



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 11, 2020

PUBLIC ACCESS OPINION 20-002
(Request for Review 2019 PAC 60399)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Scott J. Schweickert
Schweickert Law Group, LLC
2101 Marquette Road
Peru, Illinois 61354

Mr. Ken McCabe
Freedom of Information Act Officer
Kankakee County
3000 South Justice Way
Kankakee, Illinois 60901

Dear Mr. Schweickert and Mr. McCabe:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons discussed below, this office concludes that Kankakee County (County) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Scott J. Schweickert.

BACKGROUND

On October 21, 2019, Mr. Schweickert, on behalf of Schweickert Law Group, LLC, e-mailed a FOIA request to the County seeking copies of:

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- 1.) Any and all agreements, including any amendments thereto, between Kankakee County and World Fuel Services, Inc.
- 2.) Any and all Ordinances/Resolutions passed by Kankakee County which authorizes [sic] the execution of any agreement and/or amendment between Kankakee County and World Fuel Services, Inc.^[1]

On October 29, 2019, Mr. Schweickert e-mailed the County to inform it that the response to his FOIA request was overdue.²

On October 30, 2019, Mr. Schweickert submitted a Request for Review to the Public Access Bureau alleging that the County had failed to respond to his FOIA request.³ On November 7, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the County, along with a letter asking whether it had received and responded to Mr. Schweickert's FOIA request.⁴ The November 7, 2019, letter also requested that, if the County had received the request but had not yet responded to Mr. Schweickert, it do so and provide this office with a copy of its response. The County did not respond to the Public Access Bureau's November 7, 2019, correspondence.

On December 3, 2019, the Public Access Bureau sent a second copy of Mr. Schweickert's Request for Review to the County, and another letter asking it to respond to the FOIA request and to provide this office with a copy of its response.⁵ The County did not respond to the Public Access Bureau's December 3, 2019, correspondence.

¹Letter from Scott J. Schweickert, Schweickert Law Group, LLC, to FOIA Officer (October 21, 2019).

²E-mail from Scott J. Schweickert, Schweickert Law Group, LLC, to kmccabe@k3county.net (October 29, 2019).

³FOIA – Request for Review by Public Access Counselor (PAC) form signed by Scott J. Schweickert, e-mailed to Public Access [Bureau, Office of the Attorney General] (October 30, 2019).

⁴Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Ken McCabe, FOIA Officer, Kankakee County (November 7, 2019).

⁵Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Ken McCabe, FOIA Officer, Kankakee County (December 3, 2019).

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On December 12, 2019, Mr. Schweickert sent an e-mail to Mr. McCabe and another FOIA requester and copied an Assistant Attorney General (AAG) in the Public Access Bureau on his e-mail. Specifically, Mr. Schweickert noted that earlier that day, he had received an e-mail from Mr. McCabe that was addressed to another FOIA requester. Although the e-mail from Mr. McCabe contained the subject line "FOIA response PAC 60399," which is the case number of this Request for Review, it concerned a different FOIA request. Mr. Schweickert's e-mail advised Mr. McCabe that he appeared to have been sent the e-mail in error, but pointed out that he still had not received a response from the County to his FOIA request.⁶

Later on December 12, 2019, Mr. McCabe responded to Mr. Schweickert by stating that the County was still "trying to locate the documents you requested" and apologized for "the mix up and the delay in getting your request filled."⁷ On December 13, 2019, the AAG e-mailed Mr. McCabe and Mr. Schweickert, stating that the Public Access Bureau had not yet received a response from the County, either.⁸ The AAG's December 13, 2019, e-mail also included copies of the November 7, 2019, and the December 3, 2019, correspondence from this office and noted that if the Public Access Bureau did not receive a response promptly, the office would be compelled to conclude that the County had violated FOIA.⁹ The County did not respond to this e-mail correspondence.

On December 19, 2019, an AAG in the Public Access Bureau spoke with Mr. McCabe, who verified that the County had received the FOIA request from Mr. Schweickert and confirmed that he had received at least one letter from this office concerning this Request for Review.¹⁰ Mr. McCabe stated that he spoke to Mr. Schweickert after receiving the FOIA request to better understand what records Mr. Schweickert sought.¹¹ He informed the AAG that because he and other County employees were still searching for the requested records, he could not

⁶E-mail from Scott J. Schweickert, Schweickert Law Group, LLC, to Ken McCabe and Jake Lee, copy to Shannon Barnaby (December 12, 2019).

⁷E-mail from Ken McCabe to Scott Schweickert (December 12, 2019).

