



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 24, 2019

*Via electronic mail*

Mr. Matt Kiefer  
Data Editor  
*The Chicago Reporter*  
111 West Jackson Boulevard, Suite 820  
Chicago, Illinois 60604  
mkiefer@chicagoreporter.com

*Via electronic mail*

Ms. Dana O'Malley  
Assistant General Counsel  
Chicago Police Department  
3510 South Michigan Avenue  
Chicago, Illinois 60653  
pacola@chicagopolice.org

RE: FOIA Request for Review – 2018 PAC 54227; CPD No. P448809

Dear Mr. Kiefer and Ms. O'Malley:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that Chicago Police Department (CPD) improperly denied Mr. Matt Kiefer's May 17, 2018, FOIA request.

On that date, Mr. Kiefer, on behalf of *The Chicago Reporter*, submitted a FOIA request to CPD seeking a spreadsheet of "all sworn CPD employees on file[.]" including data under certain named fields.<sup>1</sup> On May 22, 2018, CPD responded that it had recently responded to a similar request with fewer fields of data and asked if that information would satisfy Mr. Kiefer's request. Later that same day, Mr. Kiefer replied that it would not and asked CPD to provide all the requested data fields. On June 11, 2018, CPD provided Mr. Kiefer with a

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<sup>1</sup>FOIA request from Matt Kiefer, Data Editor, to Whom it May Concern (May 17, 2018).

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partially responsive spreadsheet. On June 13, 2018, Mr. Kiefer notified CPD that the spreadsheet it provided lacked some of the fields included in his request. On July 30, 2018, CPD informed Mr. Kiefer that its Information Services Division (Division) would not be re-processing the request because a record did not exist in that exact format and it was not required to create a new record to satisfy the request. Later that same day, Mr. Kiefer submitted this Request for Review contesting CPD's response. Specifically, Mr. Kiefer alleged that CPD has provided the requested data for previous years in response to FOIA requests in 2016<sup>2</sup> and 2017.<sup>3</sup>

On August 21, 2018, this office sent a copy of the Request for Review to CPD and requested a detailed written description of CPD's handling of the request, including the extent to which CPD possessed additional information and the manner with which the requested information was maintained. On September 10, 2018, CPD responded, stating that it considered the request unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)) after consulting with the Division. CPD quoted the Division as follows:

Compiling such information will require the creation of a new "custom" query to reflect your specific result since we have no existing report or ad hoc query to satisfy your request as stated. We have already sent the results we were able to retrieve.

It was determined that the overall process to satisfy this request was deemed to be manual and task intensive on Department resources at this time. Please understand this first starts by locating the source information across multiple disparate data sources that exist in different external servers. This requires time to identify the correct tables and depending on the request, the aggregation process can be extremely time intensive due to determining how to join disparate data together on like fields. Then, a new, custom query would need to be written to transform the data into the requested report. Lastly, exporting and downloading data may take several hours on our production servers that currently service public operations and require additional steps.<sup>[4]</sup>

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<sup>2</sup>CPD FOIA No. P045854.

<sup>3</sup>CPD FOIA No. P058155.

<sup>4</sup>Letter from Sarah Bown, Freedom of Information Act Officer, Chicago Police Department, Office of Legal Affairs, Unit 114, to Christopher Boggs, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (September 10, 2018).

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CPD also asserted that "producing responsive records under this request will require the creation of a new 'custom' query, which is outside of FOIA requirements."<sup>5</sup>

On September 18, 2018, Mr. Kiefer submitted a reply, disputing CPD's claim that providing him with the spreadsheet he requested would constitute creating a new record. In addition, Mr. Kiefer argued that because CPD's response to his request was untimely, CPD waived the ability to deny his request as unduly burdensome under section 3(g) of FOIA.

### DETERMINATION

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." A public body must disclose the public records in its possession that are responsive to a FOIA request unless it can prove by clear and convincing evidence that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2016).

