IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CIVIL DEPARTMENT, CHANCERY DIVISION

2015CH14058
CALENDAR/ROOM 15
TIME 00:00
Injunction

CHICAGO TRIBUNE COMPANY LLC,	)	
	)	
Plaintiff,	)	
	)	Case No. _____
v.	)	
	)	
CITY OF CHICAGO OFFICE OF THE MAYOR and MAYOR RAHM EMANUEL,	)	
	)	
Defendants.	)	

FILED
2015 SEP 24 AM 10: 25
DOROTHY BROWN
CIRCUIT COURT OF COOK COUNTY, IL
CHANCERY DIVISION

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Chicago Tribune Company LLC ("Tribune") brings this Complaint against Defendant Office of the Mayor of the City of Chicago and Mayor Rahm Emanuel (herein, collectively, the "Mayor" unless otherwise indicated) for failure to disclose public records, in violation of the Illinois Freedom of Information Act ("FOIA"), 5 ILCS §140/1 *et seq.*, and for failing to preserve public records, in violation of the Illinois Local Records Act, 50 ILCS §205/1 *et seq.*

NATURE OF THE ACTION

1. In enacting FOIA, the Illinois General Assembly expressly declared that "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them." 5 ILCS §140/1. Tribune, like other news organizations, serves as a conduit for seeking out and providing information to citizens about what their government is up to. Indeed, the First Amendment's guarantee of freedom of the press is meant to enable journalists to play an "essential role in our democracy," to "bare the secrets of government and inform the people." *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring). "Since the ultimate sovereign in this country is an informed

citizenry, we must have information available of and about public issues and public figures upon which to make judgments as to public officials and public programs." *Krauss v. Champaign News Gazette, Inc.*, 59 Ill. App. 3d 745, 746-47 (1978).

2. Through the FOIA requests at issue in this case, Tribune seeks to fulfill this essential civic role and shine a public light on civic controversies such as the operation of the City's red light camera system, the bidding for the new speed camera program, and the Mayor's reliance on political donors for advice and counsel on City affairs and business. The public interest in receiving information about these topics is undeniable. Tribune seeks these records to inform citizens both regarding the operation of their government and regarding Mayor Emanuel's official actions as Mayor.

3. In recent years, Tribune's FOIA requests directed to the Office of the Mayor have been met with a pattern of non-compliance, partial compliance, delay and obfuscation. Contributing to a lack of transparency is the use of personal e-mail accounts and phone lines, rather than government-issued phones and accounts, in conducting government business, which, on information and belief, Mayor Emanuel does.

4. If e-mails and text messages concerning official government business are sent to or from an official City phone or e-mail account or from a "personal" phone or account used for government business, such e-mails and text messages are public records subject to disclosure under FOIA -- as the Illinois Attorney General and Illinois Appellate Court have found. The recent controversies over the use of personal e-mail servers to conduct U.S. State Department business, and the University of Illinois' recent release of e-mail from its senior administrators' personal accounts, show that such practices cannot be used to circumvent Freedom of Information laws.

5. Nevertheless, and contrary to FOIA's mandate and fundamental policy, the Mayor contends that e-mails and text messages concerning official government business sent to or from the Mayor's "personal" phone or e-mail accounts are not subject to FOIA's disclosure requirement and refuses to produce these public records.

6. It also appears, based on the Mayor's responses to Tribune's FOIA requests, that the Mayor may have failed to preserve public records in the form of e-mails, text messages and other electronic communications, in violation of the Illinois Local Records Act, 50 ILCS §205/1 *et seq.*

7. The Mayor should be compelled to preserve public records, perform reasonable searches for records that are subject to disclosure, and promptly release all of the requested public records, including all responsive e-mail and text messages, and logs of landline or cellular calls, including those sent from or received by a personal phone or account used for public business. Tribune therefore seeks: (a) an injunction commanding the Mayor to disclose without improper redaction the records requested in Tribune's FOIA request dated June 30, 2015; (b) a declaratory judgment that any destruction of or failure to preserve public records in the form of electronic communications is in violation of the Local Records Act, and an injunction prohibiting any further violations; and (c) an order awarding Tribune its attorneys' fees and costs of bringing this lawsuit.

PARTIES

8. The Tribune is a major daily newspaper and media outlet with the highest circulation of any daily publication in the Midwest, as well as national and international readership. Tribune reports on numerous topics and events in the Chicago metropolitan area, as well as globally. For more than a century, Tribune has worked to provide comprehensive,

accurate accounts of newsworthy events and cases. Since 1932, its journalists have won over 25 Pulitzer Prizes. As a result, the *Chicago Tribune* is generally recognized as one of the most influential newspapers in the United States.

9. The Office of the Mayor of the City of Chicago is a subsidiary body of the City of Chicago that is overseen by and administers the affairs of the City's chief executive, and is a "public body" as that term is defined in 5 ILCS §140/2(a).

10. Rahm Emanuel has occupied the office of Mayor of the City of Chicago since 2011. He is the City's chief executive, with executive and administrative responsibility for the Office of the Mayor, and is the "head of" that public body as that term is defined in 5 ILCS §140/2(e).

JURISDICTION AND VENUE

11. This Court has jurisdiction under 5 ILCS §140/11(a) of FOIA.

12. This Court also has jurisdiction over the disputes and controversies alleged herein under the Illinois Declaratory Judgment Act, 735 ILCS §5/2-701.

13. Venue is proper in Cook County under 5 ILCS §140/11(c) of FOIA because the City of Chicago and the Mayor are located in Cook County.

FACTUAL BACKGROUND

Illinois FOIA

14. FOIA makes it the "public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees." 5 ILCS §140/1. "All records in the custody or possession of a public body are presumed to be open to

inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." *Id.* §140/1.2.

15. "A 'public body' means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing ...." *Id.* §140/2(a).

16. "'Public records' means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." *Id.* §140/2(c).

17. "Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle." *Id.* §140/1. In particular, "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.* §140/7(1)(c).

18. The FOIA statute requires public bodies to promptly comply with or deny record requests within five business days after the request is received. *Id.* §140/3(d). When certain

conditions are met, the public body may extend its time for responding for "not more than five business days from the original due date." *Id.* §140/3(e).

19. The FOIA statute also provides: "When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority." *Id.* §140/9(b).

20. This Court has jurisdiction "to enjoin [the Mayor] from withholding public records and to order the production of any public records improperly withheld from the person seeking access." *Id.* §140/11(d).

