phone in response to one of the other 19 requests, but was "just waiting for confirmation that there is no responsive records on the Mayor's private cell phone before issuing the final response letter."¹⁷ Mr. Pratt, who was copied on the correspondence between this office and Mr. Skelton, replied: "This means they haven't even finished gathering the responsive records. They have an obligation to do that within the response time."¹⁸

As of the date of the issuance of this binding opinion, this office has not received confirmation from the Mayor's Office that it has responded to the FOIA request at issue in this matter, nor confirmation from Mr. Pratt that he has received a response to that request.

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:

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

¹⁶E-mail from Tom Skelton, FOIA Officer, Office of the Mayor, [City of Chicago], to [Josh] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (August 12, 2021).

¹⁷E-mail from Tom Skelton, FOIA Officer, Office of the Mayor, [City of Chicago], to [Josh] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (August 12, 2021).

¹⁸E-mail from Gregory Pratt, Chicago Tribune, to [Josh] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] and [Tom] Skelton, [FOIA Officer, City of Chicago Mayor's Office] (August 12, 2021).

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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).

As referenced in the quoted language, 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, unless the requester agrees in writing to a longer extension.

Although the Mayor's Office extended its time to respond to Mr. Pratt's FOIA request by five business days pursuant to section 3(e)(vii) of FOIA, the Mayor's Office neither complied with the request nor denied the request in writing within the extended response period. Further, Mr. Pratt did not agree in writing to extend the response period beyond five business days. The failure of the Mayor's Office 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 June 17, 2021, at 3:13 p.m., Mr. Gregory Pratt, on behalf of the *Chicago Tribune*, submitted a FOIA request to the City of Chicago Mayor's Office seeking copies of text messages between Mayor Lightfoot and two named persons associated with Loretto Hospital from December 1, 2020, through March 29, 2021. The Mayor's Office acknowledged receiving the request and, pursuant to section 3(e)(vii) of FOIA, extended its time to respond to the request by five business days on June 24, 2021. Mr. Pratt did not receive a response to his FOIA request.

2) On July 6, 2021, Mr. Pratt submitted his Request for Review to the Public Access Counselor and the Public Access Bureau alleging the Mayor's Office had not responded to any of the 20 FOIA requests for copies of Mayor Lightfoot's text messages he submitted on June 17, 2021, including the 3:13 p.m. request at issue in this matter. Mr. Pratt's Request for Review was filed within the statutory time period and otherwise complies with the requirements of section 9.5(a) of FOIA.

3) On July 13, 2021, the Public Access Bureau forwarded copies of Mr. Pratt's Requests for Review to the Mayor's Office, together with a letter asking the Mayor's Office to advise this office whether it had received and responded to Mr. Pratt's FOIA requests. The Mayor's Office did not respond to this office's inquiry.

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4) On July 26, 2021, the Public Access Bureau sent an e-mail to the Mayor's Office's FOIA officer asking for the status of its responses to Mr. Pratt's requests. On that same date, the Mayor's Office's FOIA officer stated that he had gathered the responsive text messages from Mayor Lightfoot's City-issued device but would check on the status of the search of her personal cell phone.

5) On August 12, 2021, this office sent the Mayor's Office another e-mail seeking the status of its responses to Mr. Pratt's FOIA requests. On that same date, the Mayor's Office's FOIA officer responded by indicating that the Mayor's Office was still processing the June 17, 2021, 3:13 p.m. request; he did not provide an anticipated response time.

6) As of the date of the issuance of this binding opinion, this office has received no information indicating that the Mayor's Office has responded to the FOIA request Mr. Pratt submitted on June 17, 2021, at 3:13 p.m.

Therefore, it is the opinion of the Attorney General that the Mayor's Office has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Pratt's June 17, 2021, 3:13 p.m. 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 Mayor's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Pratt with copies of all records responsive to his June 17, 2021, 3:13 p.m. request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2020)). If the Mayor's Office 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)).

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. Gregory Pratt 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

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-008) upon:

Mr. Gregory Pratt
Chicago Tribune
560 West Grand Avenue
Chicago, Illinois 60654
gpratt@chicagotribune.org

Mr. Tom Skelton
FOIA Officer
Office of the Mayor, City of Chicago
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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 August 31, 2021.


SARAH L. PRATT
Public Access Counselor

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