



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

July 9, 2015

Via electronic mail
Mr. Matt Chapman
foiarequesterchicago@gmail.com

Via electronic mail
Ms. Yolanda Gardner
FOIA Officer
City of Chicago Department of Innovation and Technology
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RE: FOIA Request for Review – 2015 PAC 33658

Dear Mr. Chapman and Ms. Gardner:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the response by the City of Chicago Department of Innovation and Technology (Department) to Mr. Matt Chapman's December 19, 2014, FOIA request violated the requirements of FOIA.

On that date, Mr. Chapman submitted an anonymous FOIA request to the Department, asking it to "[p]lease attach in a standard text, compressed format, all VoIP server logs that would contain phone numbers dialed between the dates of 11/24/14 and 12/04/14 for the location of 121 N La Salle St #507, Chicago, IL 60602 (mayor's office)."¹ On January 30, 2015, the Department provided a spreadsheet of telephone numbers with the last four digits redacted. The Department asserted that some of the telephone numbers might be private numbers exempt from disclosure under sections 7(1)(b) or 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2014)), and that determining whether the numbers dialed were public or private would be unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2014)). In his

¹E-mail from Anonymous [to FOIA Officer, Department of Innovation and Technology] (December 19, 2014).

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Request for Review, Mr. Chapman alleged: (1) the Department's response was untimely; (2) public employee telephone numbers are not exempt from disclosure; and (3) he was not provided with responsive records in the log file format he had requested.

On March 2, 2015, the Public Access Bureau forwarded a copy of Mr. Chapman's Request for Review to the Department and asked it to: (1) provide this office with unredacted copies of the responsive Voice over Internet Protocol (VoIP) logs; (2) explain whether the documents provided to Mr. Chapman are copies of VoIP server logs, and, if not, provide a legal and factual basis for providing documents different from the documents requested; and (3) provide any additional information about the Department's legal and factual bases for its assertion of sections 7(1)(b), 7(1)(c), and 3(g). On March 10, 2015, this office received the Department's written response, purporting to enclose copies of the VoIP logs at issue. That afternoon, an Assistant Attorney General in the Public Access Bureau contacted the Department by telephone to ascertain whether the records the Department provided were, in fact, VoIP logs. The Department responded that it does not use VoIP technology and that it would issue a supplemental written response explaining what it had provided. On March 13, 2015, this office received that response. On March 21, 2015, this office received Mr. Chapman's reply.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

Timeliness of the Department's Response

As an initial matter, the Department's January 30, 2015, response was not timely. Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) 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 received may not treat the request as unduly burdensome under subsection (g).

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Mr. Chapman submitted his FOIA request via e-mail on December 19, 2014, and the Department extended its response time by 5 business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)). Therefore, the Department was required to respond to the request by January 6, 2015. There is no indication that the Department reached a written agreement with Mr. Chapman to further extend its response deadline from that date. Accordingly, the Department's failure to provide a timely response to Mr. Chapman's FOIA request violated section 3(d) of FOIA.

Section 3(g) of FOIA

Section 3(g) of FOIA provides:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Under the plain language of section 3(d), a public body that fails to respond to a FOIA request within the requisite time period (or authorized extension thereof) may not assert that the request is unduly burdensome. Because the Department did not respond to Mr. Chapman's December 19, 2014, FOIA request within the requisite time period, the Department waived its opportunity to treat the request as unduly burdensome pursuant to section 3(g) of FOIA.

Section 7(1)(b) of FOIA

In response to Mr. Chapman's request, the Department provided him with a spreadsheet containing the first six digits of the telephone numbers dialed for 83 responsive calls and asserted that it had withheld the last four digits of each number pursuant to section 7(1)(b)

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"because providing them makes it possible to attribute each telephone number to a person."² The Department further asserted that "[t]he log potentially includes, for example, personal and other non-public phone numbers of business and community leaders, City employees, public officials, and other individuals."³

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." The definition of "private information" includes "home or personal telephone numbers." *See* 5 ILCS 140/2(c-5) (West 2012), as amended by Public Acts 98-806, effective January 1, 2015; 98-1129, effective December 3, 2014.

Although home and personal telephone numbers are exempted from disclosure under section 7(1)(b), the Department has not determined whether any of the 83 calls in the spreadsheet were made to home or personal telephone numbers. Thus, the Department has not demonstrated by clear and convincing evidence that any of the telephone numbers that it redacted are exempt from disclosure pursuant to section 7(1)(b) of FOIA.

Section 7(1)(c) of FOIA

The Department withheld City employee cell phone numbers pursuant to section 7(1)(c), asserting that the public's interest in the numbers does not outweigh the personal privacy interests at stake. Section 7(1)(c) of FOIA exempts from disclosure:

Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. 'Unwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. *The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.* (Emphasis added.)

²Letter from Yolanda Gardner, Freedom of Information Officer, Department of Innovation and Technology, to FOIA Requester (January 30, 2015), at 1.

³Letter from Yolanda Gardner, Freedom of Information Officer, Department of Innovation and Technology, to FOIA Requester (January 30, 2015), at 1.

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A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (1994).

In support of its assertion of section 7(1)(c), the Department cited a 2010 letter (Ill. Att'y Gen. PAC Pre-Auth. al dl8685, issued September 30, 2010) in which this office approved the Department's request to assert section 7(1)(c) to redact public employees' cell phone numbers. In that matter, however, the requester sought employee cell phone numbers together with the names and titles of the employees to whom the numbers were assigned. Further, that letter was a pre-authorization for the assertion of section 7(1)(c) issued pursuant to now-repealed provisions of FOIA, which was not a final determination in any sense and consequently of little precedential value. Here, Mr. Chapman has sought only records containing telephone numbers dialed from the Mayor's Office. In the absence of corresponding information identifying the employees to whom the numbers are assigned, there is no indication that disclosure of City cell phone numbers would constitute an unwarranted invasion of any individual's personal privacy. Accordingly, the Department has failed to sustain its burden to justify withholding non-ascribed City employee cell phone numbers pursuant to section 7(1)(c). Because the Department did not sustain its burden to withhold any portion of the telephone numbers requested by Mr. Chapman, we direct the Department to disclose them to him.

The Requested Format

Lastly, Mr. Chapman complained that he was not provided with responsive records in the log file format he had requested. The Department explained the format of the record it provided to Mr. Chapman as follows:

A server log is a record of transactions that occurred in a server that supports Voice over Internet Protocol (VoIP). After consulting with the Chief Technology Officer, The City does not use a VoIP system. The City uses a Centrex system for telecommunications. Local call data is stored as a flat file that is 200mbs in size and indistinguishable to a person without the knowledge and experience to interpret the data. The City's long distance vendor provides access to the call detail data through an online application database. Users are able to log into the database, enter specific dates of service as the search criteria and

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download information into either a PDF file or Excel spreadsheet. The database generates citywide call details. [The Department] has provided the PAC with unredacted data generated from the long distance database in the PDF file format and Excel spreadsheet, as well as the requester's specific inquiry into call details from the Mayor's Office in both a PDF file format and Excel spreadsheet. In an effort to address Mr. Chapman's FOIA request, [the Department] provided data that was compiled from both sources.

[The Department] read Mr. Chapman's request as a request for the telephone numbers dialed from the mayor's office between November 24, 2014 and December 4, 2014. Therefore, [the Department] provided Mr. Chapman with a spreadsheet of the telephone numbers dialed from the mayor's office between November 24, 2014, and December 4, 2014. The interpretation of Mr. Chapman's FOIA request is the reason he was provided with a spreadsheet of the telephone numbers dialed instead of a copy of the VoIP logs.⁴

Mr. Chapman replied:

Because my initial request was for log data, I would have appreciated and preferred the raw information. Should the data have truly been indecipherable, then I would have submitted a further FOIA request. I have not found anything in FOIA that prevents the disclosure of information that could be considered confusing/gibberish to a layman.⁵

Section 6(a) of FOIA (5 ILCS 140/6(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014) provides, in pertinent part:

When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to

⁴Letter from Yolanda Gardner, Freedom of Information Officer, Department of Innovation and Technology, to Josh Jones, Assistant Attorney General, Office of the Illinois Attorney General (March 13, 2015), at 2.

⁵E-mail from Matt Chapman [to the Public Access Bureau] (March 21, 2015).

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furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.

Pursuant to section 6(a), the Department was required to provide Mr. Chapman with any responsive VoIP server logs in the "standard text, compressed format" he requested, if feasible. After consulting with the Chief Technology Officer, however, the Department determined that the City does not use a VoIP system. Because the available information indicates that the Department does not maintain or possess VoIP logs, the Department was not required to provide Mr. Chapman with VoIP logs. *See, e.g., Kenyon v. Garrels*, 184 Ill. App. 3d 28, 31-32 (4th Dist. 1989) (FOIA does not require public bodies to create records).

While the Department could have responded that it did not maintain or possess records responsive to Mr. Chapman's request, it appears to have attempted to comply with the request by treating it as a request for the numbers dialed from the Mayor's Office during the applicable time period, and by providing the responsive numbers in one of the only two formats in which they were retrievable. Under these circumstances, the Public Access Bureau concludes that the Department did not violate section 6(a) of FOIA by providing responsive information in a format other than that which Mr. Chapman requested.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,



JOSH JONES
Supervising Attorney
Public Access Bureau

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