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

BETTER GOVERNMENT ASSOCIATION,)
)
       Plaintiff,   )
)   **No. 15 CH 15674**
       v.   )
)   **Hon. Sophia H. Hall**
CITY OF CHICAGO MAYOR'S OFFICE,)
)
       Defendant.   )

NOTICE OF PRODUCTION OF REQUESTED RECORDS

The City of Chicago ("City") Mayor's Office, by and through its undersigned counsel, hereby respectfully informs the Court that on December 21, 2016, the City produced to the Better Government Association ("BGA") the records that are responsive to the Illinois Freedom of Information Act ("FOIA") request underlying this lawsuit.

As this Court is aware, the BGA's September 14, 2015 FOIA request sought email communications from private, non-City email accounts. In particular, the BGA requested "[t]he complete contents of any email server of any kind that is used by Mayor's Office employees to discuss public business, excluding the City's official email server '@cityofchicago.org.'" The BGA also requested "[a]ll emails of Rahm Emanuel" and two former City employees "discussing public business that reside on any email accounts other than '@cityofchicago.org.' This would include, for example, personal Gmail, Yahoo, or other commercially available accounts, as well as emails on any privately maintained email systems."

The parties have a dispute concerning whether emails on private accounts are public records subject to FOIA. The City's position, which is grounded in the plain language of FOIA as well as decisions of the Illinois Appellate Court including City of Champaign v. Madigan, 2013 IL App (4th) 120662, is that communications on the private or other non-City email accounts of City employees and officials are not public records within the meaning of FOIA, that the City has no duty to locate and search private and other non-City email accounts for purposes of responding to FOIA requests, and, indeed, that such an endeavor would constitute an unreasonable and unprecedented invasion of privacy of the City's current and former employees and officials. Moreover, FOIA includes no mechanism for the City to access the private and other non-City email accounts of its current employees, much less its former employees.

In the interests of resolving this litigation, Mayor Emanuel has decided to provide the City all emails on the Mayor's non-City email accounts that pertain to the transaction of City business. On the Mayor's instructions, his personal counsel has reviewed and provided to the City, for review and production in response to this and future FOIA requests, all emails stored on the Mayor's non-City accounts that pertain to the transaction of City business, including without limitation all emails that discuss actual or contemplated City operations, policies, personnel, contracting or expenditures. The City's lawyers have reviewed those emails, determined which are responsive to the BGA's FOIA request, and produced the responsive emails to

2

the BGA, after withholding or redacting all information that is exempt under Section 7 of FOIA.

Moreover, going forward, the emails from the Mayor's non-City accounts that are produced by the Mayor (after review by his personal counsel) will be included in the universe of documents that are routinely searched in response to FOIA requests submitted to the City of Chicago Mayor's Office. At least quarterly, the Mayor and his personal counsel will review all emails on the Mayor's non-City accounts and provide to the City any emails that pertain to the transaction of City business, using the standard set forth in the above paragraph. These, too, will be included in the documents that are routinely searched in response to FOIA requests.

The City also intends to promptly adopt and promulgate to all City employees and officials a written policy prohibiting employees and officials from using their private or other non-City email accounts for the transaction of public business. This policy will also require that, if an employee or official receives an email pertaining to the transaction of City business on a non-City email account, the employee or official must promptly forward the email to the City email account of the employee or official. A failure to comply with the written policy may subject the employee or official to discipline.
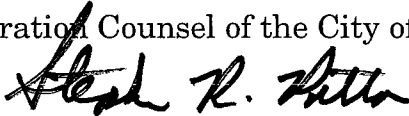
In light of the above-described developments, the parties have entered into a settlement agreement pursuant to which they have agreed to execute the documents necessary and take any additional actions needed to dismiss this

lawsuit. The parties acknowledge that this settlement does not constitute a waiver

of the BGA's right to challenge the City's decision to withhold information

responsive to the BGA's FOIA request as exempt under Section 7 of FOIA, or of the

BGA's right to assert that emails stored on the non-City accounts of City employees

other than the Mayor are subject to disclosure under FOIA. Similarly, the parties

acknowledge that the settlement does not constitute a waiver of the City's right to

deny other FOIA requests that are unduly burdensome as defined by FOIA, or to

assert in response to the FOIA request at issue here and other FOIA requests and

related litigation that emails stored on the non-City accounts of City employees

other than the Mayor are not public records and not subject to disclosure under

FOIA. In fact, the City intends to continue to protect the privacy of its current and

former employees by maintaining its position in other, unrelated litigation that

emails stored on non-City accounts of those employees are not subject to disclosure

under FOIA.

Dated: December 21, 2016   Respectfully submitted,

STEPHEN R. PATTON
Corporation Counsel of the City of Chicago

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AMBER ACHILLES RITTER
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4

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

BETTER GOVERNMENT ASSOCIATION,   )
)
          Plaintiff,   )
)
v.   )   Case No. 15 CH 15674
)
CITY OF CHICAGO'S MAYOR'S OFFICE,)
)
          Defendant.   )

NOTICE OF FILING

To: Matthew Topic
       LOEVY & LOEVY
       312 N. May St., Suite 100
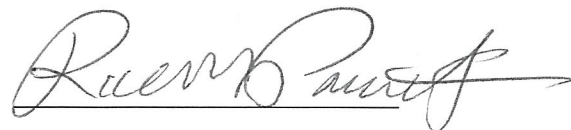   Chicago, Illinois 60607

    PLEASE TAKE NOTICE that on **Wednesday, December 21, 2016**, I caused to be filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Chancery Division, **Certificate of Service**, a copy of which is hereby served upon you.

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Michael T. Layden, Esq.
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Chicago, Illinois 60602
(312) 641-0881

CERTIFICATE OF SERVICE

    Richard J. Prendergast, an attorney, certifies that he caused a copy of the foregoing **Notice of Production of Requested Records** to be served upon the aforementioned by E-Mail and Messenger Delivery, on this **21st** day of **December, 2016**.

RICHARD J. PRENDERGAST
SEAMUS C. PRENDERGAST
MICHAEL T. LAYDEN
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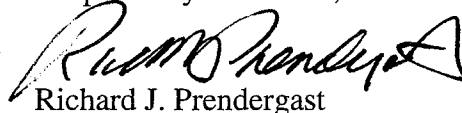
December 21, 2016

<u>VIA MESSENGER DELIVERY</u>
Honorable Sophia H. Hall
Richard J. Daley Center
50 W. Washington St., Room 2301
Chicago, Illinois 60602

   Re: Better Government Association v. City of Chicago Mayor's Office, 15 CH 15674

Dear Judge Hall:

   The enclosed Notice of Production of Requested Records was filed today with the Clerk of Circuit Court.

Respectfully submitted,

Richard J. Prendergast

RJP/ls
Enclosure

cc: Service List

SERVICE LIST

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(do not send hard copies except for briefs for which they would be required to provide the
courtesy copies (ie, our responses to any of our motions))