



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 3, 2012

Via electronic mail

Mr. Bradley VanHoose
319 S. McKinley Drive
Belleville, Illinois 62221
bvh231@gmail.com

Via electronic mail

Mr. Duane Clarke
Village Attorney, Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232
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RE: FOIA Request for Review - 2011 PAC 17001

Dear Mr. VanHoose and Mr. Clarke:

The Public Access Counselor has received a Request for Review submitted by Mr. Bradley VanHoose, pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011) and the correspondence submitted to this office by the Village of Caseyville (Village).

BACKGROUND

On September 26, 2011, Mr. VanHoose submitted a FOIA request to the Village seeking copies of 10 items that included, among other things, Village Board meeting minutes, the Village's Hotel/Motel Committee meeting minutes, various contracts and agreements, invoices, and records relating to the Village's "Hotel/Motel fund."¹ On September 27, 2011, Mr. VanHoose submitted a FOIA request to the Village seeking copies of four items of information that included proposals for the construction of fishing docks, invoices for fishing docks, print

¹Request for Inspection or Copying of Public Records to the Village of Caseyville signed by Brad VanHoose (September 26, 2011).

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advertising for public bids, and the designated location for posting to the Village's Hotel/Motel Committee meetings.² On September 30, 2011, Mr. VanHoose submitted a FOIA request to the Village seeking copies of four items that included, among other things, Village appointments, resolutions, and financial records.³ In sum, Mr. VanHoose's three FOIA requests sought 18 items of information.

The Village responded to Mr. VanHoose's requests on October 3, 2011, in a letter which stated, in part:

Pursuant to the Illinois Freedom of Information Act (hereinafter "the Act"), the Village considers you a recurrent requester as referenced in Section 140/3.2 of the Act. The Village is hereby notifying you that your attached requests are being handled as recurrent requests under Section 140/2(g) of the Act due to the amount of documents you requested.⁴

On October 4, 2011, the Public Access Bureau received Mr. VanHoose's Request for Review which challenged the Village's classification of him as a recurrent requester.⁵ This office initiated further review of Mr. VanHoose's Request for Review on October 18, 2011, and asked the Village for a detailed explanation of its decision to label Mr. VanHoose as a recurrent requester.⁶

On October 21, 2011, in response to our further inquiry letter, the Village submitted to the Public Access Bureau a letter addressed to Village of Caseyville Mayor George Chance from Village Attorney Duane Clarke.⁷ In that letter, the Village informed Mayor Chance that Mr. VanHoose had "made 21 separate requests for different documents in a 5 day period," but provided no further explanation or copies of those requests for information to this office for

²Request for Inspection or Copying of Public Records to the Village of Caseyville signed by Brad VanHoose (September 27, 2011).

³Request for Inspection or Copying of Public Records to the Village of Caseyville signed by Brad VanHoose (September 30, 2011).

⁴Letter from Leonard Black, Village Freedom of Information Officer, Village of Caseyville, to Mr. Brad VanHoose (October 3, 2011).

⁵E-mail from Brad VanHoose to the Public Access Bureau (October 4, 2011).

⁶Letter from Mr. Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Mr. Leonard Black, Freedom of Information Officer, Village of Caseyville (October 18, 2011).

⁷Letter from Duane Clarke, Village Attorney, Village of Caseyville, to Mayor George Chance, Village of Caseyville Board of Trustees, (October 21, 2011).

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review. The letter also stated that it planned to respond to Mr. VanHoose's request in 21 days. To date, the Village has not furnished the Public Access Bureau with a direct, written response to our further inquiry letter explaining why Mr. VanHoose was treated as a recurrent requester.

The Public Access Bureau forwarded a copy of the October 21, 2011, letter to Mr. VanHoose on October 27, 2011.⁸ On October 29, 2011, Mr. VanHoose responded to that letter and challenged the Village's classification of him as a recurrent requester under section 2(g) of FOIA. 5 ILCS 140/2(g) (West 2010), as amended by Public Act 97-579, effective August 26, 2011.⁹ On November 1, 2011, 21 business days after the Village's receipt of the September 30, 2011, request, the Village sent Mr. VanHoose a response informing him that his request was unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2010)), which states that "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."¹⁰

DETERMINATION

The issues for our review are whether the Village complied with the requirements of FOIA by treating Mr. VanHoose as a recurrent requester in its response to his September 26, 2011, September 27, 2011, and September 30, 2011, FOIA requests and whether the Village properly asserted section 3(g) when issuing its November 1, 2011, response to Mr. VanHoose.

Recurrent Requester

The amendments to FOIA contained in Public Act 97-579 adding the "recurrent requester" provisions became effective on August 26, 2011. Section 2(g) of FOIA defines a "recurrent requester" as a person who, "in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period."

⁸Letter from Mr. Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Mr. Brad VanHoose (October 27, 2011).

⁹Letter from Bradley VanHoose to Matthew Rogina, Assistant Attorney General, Public Access Bureau (October 29, 2011).

¹⁰Letter from Leonard Black, Village Freedom of Information Officer, Village of Caseyville, to Mr. Brad VanHoose (November 1, 2011).

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Section 3.2 of FOIA sets forth the procedure that a public body must follow if it intends to treat an individual as a recurrent requester. First, pursuant to section 3.2(b) a public body must, within five days after receiving a request, notify the requester:

(i) that the public body is treating the request as a request under subsection (g) of Section 2, (ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section." 5 ILCS 140/3.2(b) (West 2010), as amended by Public Act 97-579, effective August 26, 2011).