A public body is not required to answer questions or create new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989). The contents of a database, however, constitute "public records" subject to disclosure under FOIA. *Hites v. Waubensee Cmty. Coll.*, 2016 IL App (2d) 150836, ¶70, 56 N.E.3d 1049, 1064 (2016), *appeal denied after remand*, 2018 IL App (2d) 170617, 117 N.E.3d 408 (2018) (concluding that "data in [a public body's] databases constitutes public records under FOIA because such data is clearly 'recorded information \* \* \* pertaining to the transaction of public business \* \* \* prepared by \* \* \* being used by \* \* \* or under the control of [a] public body.'").

In a July 30, 2018, e-mail to Mr. Kiefer, CPD asserted that it did not maintain a responsive record that was formatted as specifically requested. However, Mr. Kiefer alleged that, based on previous requests he had submitted, CPD indeed appeared to maintain the requested information in its ordinary course of business. CPD's response to this office asserted that it would have to create a new query to compile and sort information from disparate sources in order to provide the information sought, and argued that doing so would both constitute the creation of a new record and cause an undue burden on its operations.

The Public Access Bureau has previously determined that, in contrast to a request that improperly asks CPD to interpret or analyze personnel information or otherwise create a

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<sup>5</sup>Letter from Sarah Bown, Freedom of Information Act Officer, Chicago Police Department, Office of Legal Affairs, Unit 114, to Christopher Boggs, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (September 10, 2018).

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record that did not previously exist, a request that asks for certain types of personnel information that has been entered into a database merely requires compiling existing data. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52641, issued July 2, 2018, at 3. "[B]oth Illinois and federal courts have rejected claims that a public body creates a new record when it compiles information in its possession in a new format to make the information available for inspection and copying." Ill. Att'y Gen. Pub. Acc. Op. No. 12-014, issued December 11, 2012, at 7. Further, "the application of [computer] code or programming to retrieve stored information, or to sort a database by particular data fields \* \* \*, does not create a new record." *Hites*, 2016 IL App (2d) 150836, ¶80, 56 N.E.3d at 1066-67 (request for data in specific fields did not require creating new records even though it "will require computerized searches of the databases that might involve the creation of code"). In other words, although a public body is not required to create new records in order to comply with FOIA, a public body may need to create and apply a new query in order to provide a proper response to a FOIA request seeking data maintained in disparate data sources.

Here, because Mr. Kiefer's request sought information that CPD appears to maintain in its databases and because CPD did not demonstrate that creating the query that would compile the requested information would constitute creating a new record for purposes of FOIA, this office concludes that CPD improperly responded to Mr. Kiefer's request.

With respect to CPD's claim that Mr. Kiefer's FOIA request is unduly burdensome, section 3(g) of FOIA provides, in pertinent part:

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 public 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.

Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2016)) provides that "[e]ach public body shall, promptly, either comply with or deny a request for public records within 5 business days after its

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receipt of the request, unless the time for response is properly extended under subsection (e) of this Section."<sup>6</sup> Section 3(d) of FOIA also provides that "[a] public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g)."

Mr. Kiefer submitted his FOIA request to CPD on May 17, 2018. In his reply to CPD's answer, he stated that CPD requested a five business day extension on May 22, 2018, allowing it to respond by June 1, 2018. However, CPD did not respond to Mr. Kiefer until June 11, 2018. CPD has not asserted that Mr. Kiefer agreed in writing to an extension beyond June 1, 2018; nor is there any indication that he did. Therefore, CPD's June 11, 2018, response was untimely, and CPD waived the opportunity to deny Mr. Kiefer's request as unduly burdensome. *See Ill. Att'y Gen. Pub. Acc. Op. No. 14-007, issued August 14, 2014, at 7-8 (public body that failed to issue timely response and failed to comply with the requisite procedures in section 3(g) improperly denied request as unduly burdensome).*

Accordingly, this office requests that CPD issue a revised response to Mr. Kiefer's requests which accounts for all the data fields he requested.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address listed on the first page of this letter.

Very truly yours,

  
CHRISTOPHER R. BOGGS  
Supervising Attorney  
Public Access Bureau

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<sup>6</sup>Section 3(e) (5 ILCS 140/3(e) (West 2016)) permits a public body to extend its time for response by five business days.