21. If Tribune prevails in this proceeding it is entitled to recover its reasonable attorneys' fees pursuant to 5 ILCS §140/11(i).

Tribune's Coverage of Controversies Involving the Mayor

22. It is crucial to the Tribune's watchdog mission that its journalists receive timely information regarding the operations of government, including City Hall and the Mayor, to keep the public apprised of developments and matters of concern. The FOIA requests here implicate matters of public concern that have been the subject of award-winning investigative journalism by the Tribune.

23. ***Red Light Cameras.*** Since 2012, Tribune reporters covering City Hall, have written extensively on controversies surrounding the City's red light camera system. (*See* http://www.chicagotribune.com/news/watchdog/redlight/). That system, now the biggest in the nation, has generated more than $500 million in revenue. The Tribune's reporting led to federal bribery indictments of a former City official, and exposed failed oversight, unfair enforcement

practices and unsupported claims about the system's safety benefits, leading to changes in City policy. Specifically:

- Tribune's investigation uncovered a $2 million bribery scheme involving the initial vendor for the red light camera system, Redflex Traffic Systems Inc. Tribune's disclosures revealed the company may have bribed John Bills, the former city official who was crucial to selecting Redflex and oversaw its contract since it began in 2003. In the wake of these revelations, the Mayor fired Redflex, and federal criminal charges were brought against Bills and Redflex's CEO.[1]

- As part of its investigations, Tribune commissioned a scientific study showing that while the City boasted about red light cameras increasing safety, the cameras did nothing to make drivers safer and may have caused an increase in injury-related crashes. After the study was published, in December 2014 -- and after it became an issue in the mayoral campaign -- the Mayor announced he would remove 50 of the red light cameras at 25 intersections.[2]

- Tribune's investigation also highlighted concerns about City Hall's handling of signal times at camera intersections, namely, that Chicago's yellow light times are too short for traffic conditions, and out of step with national safety standards. While increasing yellow light times would reduce accidents, it would also reduce the red light camera tickets that have generated more than half a billion dollars for the City.[3]

24. The Nieman Foundation at Harvard University honored Tribune's investigation of corruption and undeserved ticketing in Chicago's red light camera system with the 2014 Taylor Family Award for Fairness in Journalism. The Taylor judges praised the "dogged, ingenious investigation" of reporters David Kidwell and Alex Richards and said they "brought a big dose of fairness to an incredibly unfair situation."[4]

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[1] *See, e.g.*, David Kidwell, Ex-CEO pleads not guilty to bribery; Charges allege $2M scheme to secure traffic camera deal, *Chicago Tribune*, Sept. 11, 2014; David Kidwell and Jeff Coen, Red light camera indictee aids feds; Ex-Chicago consultant says he was conduit for payoffs to city official, Chicago Tribune, Aug. 21, 2014; David Kidwell and John Chase, Ex-city official charged; in red light bribery case, *Chicago Tribune*, May 15, 2014.

[2] *See, e.g.*, David Kidwell and Alex Richards, Tribune study: Chicago red light cameras provide few safety benefits, *Chicago Tribune*, Dec. 19, 2014; David Kidwell, City pulls 50 cameras from 25 intersections; Emanuel denies red light decision is a reaction to re-election pressure from his challenger, Garcia, *Chicago Tribune*, March 9, 2015.

[3] David Kidwell, City data show fast times at yellows; Reports support contention that red light signal interval too short, *Chicago Tribune*, Mar. 16, 2015.

[4] Tribune series receive honors; Investigations on red light cameras, youth treatment centers lauded, *Chicago Tribune*, April 9, 2015.

25. ***The Mayor's Influential Adviser and Donor, Michael Sacks.*** Tribune has reported that, since being elected, the Mayor "has opened the door to his City Hall office for a steady stream of investment bankers, venture capitalists and international consultants in his intense search for private solutions to some of Chicago's biggest public problems. . . . At the center of that effort is a key private adviser -- Michael Sacks, the CEO of a Chicago hedge fund firm and a prolific campaign fundraiser for Emanuel."[5] "Soon after taking office in May 2011, the mayor put Michael Sacks in charge of World Business Chicago, the city's de facto economic development agency, naming him vice chairman. Michael Sacks has met with Emanuel more than two dozen times this year, according to the schedule, on everything from pension reform to the sites of sporting arenas."[6]

Tribune's June 30, 2015 FOIA Request

26. On June 30, 2015, reporter David Kidwell sent a FOIA request to the Mayor (the "Tribune Request," attached hereto as Exhibit A) seeking three categories of communications, all of which implicate the important matters of public interest discussed above, *i.e.*:

a) All emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner[7],

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[5] Jeff Coen and John Chase, Emanuel makes time for corporate execs; Mayor's calendar gives a peek into his use of private advisers as he seeks business partnerships to reach his goals for city, *Chicago Tribune,* Nov. 15, 2012.

[6] *Id.; see also* Bill Ruthhart, Emanuel reports gifts from the rich and famous; Entertainment, financial execs lightened mayor's travel expenses in 2012, *Chicago Tribune*, May 3, 2013 (Mayor accepted sports tickets, meals and transportation from Sacks, who is among Mayor's biggest donors, contributing $100,000 during his campaign).

[7] Greg Goldner -- a key political ally of the Mayor who managed his 2002 election to Congress -- is a consultant to the Redflex-funded Traffic Safety Coalition. In 2011, he lobbied the Illinois legislature to legalize speed cameras in Illinois at the same time the Mayor was pushing to start such a program in Chicago. David Kidwell, Focus shifts to speed camera plan; Redflex inquiry casts unfavorable shadow on mayor's new initiative, *Chicago Tribune*, March 17, 2013; David Kidwell, Camera push tied to insider; Devices backed by mayor to nab speeders may enrich ally's client, *Chicago Tribune*, March 13, 2012.

speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson[8], inspector general, "IG", ATS[9], American Traffic, Kidwell, and redlight (the "Red Light Request").

b) All emails, text messages and other electronic communications in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business (the "Sacks Request").

c) All emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business (the "60-Day Request").

27. In addition to the communications themselves, the Tribune Request sought a log of the requested e-mails, text messages and other electronic communications. Tribune's request for a log was in the alternative to its request for the e-mails themselves, in the interest of obtaining a rapid response and to determine what additional FOIA requests were needed.