Next, the public body must respond to the recurrent requester within 21 business days after receipt of the request. Section 3.2(a) of FOIA (5 ILCS 140/3.2(a) (West 2010), as amended by Public Act 97-579, effective August 26, 2011) provides that:

[T]he response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

Section 3.2(c) requires that unless a public record is exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request. 5 ILCS 140/3.2(c) (West 2010), as amended by Public Act 97-579, effective August 26, 2011).

Thus, to lawfully treat a person as a recurrent requester a public body must:

- (1) Properly calculate the number of FOIA requests made within a particular time frame, and determine if the requests fit into any of the three categories identified in section 2(g);
- (2) Notify the person within 5 days of the request that he or she is being treated as a recurrent requester. Notification must include the public body's reasons for treating the requester as a recurrent requester, a statement that the public body

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will provide an initial response within 21 days of receipt of the request, and an explanation of the different responses that may be asserted; and

(3) Send an initial response within 21 days 1) telling the requester when it expects to respond and the estimated fees; or 2) denying the request; or 3) advising the requester that the request is unduly burdensome; or 4) providing the requested records.

The Village's October 3, 2011, letter to Mr. VanHoose stated that he was considered a recurrent requester based on "the amount of documents [Mr. Van Hoose] requested" in his three FOIA requests. The City did not identify, either to Mr. Van Hoose or to the Public Access Bureau, any FOIA requests other than those of September 26, 27, and 30, 2011, which it considered in determining that it would treat Mr. VanHoose as a "recurrent requester." Because the three FOIA requests submitted within a four day period by Mr. VanHoose to the City do not meet the statutory minimum number of requests to be considered a recurrent requester, and because of the language of the City's response, it is evident that the City was counting each separate category or item of records requested as one request. Such a practice is contrary to the plain language of FOIA.

Section 2(g) of FOIA permits a requester to submit a request for information that includes multiple items of information. Section 2(g) defines a request as:

[A] written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. *One request may identify multiple records to be inspected or copied.* (Emphasis added.) 5 ILCS 140/2(g).

The statute permits Mr. VanHoose to submit a FOIA request that seeks multiple records. Therefore, the Public Access Counselor concludes that the Village failed to comply with requirements of FOIA when it treated Mr. VanHoose as a recurrent requester based on the number of records identified in the three requests.

Section 3(g)

Next, we analyze whether the Village properly asserted section 3(g) when responding to Mr. VanHoose's requests. Under section 3(d) of FOIA (5 ILCS 140/3(d) (West 2010)), a public body must respond to a FOIA request within five business days of receipt of the request. Section 3(d) specifies the ramifications for a public body when not responding to a FOIA request within five business days, stating the following:

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A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. *A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).* (Emphasis added). 5 ILCS 140/3(d).

Because the Village improperly treated Mr. VanHoose as a recurrent requester, it should have responded to each of Mr. VanHoose's FOIA requests within five business days. The Village's November 1, 2011, response, which was sent to Mr. VanHoose 21 business days after the final request, was late, therefore the Village is precluded from asserting that the requests are unduly burdensome under section 3(g).

We further note that, even if the Village had properly characterized Mr. VanHoose as a recurrent requester and its response were timely, the Village did not follow the proper procedure required to notify him that the request was unduly burdensome. Section 3(g) provides that "[i]f any body responds to a categorical request by stating that compliance would unduly burden its operation * * * 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." (Emphasis added.) (5 ILCS 140/3(g) (West 2010)). The Village's November 1, 2011, response does not specify the reasons why compliance with Mr. VanHoose's FOIA requests would unduly burden the operations of the Village. Therefore, we conclude that the Village failed to comply with the requirements of section 3(g).

Finally, this office notes it has attempted to mediate this matter between the Village and Mr. VanHoose to assist Mr. VanHoose in obtaining the requested records. In a November 29, 2011, email to the Public Access Bureau, Mr. VanHoose informed this office that although he received some responsive records, other records, such as audio discs, were incomplete.¹¹ On January 24, 2012, Mr. Clarke informed an Assistant Attorney General in the Public Access Bureau in a telephone conversation that Mr. VanHoose's request presently remains unfulfilled.

CONCLUSION

For all of these reasons, the Public Access Counselor concludes that the Village violated the requirements of FOIA by improperly treating Mr. VanHoose as a recurrent requester, and by improperly denying Mr. Van Hoose's request as unduly burdensome under

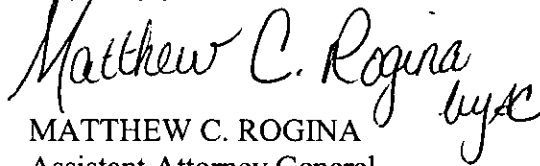
¹¹Email from Brad VanHoose, to Mr. Matthew C. Rogina, Assistant Attorney General, Public Access Bureau (November 29, 2011).

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section 3(g). The Village is directed to furnish Mr. VanHoose with all remaining responsive records. We also advise the Village to refrain from treating Mr. VanHoose as a recurrent requester unless he submits to the Village the number of FOIA requests within a specified time period as required by section 2(g) to qualify as a recurrent requester.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This correspondence shall serve to close this matter. If you have any questions, you may contact me at (312) 814-5383.

Very truly yours,

A handwritten signature in cursive script that reads "Matthew C. Rogina" followed by a small flourish.

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau