



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 28, 2024

PUBLIC ACCESS OPINION 24-009
(Request for Review 2024 PAC 81336)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Peter T. Sadelski
Associate Attorney
Ed Fox & Associates, Ltd.
118 North Clinton Street, Suite 425
Chicago, Illinois 60661

Ms. Doreen Norris
FOIA Officer and Assistant to the Village Manager
Village of Lyons
4200 Lawndale Avenue
Lyons, Illinois 60534

Dear Mr. Sadelski and Ms. Norris:

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 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons discussed below, this office concludes that the Village of Lyons (Village) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2022)) by failing to comply with, deny in writing in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Peter T. Sadelski.

BACKGROUND

On April 12, 2024, Mr. Sadelski, on behalf of Ed Fox & Associates, Ltd., submitted a FOIA request to the Village seeking all records concerning a named individual and any employee of the Village Police Department between January 1, 2010, and the date of the

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request.¹ On May 9, 2024, Mr. Sadelski submitted a Request for Review to the Public Access Counselor alleging that the Village had failed to respond to his FOIA request.²

On May 17, 2024, the Public Access Bureau sent a copy of the Request for Review to the Village together with a letter asking whether the Village had responded to Mr. Sadelski's FOIA request.³ If the Village had not responded to the request, the May 17, 2024, inquiry letter asked the Village to do so and to provide a copy of its response to this office.⁴ The Village did not respond to the inquiry letter.

On June 7, 2024, an Assistant Attorney General in the Public Access Bureau left a voicemail message for and sent an e-mail to Ms. Doreen Norris, the Village's FOIA Officer and Assistant to the Village Manager, requesting an update on the status of the Village's response to the request.⁵ On June 13, 2024, she responded: "The status of your FOIA REQUEST is that our attorneys are assisting us with this request."⁶ (Emphasis in original.) On June 17, 2024, the Assistant Attorney General replied: "Thank you for getting back to me but can you be more specific and let me know if the Village will respond to the request this week? Under FOIA, the Village was required to respond to the request within five business days of receiving it more than two months ago on April 12, and the requester has not agreed to an extension."⁷ The Village did not respond to that correspondence.

On June 24, 2024, the Assistant Attorney General sent another e-mail asking for the status of the Village's response to the FOIA request, or that the Village forward a copy of the response if it had responded.⁸ Again, the Village did not respond to this office. As of the date of the issuance of this binding opinion, this office has not received confirmation or any indication

¹Letter from Peter D. Sadelski, Ed Fox & Associates, Ltd., to Village of Lyons (April 12, 2024).

²E-mail from Peter T. Sadelski, Associate Attorney, Ed Fox & Associates, Ltd., to Public Access [Bureau, Office of the Attorney General] (May 9, 2024).

³Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Village of Lyons, Attn: FOIA Officer (May 17, 2024), at 1.

⁴Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, Village of Lyons, Attn: FOIA Officer (May 17, 2024), at 1.

⁵E-mail from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Doreen] Norris, [FOIA Officer and Assistant to the Village Manager, Village of Lyons] (June 7, 2024).

⁶E-mail from Doreen [Norris], Assistant to the Village Manager, [Village of Lyons], to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (June 13, 2024).

⁷E-mail from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Doreen Norris (June 17, 2024).

⁸E-mail from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Doreen Norris (June 24, 2024).

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from the Village or Mr. Sadelski that the Village has responded to Mr. Sadelski's April 12, 2024, FOIA 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 2022). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2022)), "[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 2022)) 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).

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)) 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 2022).

It is undisputed that the Village did not timely respond and provide records responsive to Mr. Sadelski's April 12, 2024, FOIA request, deny the request in writing in whole or in part, extend the time for responding to the request by five business days, or reach a written agreement with Mr. Sadelski for a longer extension. The Village's failure 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:

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1) On April 12, 2024, Mr. Peter T. Sadelski, on behalf of Ed Fox & Associates, Ltd., submitted a FOIA request to the Village seeking all records concerning a named individual and any employee of the Village Police Department between January 1, 2010, and the date of the request.

2) On May 9, 2024, Mr. Sadelski submitted a Request for Review to the Public Access Bureau alleging that the Village had not responded to his FOIA request. Mr. Sadelski'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 2022), as amended by Public Act 103-069, effective January 1, 2024). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

3) On May 17, 2024, the Public Access Bureau forwarded a copy of the Request for Review to the Village along with a letter asking whether the Village had responded to Mr. Sadelski's FOIA request. The Village did not respond.

4) On June 7, 2024, the Public Access Bureau sent the Village an e-mail requesting an update on the status of the Village's response to the request. On June 13, 2024, the Village replied via e-mail that its attorneys were assisting the Village with the response to the request, but provided no indication as to when the Village would respond.

5) On June 17, 2024, and June 24, 2024, the Public Access Bureau sent additional e-mails to the Village requesting clarification of the status of its response to Mr. Sadelski's request. The Village did not respond to those e-mails.

6) As of the date of the issuance of this binding opinion, this office has received no information indicating that the Village has responded to Mr. Sadelski's April 12, 2024, FOIA request seeking records concerning a named individual and any employee of the Village's Police Department.

Therefore, it is the opinion of the Attorney General that the Village has violated section 3(d) of FOIA by failing, within the statutory time period for responding to Mr. Sadelski's April 12, 2024, request, to provide copies of the requested records or to deny the request in writing in whole or in part. Accordingly, the Village is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Sadelski with copies of all records responsive to his April 12, 2024 FOIA, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective

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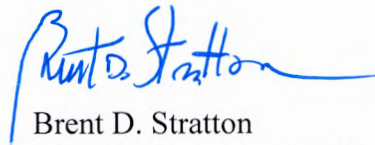
January 1, 2024).⁹ If the Village determines that any portion of the responsive records is exempt from disclosure under section 7, it is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2022)).

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 2022). 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. Peter T. Sadelski as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

⁹Because the Village did not comply with the statutory requirements for responding to Mr. Sadelski's FOIA request, the Village is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2022).

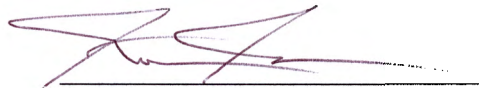
CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 24-009) upon:

Mr. Peter T. Sadelski
Associate Attorney
Ed Fox & Associates, Ltd.
118 North Clinton Street, Suite 425
Chicago, Illinois 60661
psadelski@efoxlaw.com

Ms. Doreen Norris
FOIA Officer and Assistant to the Village Manager
Village of Lyons
4200 Lawndale Avenue
Lyons, Illinois 60534
dnorris@villageoflyons-il.net

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 June 28, 2024.



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