28. The Tribune Request specified that it included all responsive e-mails, text messages, or other electronic communications (including instant messages, device to device messages, such as iMessages) sent to or from the Mayor on any publicly issued or funded line, account, or device, as well as any private or personally funded line, account, or device.

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[8] City Inspector General Joseph Ferguson worked closely with federal authorities to investigate the Redflex corruption allegations. *See* David Kidwell, 3 indicted in Redflex scandal; Ex-CEO, ex-city official, adviser charged in red light camera case, *Chicago Tribune*, Aug. 14, 2014.

[9] Arizona-based American Traffic Solutions Inc. ("ATS") was selected as the top bidder for the speed camera initiative. The Mayor refused to release the speed camera bids until a final contract was awarded. *See, e.g.*, David Kidwell, Public in the dark on red-light bids; City Hall won't reveal details until contract finalized, *Chicago Tribune*, June 24, 2013; David Kidwell, Replacing vendor no easy task; Deadline for new deal indefinite as questions pile up on takeover of complex camera system, *Chicago Tribune*, May 8, 2013.

29. The Tribune Request also asked for documents that detail or log landline or cellular calls made or received by the Mayor from May 1, 2015 to June 30, 2015 on any publicly issued or funded line or device, as well as any private or personally funded line or device, to conduct or discuss public business (the "Phone Records Request").

The Mayor's Refusal to Produce Responsive Information From "Private" Accounts

30. After requesting an extension of the five-day statutory time period to respond to the Tribune Request, on July 15, 2015, the Mayor produced a written response to the June 30 Tribune Request. A copy of this response (the "Mayor's Response") is attached as Exhibit B.

31. The Mayor's Response refused to search for, much less produce, any communications from the Mayor's "private, non-City email and telephone accounts" on grounds that "FOIA is limited to producing information possessed by a public body; it does not impose an obligation to locate and search private email accounts. As a result, to the extent that your request seeks records that do not reside on City email and telephone accounts, the Mayor's Office has no records responsive to that portion of your request." Ex. B.

32. The Mayor's Response is contrary to law. It ignores the FOIA statute's language defining public record (which is not limited to "information possessed by a public body"), as well as binding decisions of the Illinois Attorney General's Office of Public Access Counselor, and the Illinois Appellate Court, which hold that e-mails and text messages from "private" accounts that pertain to public business are public records subject to FOIA. Moreover, permitting government officials to end run FOIA by conducting official business through "private" accounts is fundamentally contrary to the public policies enunciated by FOIA.

33. That is why, for example, public bodies such as the University of Illinois have for many years "treated emails relating to the transaction of University business as subject to FOIA,

regardless of whether they are in University or personal email accounts or on personal devices." Recently, upon discovering that some of its senior administrators -- including the (recently resigned) chancellor -- had used personal e-mail accounts to discuss sensitive and controversial issues, the University released 1,100 pages of those emails, some of which would have been responsive to prior FOIA requests.[10]

34. In addition, the Mayor's improper interpretation of his FOIA obligations had an impact on the Mayor's Response to Tribune's specific requests: the Mayor's Response asserts, with respect to the Red Light and 60-Day Requests, that there are no responsive text messages, and, with respect to the Sacks Request, that there are no responsive communications *at all*. Upon information and belief, the Mayor uses text messaging, and communicates with Mr. Sacks regularly. Accordingly, the Mayor's private telephone and e-mail account should include responsive text messages and Sacks communications.

35. The Mayor's Response also included a log "indicating calls made from City-issued land lines used by the Mayor and the Mayor's administrative assistants, from May 1, 2015 through June 20, 2015." Ex. B. However, the Response ignored Tribune's request for such records with respect to "any private or personally funded line or device" used by the Mayor, as specified in the Phone Records Request. Ex. A.[11]

36. The Mayor has not sustained the burden of proving by clear and convincing evidence that the requested records are not subject to disclosure. 5 ILCS §140/1.2. Tribune thus seeks an order compelling the Mayor to fulfill its statutory duty to provide public records under

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[10] *See* News Release, Potential FOIA Compliance Issue Discovered and Reviewed (Aug. 7, 2015) (http://uofi.uillinois.edu/emailer/newsletter/77321.html).

[11] The Mayor's incomplete response to the Phone Records Request redacts the last four digits of all the logged phone numbers, on grounds that some may be personal telephone numbers and work cell phone numbers of both private citizens and government employees, which the Mayor asserts are exempt under FOIA Section 7(1)(b) and 7(1)(c). Ex. B. At this time, Tribune does not dispute these redactions.

FOIA in keeping with the laws of the State of Illinois and "the fundamental philosophy of the American constitutional form of government." *Id.* § 140/1.

Refusal to Produce Responsive Information From The Mayor's *Official* E-Mail Account

37. In addition to rejecting Tribune's request for any responsive communications from the Mayor's "private, non-City email and telephone accounts," the Mayor's Response with respect to e-mails to or from the Mayor's *official* City account also failed to comply with the law.

38. The Mayor's Response included a log of e-mails to or from the Mayor's official City e-mail account, for both the Red Light and the 60-Day Requests. The logs identified e-mails by author, recipient, subject line and date and time sent. However, the Mayor refused to produce the actual e-mails listed on the logs, asserting that it would be "unduly burdensome" to do so. Ex. B. The Mayor's Response does not establish, as required by FOIA Section 3(g), that "the burden on the public body outweighs the public interest in the information" requested, nor has it adequately specified how "compliance will so burden [its] operations." 5 ILCS 140/3(g).

39. In response to the Mayor's invitation to potentially narrow the number of e-mails listed on the logs (and expressly preserving Tribune's objections to the Mayor's improper and incomplete response to the Tribune Request), Tribune suggested that adding further information to the logs would help identify communications of interest, and requested that a specific subset of the logged e-mails be produced. (July 17, 2015 Kidwell Letter, attached as Exhibit C).

40. The Mayor denied Tribune's request to add clarifying information to the logs, and produced some of the specific requested e-mails from the Mayor's official City e-mail account. The Mayor withheld two (unidentified) e-mails and heavily redacted many others, asserting the "preliminary draft exemption" set forth in FOIA Section 7(1)(f). (Aug. 3, 2015 Rasmas Letter, attached as Exhibit D; herein, "Mayor's Supplemental Response").

41. The Mayor's blanket invocation of Section 7(1)(f) does not provide, as to each document redacted or withheld, "the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority." 5 ILCS §140/9(b). As to the two documents withheld, the Mayor did not even provide redacted versions of those e-mails or any other information about the subject matter, senders/recipients, or what search terms it responded to.

42. Finally, the log of all emails from the Mayor's official City account that the Mayor produced in response to Tribune's 60-Day Request reveals that, between May 1, 2015 and June 30, 2015, Mayor Emanuel sent 139 e-mails from his official e-mail accounts ("Mayor Emanuel" or "REMOC") -- and that of those, 63 were form invitations to the dedication of Maggie Daley Park; 6 were form invitations to participate in a procurement reform task force; and 6 were "test" messages, thank you letters, and other non-substantive communications. During this two month period therefore, the Mayor of a major metropolis claims he sent at most 64 potentially substantive e-mails from his official City accounts, a number that appears surprisingly low, if the Mayor is using these official accounts as his only mode of electronic communication.

Failure to Preserve Records in Violation of Local Records Act

43. Illinois FOIA contains no provisions for the disposition or destruction of public records. However, the Local Records Act provides, in relevant part:

> All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law. Any person who knowingly, without lawful authority and with the intent to defraud any party, public officer, or entity, alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony.

50 ILCS §205/4; *see also id.* §205/7 ("Except as otherwise provided by law, no public record

shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained").

44. The Local Records Act defines "public record" as, *inter alia*, "any . . . digitized electronic material . . . regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein." *Id.* §205/3.

45. The Act further states that "[n]onrecord materials or materials not included within the definition of records as contained in this Act may be destroyed at any time by the agency in possession of such materials without the prior approval of the Commission. The Commission may formulate advisory procedures and interpretations to guide in the disposition of nonrecord materials." *Id.* §205/9.

46. Regulations enacted pursuant to the Local Records Act provide that "[t]ypes of non-record material include, but are not limited to":

> Transitory messages, consisting of material that is created primarily to communicate information of short-term value. These can include messages sent via email, instant messaging (IM), text messaging (SMS) or paper correspondence. Examples of transitory messages include, but are not limited to, reminders to employees about scheduled meetings or appointments; most telephone messages (whether in paper, voicemail or other electronic form); announcements of office events such as holiday parties or group lunches; and recipient copies of announcements of agency-sponsored events such as exhibits, lectures, workshops, etc. Transitory messages are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction or become a receipt.

44 Ill. Adm. Code §4500.20 (2015).

47. "Whenever there is doubt that certain items are non-record materials, the agency should consider them to be records until their status is determined." *Id.* §4500.10(h) (2015).

48. The Illinois State Archivist's "FAQs for Local Government Agencies" further explains that an email or instant message may be a public record under the Local Records Act "depending on the information contained" therein;

> If the information fits the definition above of a public record as described in the Local Records Act, then the information is subject to the provisions of the Act regardless of the media the data is maintained in or on. . . . If the messages have a bearing on actions or decisions taken or not taken, then they would be classified as a public record under the Local Records Act.

See Jesse White, Ill. Sec'y of State, Ill. State Archives: FAQs for Local Government Agencies (http://www.cyberdriveillinois.com/departments/archives/records_management/faqlocal.html).

49. E-mails and text messages sent or received on the Mayor's "personal" telephone or e-mail accounts that pertain to public business and reflect the Mayor's policies and decisions, and other information concerning his official activities, would be appropriate for preservation, and are public records within the meaning of the Local Records Act. The Mayor's Response indicates that no measures have been taken to preserve these records, and, upon information and belief, many have not been preserved.

COUNT I
(Injunctive Relief Requiring Production of Public Records Improperly Withheld in Violation of Illinois FOIA)

50. Tribune incorporates and realleges Paragraphs 1 through 49 of this Complaint as though fully restated herein.

51. Tribune seeks disclosure of the following public records requested by Tribune and improperly withheld by the Mayor (herein, the "Improperly Withheld Records"):

a) Any and all e-mails, text messages, or other electronic communications (including but not limited to instant messages, device to device messages, such as iMessages) sent to or from the Mayor on any private or personally funded telephone or e-mail account or device that pertain to public business and are responsive to the Red Light, Sacks, and 60-Day Requests.

b) Any and all documents responsive to the Phone Records Request with respect to any of the Mayor's private or personally funded telephone lines or devices.

c) The two e-mails withheld from the Mayor's Supplemental Response and unredacted versions of the e-mails produced with the Mayor's Supplemental Response.

52. The Improperly Withheld Records are all public records within the meaning of 5 ILCS §140/2(c) and subject to disclosure by the Mayor under FOIA.

53. With respect to the Improperly Withheld Records described in paragraph 51(a) and (b) -- relating to communications from the Mayor's private or personally funded telephone or e-mail account or device that pertain to public business -- the Mayor's Response does not assert that there is no information responsive to the requests for these Improperly Withheld Records, but rather, that he is not obligated to produce that information under FOIA. The Mayor has asserted no FOIA exemption that is applicable to these Improperly Withheld Records, and no such exemption from disclosure applies.

54. With respect to the Improperly Withheld Records described in paragraph 51(c) -- e-mails withheld or redacted based on a purported "preliminary draft" exemption -- the Mayor's blanket invocation of FOIA Section 7(1)(f) does not comply with FOIA's requirement that, as to each document redacted or withheld, the Mayor provide "the specific reasons for the denial,

including a detailed factual basis and a citation to supporting legal authority." 5 ILCS §140/9(b). The Mayor's "one-size-fits-all," generic and conclusory claim of exemption is inadequate as a matter of law.[12]

55. The matters addressed by the requests for the Improperly Withheld Records are of public interest for all the reasons discussed above, and therefore, the release of such public records will "enable the people to fulfill their duties of discussing public issues fully and freely, mak[e] informed political judgments and monitor[] government to ensure that it is being conducted in the public interest." 5 ILCS §140/1.

56. This Court has the power to order declaratory and injunctive relief compelling the Mayor to comply with FOIA's obligations. 5 ILCS §§140/11(a), (d).

COUNT II
(Declaratory and Injunctive Relief Prohibiting the Destruction of or Failure to Preserve Public Records in Violation of Local Records Act)

57. Tribune incorporates and realleges Paragraphs 1 through 56 of this Complaint as though fully restated herein.

58. The records requested by Tribune are "public records" within the meaning of the Local Records Act, since they constitute "digitized electronic material . . . made, produced, executed or received by" the Mayor "in connection with the transaction of public business" and "appropriate for preservation . . . as evidence of the organization, function, policies, decisions, procedures, or other activities" of the Mayor's office "or because of the informational data contained therein." *Id.* §205/3.

[12] Some of the e-mails produced with the Mayor's Supplemental Response also redact personal phone numbers and e-mail addresses, asserting they are exempt under FOIA Section 7(1)(b) and 7(1)(c); and redact other information regarding children who were the victims of gun violence under Section 7(1)(c). *See* Ex. D. At this time, Tribune does not dispute these redactions.

59. The records requested by Tribune are not "nonrecords" within the meaning of the Local Records Act and regulations enacted thereunder, since they involve public business and City policy and are not mere "transitory messages, consisting of material that is created primarily to communicate information of short-term value," such as reminders to employees about scheduled meetings, announcements of office events and the like. 44 Ill. Adm. Code §4500.20. Even if the Mayor had any "doubt" as to whether the records requested by Tribune were record or non-record materials under the Local Records Act, the Mayor was and is required to "consider them to be records until their status is determined." *Id.* §4500.10(h).

60. The public records requested by Tribune are within the custody, control or possession of the Mayor, and any failure to preserve them in whole or part is a violation of the Local Records Act. 50 ILCS §205/4.[13]

61. There exists between Tribune on the one hand and the Mayor on the other an actual, immediate and justiciable dispute on these issues, and Tribune seeks a declaration of the parties' rights under the relevant statutes and regulations. 735 ILCS §5/2-701(a).

PRAYER FOR RELIEF

WHEREFORE Tribune prays that this Court enter an order:

(1) Declaring that the Office of the Mayor and Mayor Rahm Emanuel acted in violation of the Illinois FOIA by failing to produce documents responsive to Tribune's requests and improperly redacting documents that were produced;

[13] Even if the requested records are not public records within the meaning of the Local Records Act, any such records in the Mayor's possession or control that have not been deleted are unquestionably public records within the meaning of FOIA and would have to be produced pursuant to the Tribune Request. The Illinois Supreme Court has clarified that the Local Records Act is concerned with "which local governmental records should or should not be preserved" and "[d]ifferent considerations are involved in determining which records are available for public disclosure." *Lopez v. Fitzgerald*, 76 Ill.2d 107, 114 (1979). "The basis for determining which records are open to disclosure must be found outside the Local Records Act" (*id.* at 116) -- namely, today, in the Illinois FOIA.

(2) Compelling the Office of the Mayor and Mayor Rahm Emanuel to promptly produce the Improperly Withheld Records, as required by FOIA;

(3) Declaring that the deletion of or failure to preserve e-mails, text messages and other electronic communications sent or received by the Mayor in connection with the transaction of public business and reflecting the "policies, decisions, procedures, or other activities" of the Mayor's office is in violation of the Illinois Local Records Act;

(4) Enjoining the Office of the Mayor and Mayor Rahm Emanuel from deleting or failing to preserve e-mails, text messages and other electronic communications sent or received by the Mayor in connection with the transaction of public business and reflecting the "policies, decisions, procedures, or other activities" of the Mayor's office;

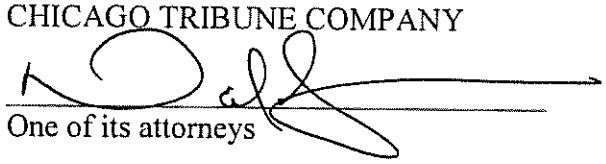
(5) Granting Tribune all costs and attorneys' fees associated with this suit pursuant to 5 ILCS 140/11(i); and

(6) Awarding all other just and equitable relief the Court deems necessary and proper.

September 24, 2015

Respectfully submitted,

CHICAGO TRIBUNE COMPANY

By: 

One of its attorneys

Natalie J. Spears
Gregory R. Naron
Kristen C. Rodriguez
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606-6404
(312) 876-2556

Of Counsel:
Karen Flax
Deputy General Counsel
Tribune Publishing Company, LLC
435 N. Michigan Ave.
Chicago, IL 60611

Exhibit A

From: Kidwell, David
Sent: Tuesday, June 30, 2015 10:41 AM
To: 'mofola@cityofchicago.org'
Cc: Quinn, Kelley
Subject: CHICAGO TRIBUNE REQUEST

Attached is a request for public records from the Office of Mayor, please acknowledge receipt. Thank you.

David Kidwell
312 912-3938

Chicago Tribune

June 30, 2015

Mayor Rahm Emanuel
and the Office of the Mayor, City of Chicago -- Attn: FOIA Officer
121 N. LaSalle Street
Chicago, Illinois 60602

This is a request for public records under the Illinois Freedom of Information Act directed to Mayor Rahm Emanuel (the "Mayor") and the Office of the Mayor (collectively referred to as "you" or "your"). Please make available for my inspection by noon, Wednesday, July 8, 2015 the following public records:

1) All emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.

2) A log of all emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.

3) All emails, text messages and other electronic communications in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.

4) A log of all emails, text messages and other electronic communications in which both the Mayor and Michael Sacks were a sender or any type of

435 North Michigan Avenue ♦ Chicago, Illinois 60611 ♦ (312) 222-2413 ♦ dkidwell@tribune.com

recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.

5) All emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

6) A log of all emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

Requests 1-6 above include all responsive e-mails, text messages, or other electronic communications sent to or from the Mayor on any publicly issued or funded line, account, or device, as well as any private or personally funded line, account, or device. These requests also specifically include all e-mails, text messages, or electronic communications where the Mayor was a "cc" or "bcc" recipient. As used in requests 1-6, "other electronic communications" includes but is not limited to instant messages, device to device messages, such as iMessages, and app-based messages. Further, in the logs provided in response to requests 2, 4, and 6 above, please include all available fields, including but not limited to the email address of the sender and recipient, the "cc:" and "bcc:" fields, the phone/SMS number of the sender and recipient, the time sent and received, the date sent and received, the delivery status, and message size.

7) Documents that detail or log all landline or cellular calls made by or received by the Mayor from May 1, 2015 to June 30, 2015 on any publicly issued or funded line or device, as well as any private or personally funded line or device, to conduct or discuss public business. This request includes but is not limited to telephone bills or other itemized records of calls reflecting phone numbers, dates/times, and duration of calls. This request also includes lines or devices assigned to or owned by other City staff employees, if used by the Mayor.

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As noted above, all of these requests specifically include responsive communications made from private and personal lines, accounts, or devices. I request confirmation that records for all private or personal lines, accounts and devices have been searched for responsive documents, including all records and communications in your possession, custody or control through messaging platforms, systems, mobile phone carriers, email providers, and any other channel or mechanism used by the Mayor to transmit or receive any electronic communications. I also request a list of each channel or mechanism searched. Further, if it is your position that no documents exist in response to these requests, or are not available or no longer available, I request an explanation as to why that is the case.

If your position is that a particular portion of any of the requests is exempt from public scrutiny, please provide that portion of the request not in dispute. In addition, please provide complete records which discernibly redact those portions you feel are exempt from public disclosure, the precise nature of those portions redacted, and a specific statutory authority on which you rely for each such redaction.

Finally, please preserve, and take all steps to ensure the preservation of, all potentially
responsive documents to these requests, to allow for further review as necessary. As these requests are made in my capacity as a journalist, time is of the utmost concern. Should any problems, questions or concerns arise from these requests, please do not hesitate to contact me at the email account or telephone number provided. Thank you for your consideration.

David Kidwell
Chicago Tribune
312 912-3938

Exhibit B

OFFICE OF MAYOR RAHM EMANUEL

CITY OF CHICAGO

July 15, 2015

David Kidwell
Chicago Tribune
435 N. Michigan Ave
Chicago, IL 60611

Re: Your FOIA Request of June 30, 2015

Dear Mr. Kidwell,

This letter is in response to the Freedom of Information Act ("FOIA") request received by the City of Chicago ("City") Mayor's Office on June 30, 2015. On July 8, 2015, we requested the statutory extension, and this response is now timely submitted. In your request, you seek:

> *1) All emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.*
>
> *2) A log of all emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.*
>
> *3) All emails, text messages and other electronic communication in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.*
>
> *4) A log of all emails, text messages and other electronic communication in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being*

a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.

5) All emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

6) A log of all emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

7) Documents that detail or log all landline or cellular calls made by or received by the Mayor from May 1, 2015 to June 30, 2015 on any publicly issued or funded line or device, as well as any private or personally funded line or device, to conduct or discuss public business. This request includes but is not limited to telephone bills or other itemized records of calls reflecting phone numbers, dates/times, and duration of calls. This request also includes lines or devices assigned to or owned by other City staff employees, if used by the Mayor.

We are producing herewith email logs for parts 2 and 6 of your request. By providing these logs and other information with this response letter, the Mayor's Office does not waive any legal objections it may have to production of documents in response to your request. Certain personal email addresses appear in these logs, and have been redacted pursuant to 5 ILCS 140/7(1)(b), which exempts:

> Private information, unless disclosure is required by another provision of this Act, a State or federal law or court order.

5 ILCS 140/7(2)(c-5) defines "private information" as:

> [U]nique 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 addresses and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Because personal email addresses are specifically included in the definition of "private information" that is exempt pursuant to 5 ILCS 140/7(1)(b), these email addresses have been redacted.

As to parts 1 and 5, in which you request copies of the emails contained in these logs, your request is overly burdensome. The FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying body and there is no way to narrow the request, and the burden on the public body outweighs the public interest in the

information. As you can see by the email logs produced herewith, the search parameters you have provided for parts 1 and 5 would each yield over 1,000 emails, totaling over 2,000 emails. The Illinois Attorney General Public Access Counselor ("PAC") has determined that a request that yields more than 1,000 emails poses an undue burden on a public body, and is properly denied on that ground. (*See* 2013 PAC 23430, issued April 26, 2013.) For these reasons, your request for these emails is unduly burdensome within the meaning of 5 ILCS 140/3(g).

Further, in part 6 of your request, you specify that you seek a log of communications that "pertain to public business." In order to determine whether the emails that we have logged pertain to public business, we would have to review each email under the same conditions described above. And, for the same reasons that producing each email would pose an undue burden on the Mayor's Office, culling the log so that it contained only emails that pertain to public business would be unduly burdensome. For this reason, we have included in the logs all emails that meet your search criteria, whether or not they pertain to public business.

Therefore, it is necessary for this portion of your request to be narrowed. If you would like assistance in narrowing your request, please contact me and we will assist you. Otherwise, as explained above, we will be unable to respond to this portion of your request. If you wish to narrow your request, please submit a revised written request to our attention. The Mayor's Office will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen (14) calendar days of the date of this letter, your current request will be denied.

To the extent that parts 1, 2, 5 and 6 of your request concern text messages or electronic communication other than email, as addressed above, the Mayor's Office has no responsive records.

As to parts 3 and 4 of your request, the Mayor's Office has no responsive records.

As to part 7 of your request, we are providing logs indicating calls made from City-issued land lines used by the Mayor and the Mayor's administrative assistants, from May 1, 2015 through June 20, 2015. These records were generated from the City's phone billing system, and, as such, do not include incoming calls, or calls to internal City phones (i.e., '744' numbers). The City does not maintain records of calls made or received other than these billing records. For these same reasons, because as of the date of this response we have been billed only through June 20, 2015, we do not possess records responsive to your request for June 21, 2015 through June 30, 2015.

Because particular phone numbers called may be exempt from disclosure, we have redacted the last four digits of telephone numbers reflected in the log. Numbers that appear on the log may be personal, home, and/or other non-public numbers that are exempt from disclosure pursuant to 5 ILCS 140/7(1)(b) and 140/2(c-5). This includes, for example, the personal and other non-public phone numbers of business and community leaders, public officials, employees and other individuals that appear on the log. Further, we have redacted City-issued cell phone numbers. As the PAC has determined, City-issued cell phone numbers are exempt from disclosure pursuant to 5

1LCS 140/7(1)(c), because the disclosure of these numbers would constitute a clearly unwarranted invasion of personal privacy. The PAC reasoned that certain staff of public bodies are issued cell phones partly so they may be on call during non-work hours or while away from their offices. Disclosure of these numbers could subject staff to excessive phone calls from the public at all times of day. Further, if staff were forced to turn off their cell phones to reduce such intrusion, they may not be readily available to attend to the business of the public body, which defeats the purpose of issuing them cell phones. For these reasons, City-issued cell phone numbers are exempt pursuant to 5 ILCS 140/7(1)(c). (*See* 2010 PAC 8685, issued September 30, 2010.)

It would be extremely burdensome to review each of the calls appearing in the log to determine whether it involved a personal, home, or other non-public number, and therefore exempt from disclosure pursuant to 5 ILCS 140/7(1)(b) and 140/2(c-5), or a City-issued cell phone number, and therefore exempt from disclosure pursuant to 5 ILCS 140/7(1)(c). This is not solely a function of the number of potentially responsive calls and the short period prescribed by FOIA. Making such a determination would require the use of a reverse directory and/or telephoning the number in question, and even that effort would identify only the individuals called. In many cases, further investigation would be required to determine whether the numbers were personal, home, or other non-public numbers.

The FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. For the reasons stated above, it would be unduly burdensome to determine for each of the calls you have requested whether the number was personal or otherwise private and non-public. On these grounds, we have redacted the last four digits of all phone numbers in the logs provided in response to part 7 of your request.

If you object to this global redaction, it is necessary for this portion of your request to be narrowed. If you would like assistance in narrowing your request, please contact me and we will assist you. Otherwise, as explained above, we will be unable to respond to this portion of your request beyond the redactions described above. If you wish to narrow your request, please submit a revised written request to our attention. The Mayor's Office will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen (14) calendar days of the date of this letter, your current request will be denied.

Last, in each part of your request, you specifically seek communications from private, non-City email and telephone accounts. By definition, this request asks the Mayor's Office to produce records that exist not on City email and telephone accounts, but on non-government accounts. However, FOIA is limited to producing information possessed by a public body; it does not impose an obligation to locate and search private email accounts. As a result, to the extent that your request seeks records that do not reside on City email and telephone accounts, the Mayor's Office has no records responsive to that portion of your request.

We look forward to working with you to resolve any outstanding issues you have with this response, and invite you to call me if you wish to discuss any of these matters further.

You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, (877) 299-3642. You also have the right to seek judicial review of a denial by filing a lawsuit in Cook County Circuit Court.

Sincerely,

Chloe K. Rasmas
Freedom of Information Officer

Exhibit C

From: "Kidwell, David" <dkidwell@chicagotribune.com>
Date: July 17, 2015 at 5:20:05 PM CDT
To: MOFOIA <MOFOIA@cityofchicago.org>
Cc: "Quinn, Kelley" <Kelley.Quinn@cityofchicago.org>
Subject: RE: CHICAGO TRIBUNE REQUEST

Chloe, this is in response to your email of July 15 regarding our request for the mayor's communications. Please acknowledge receipt and that you are able to open each record. Thank you, David

---

From: MOFOIA [MOFOIA@cityofchicago.org]
Sent: Wednesday, July 15, 2015 6:14 PM
To: MOFOIA; Kidwell, David
Cc: Quinn, Kelley
Subject: RE: CHICAGO TRIBUNE REQUEST

Please see attached.

Thank you,

Chloe Rasmas
312-744-3844

From: MOFOIA
Sent: Wednesday, July 08, 2015 10:30 AM
To: MOFOIA; Kidwell, David
Cc: Quinn, Kelley
Subject: RE: CHICAGO TRIBUNE REQUEST

Please see attached request for an extension.

Thank you,

Chloe Rasmas
312-744-3844

From: MOFOIA
Sent: Tuesday, June 30, 2015 11:57 AM
To: Kidwell, David; MOFOIA
Cc: Quinn, Kelley
Subject: RE: CHICAGO TRIBUNE REQUEST

Received.

Thank you,

Chloe Rasmas
312-744-3844

From: Kidwell, David [mailto:dkidwell@chicagotribune.com]
Sent: Tuesday, June 30, 2015 10:41 AM
To: MOFOIA
Cc: Quinn, Kelley
Subject: CHICAGO TRIBUNE REQUEST

Attached is a request for public records from the Office of Mayor, please acknowledge receipt. Thank you.

David Kidwell
312 912-3938

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.

Dear Ms. Rasmus:

I have received the Office of Mayor's July 15, 2015 response to my June 30, 2015 request for public records regarding Mayor Rahm Emanuel's communications on public business. This letter is not an amendment of my original Request and does not concede that any part of my request is "unduly burdensome." Instead, this letter addresses, and is specifically limited to, your invitation to potentially narrow the number of emails listed on the two logs that you produced in partial response to the request for red light and speed camera communications (No. 2) and communications pertaining to public business during the last 60 days (No. 6).

For purposes of potentially narrowing the number of emails from these specific logs that you would be obligated to produce, it would be helpful if you could include the following additional information on the logs:

- With respect to the log produced in response to Request No. 2, please include a field that lists the specific search terms that appear in that email.
- With respect to the log produced in response to Request No. 6, please replace the 94 fully redacted emails in the "from" column with only that portion of the email address before the @ sign. For instance, dkidwell@tribune.com would be redacted to read only "dkidwell@". This both preserves the asserted privacy of the email address and provides us some identifying information from which we can potentially narrow the request.

I would further request that you provide the entire content of the following emails disclosed on your logs:

- The content of the 73 email and email strings listed in the attached spreadsheet headed "FROMMRE".
- The content of the 38 email and email strings listed in the attached spreadsheet headed "TOMRE".

Thank you for your prompt attention to this matter. I take issue with your failure to produce the entirety of the records called for in my request, and this letter is sent without prejudice to or limitation of my rights and remedies with respect to that failure and any other aspect of the request, all of which are expressly reserved and preserved.

Sincerely,

David Kidwell

Exhibit D

OFFICE OF MAYOR RAHM EMANUEL

CITY OF CHICAGO

August 3, 2015

David Kidwell
Chicago Tribune
435 N. Michigan Ave
Chicago, IL 60611

Re: Your July 20, 2015 Narrowed FOIA Request

Dear Mr. Kidwell,

As you know, on June 30, 2015, the City of Chicago ("City") Mayor's Office received a Freedom of Information Act ("FOIA") request from you, seeking:

1) All emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.

2) A log of all emails, text messages and other electronic communications sent to or from the Mayor between January 1, 2015 and June 30, 2015 that contain any form of the following terms and pertain to public business: Red, yellow, Redflex, Goldner, speed, traffic, amber, refund, camera, enforcement, Bills, Ferguson, inspector general, "IG", ATS, American Traffic, Kidwell, and redlight.

3) All emails, text messages and other electronic communication in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.

4) A log of all emails, text messages and other electronic communication in which both the Mayor and Michael Sacks were a sender or any type of recipient of the communication, including being a "cc" or "bcc" recipient, that were transmitted between the dates of January 1, 2015 and June 30, 2015, and pertain to public business.

5) All emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

6) A log of all emails, text messages and other electronic communications sent to or from the Mayor between May 1, 2015 and June 30, 2015 that pertain to public business.

7) Documents that detail or log all landline or cellular calls made by or received by the Mayor from May 1, 2015 to June 30, 2015 on any publicly issued or funded line or device, as well as any private or personally funded line or device, to conduct or discuss public business. This request includes but is not limited to telephone bills or other itemized records of calls reflecting phone numbers, dates/times, and duration of calls. This request also includes lines or devices assigned to or owned by other City staff employees, if used by the Mayor.

On July 8, 2015, we requested the statutory extension and, on July 15, 2015, timely submitted a response letter (*see* July 15, 2015 Response ("Response"), attached hereto) along with certain responsive documents, including, but not limited to, logs of emails in response to parts 2 and 6 of your request. In our Response, we informed you, among other things, that certain parts of your request were unduly burdensome pursuant to Section 3(g) of FOIA, and invited you to contact us for assistance in narrowing your request, or to submit a revised written request to our attention.

On July 17, 2015 at 5:20 p.m., you sent a letter to me by email which, because it was received after business hours, is deemed received on the next business day, which was July 20, 2015 ("July 20th Narrowed Request"). In that letter, you stated:

[t]his letter addresses, and is specifically limited to, your invitation to potentially narrow the number of emails listed on the two logs that you produced in partial response to the request for red light and speed camera communications (No. 2) and communications pertaining to public business during the last 60 days (No. 6).

For purposes of potentially narrowing the number of emails from these specific logs that you would be obligated to produce, it would be helpful if you could include the following additional information on the logs:

- *With respect to the log produced in response to Request No. 2, please include a field that lists the specific terms that appear in that email.*

- *With respect to the log produced in response to Request No. 6, please replace the 94 fully redacted emails in the "from" column with only that portion of the email address before the @ sign. For instance, dkidwell@tribune.com would be redacted to read only "dkidwell@". This both preserves the asserted privacy of the email address and*

provides us some identifying information from which we can potentially narrow the request.

I would further request that you provide the entire content of the following emails disclosed on your logs:

- *The content of the 73 email and email strings listed in the attached spreadsheet headed "FROMMRE".*

- *The content of the 38 email and email strings listed in the attached spreadsheet headed "TOMRE".*

On July 27, 2015, we requested the statutory extension. This response to your narrowed request is being timely made.

We are providing herewith the responsive documents to your requests for specific emails. Please note that many of the emails you have requested were sent from Mayor Emanuel to individuals regarding the dedication of Maggie Daley Park on June 13, 2015, attaching the invitation itself. Because the same invitation was attached to all of these emails, we have produced only one copy of the invitation in the interest of conserving resources. If you would like to obtain all of the attached invitations, please let me know.

Certain portions of some emails produced herewith have been redacted, and two emails have been withheld in their entirety, because they reflect pre-decisional internal discussions in accordance with FOIA Section 7(1)(f), which exempts:

> Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.

5 ILCS 140/7(1)(f). The U.S. Supreme Court has determined that the deliberative process exemption under FOIA pertains to documents that reflect "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." NLRB v. Sears and Roebuck, 421 U.S. 132, 150-151 (1975). The purpose is to encourage "frank discussion of legal or policy matters" such that employees in government feel free to express their opinions before a final legal or policy decision is made. "Deliberative" has been found to mean being a direct part of the process where recommendations and opinions are expressed. Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). Emails where preliminary opinions are expressed and policies and actions are formulated are expressly exempt from production under Section 7(1)(f) of the Illinois FOIA. The Mayor's Office has withheld from its response certain information and records pursuant to Section 7(1)(f) because they reveal advisory opinions, recommendations and deliberations, involving the Mayor, and comprising part of the City's decision- and policy-making process.

Additionally, certain personal information concerning the families of children who were

victims of gun violence has been redacted pursuant to FOIA Section 7(1)(c), which exempts:

> 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 of 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.

5 ILCS 140/7(1)(c). The identity and other personal information regarding the families of children who were the victims of gun violence is highly personal, and the dissemination of this information would constitute a clearly unwarranted invasion of personal privacy for these individuals. In addition, there is no public interest that outweighs the subjects' right to privacy. Therefore, the identity and certain other information regarding family members of children who were victims of gun violence have been redacted.

Last, personal home and cell phone numbers have been redacted pursuant to FOIA Section 7(1)(b), which exempts:

> Private information, unless disclosure is required by another provision of this Act, a State or federal law or court order.

5 ILCS 140/7(1)(b). Section 2(c-5) of FOIA defines "private information" as:

> [U]nique 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. Personal information also includes home addresses and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5). Because personal home and cell phone numbers are specifically included in the definition of "private information," they are exempt from disclosure under FOIA Section 7(1)(b), and have therefore been redacted.

As set forth above, in addition to your narrowed request for specific emails, you include two requests for additional information to supplement the email logs we produced in response to parts 2 and 6 of your request. In your first request you seek, with respect to the log produced in response to part 2 of your request, the inclusion of "a field that lists the specific search terms that appear in that email." This request is denied, as the Mayor's Office ran the search you requested using all 18 of the search terms, and the

search results do not indicate which emails contain which terms.

In addition, with respect to the log produced in response to part 6 of your request, you have asked us to replace the fully redacted personal email addresses with only that portion of the email address before the @ sign. This request is denied. As explained fully in our Response, "personal email addresses" are specifically listed under Section 7(2)(c-5) as among the "private information" which is exempt under Section 7(1)(b). FOIA simply does not exempt only a portion of the address, or require a public body to redact only a part, but specifies that the address itself is exempt. This comports with FOIA's goal of exempting "unique identifiers," because the vast majority of personal email addresses that appear in the responsive documents reflect only a small number of popular domain names. In other words, if, as you suggest, we redacted only the domain name, so that an individual with the personal email address of IndividualA@gmail.com appeared on the spreadsheet as IndividualA@[redacted], the redaction would not protect that person's private information, because someone wishing to contact that person would very likely be successful if he directed an email to IndividualA@ each of the small handful of popular domain names prevalent in the redacted addresses. Therefore, redacting only the domain name of each personal email address would not serve the purpose of the exemption of Section 7(1)(b), which is to protect private information, including unique identifiers.

I invite you to call me if you wish to discuss any of these matters further.

You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, (877) 299-3642. You also have the right to seek judicial review of a denial by filing a lawsuit in Cook County Circuit Court.

Sincerely,

Chloe K. Rasmas
Freedom of Information Officer