⁸E-mail from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Scott] Schweickert, [Ken] McCabe, and the other FOIA requester (December 13, 2019).

⁹E-mail from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to [Scott] Schweickert and [Ken] McCabe (December 13, 2019).

¹⁰Telephone conversation between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Ken McCabe, FOIA Officer, Kankakee County (December 19, 2019).

¹¹Telephone conversation between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Ken McCabe, FOIA Officer, Kankakee County (December 19, 2019).

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provide a specific time frame for issuing a response to Mr. Schweickert, but anticipated that the County would respond soon.¹² Mr. McCabe also informed the AAG that he had told Mr. Schweickert that the County was still searching for responsive records.¹³

On December 27, 2019, Mr. Schweickert notified this office that he still had not received a response from the County.¹⁴

On December 27, 2019, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days, to February 11, 2020, pursuant to section 9.5(f) of FOIA.¹⁵

On January 7, 2020, and January 21, 2020, Mr. Schweickert confirmed that he still had not received a response to his October 21, 2019, FOIA request.^{16, 17}

As of the date of the issuance of this binding opinion, this office has not received a written response from the County or confirmation from Mr. Schweickert that he has received a response to his October 21, 2019, FOIA request.

ANALYSIS

"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 2018). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2018)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081,

¹²Telephone conversation between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Ken McCabe, FOIA Officer, Kankakee County (December 19, 2019).

¹³Telephone conversation between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Ken McCabe, FOIA Officer, Kankakee County (December 19, 2019).

¹⁴E-mail from Scott [Schweickert] to [Shannon] Barnaby (December 27, 2019).

¹⁵Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Scott J. Schweickert and Ken McCabe, FOIA Officer, Kankakee County (December 27, 2019).

¹⁶E-mail from Scott J. Schweickert, Schweickert Law Group, LLC, to [Shannon] Barnaby (January 7, 2020).

¹⁷E-mail from Scott J. Schweickert, Schweickert Law Group, LLC, to [Shannon] Barnaby (January 21, 2020).

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effective July 12, 2019) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." Section 3(d) of FOIA further provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request 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).

The County did not respond to Mr. Schweickert's FOIA request within five business days after its receipt by either complying with his request, extending the time for its response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2018), as amended by Public Act 101-081, effective July 12, 2019), or denying the request in writing. The County's failure to comply with the requisite procedures violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On October 21, 2019, Mr. Scott Schweickert, on behalf of Schweickert Law Group, LLC, submitted a FOIA request to Kankakee County seeking copies of any agreements between Kankakee County and World Fuel Services, Inc., and any ordinances or resolutions passed by Kankakee County that authorized the execution of such agreements. Mr. Schweickert did not receive a response to his request.
- 2) On October 30, 2019, Mr. Schweickert submitted a Request for Review to the Public Access Counselor and the Public Access Bureau because the County had not responded to his FOIA request. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2018)).

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3) On November 7, 2019, the Public Access Bureau forwarded a copy of Mr. Schweickert's Request for Review to the County, along with a letter asking the County to advise this office whether it had received and responded to Mr. Schweickert's October 21, 2019, FOIA request. The County did not respond to this office's inquiry.

4) On December 3, 2019, this office sent the County an additional copy of the Request for Review and this office's November 7, 2019, letter, along with a letter inquiring as to the status of the County's response to this office. The County did not respond to that inquiry, either.

5) On December 19, 2019, the County's FOIA Officer, Mr. Ken McCabe, confirmed for an AAG in the Public Access Bureau that the County had received Mr. Schweickert's October 21, 2019, FOIA request as well as correspondence from this office concerning Mr. Schweickert's Request for Review. Mr. McCabe indicated that the County was searching for responsive records and would respond soon.

6) On December 27, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to February 11, 2020, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) On January 7, 2020, and January 21, 2020, Mr. Schweickert confirmed for this office that the County had not responded to his request.

8) As of the date of the issuance of this binding opinion, this office has not received a response to its inquiries nor has this office received any information indicating that the County has responded to Mr. Schweickert's request.

Therefore, it is the opinion of the Attorney General that the County has violated section 3(d) of FOIA by failing, within five business days after receiving Mr. Schweickert's October 21, 2019, FOIA request, to provide copies of the requested records, to extend the time for its response pursuant to section 3(e) of FOIA, or to deny the request in whole or in part. Accordingly, the County is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Schweickert with all records responsive to his October 21, 2019, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019).¹⁸ If the County determines that

¹⁸Because the County did not comply with the statutory requirements for responding to Mr. Schweickert's FOIA request, the County is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2018), as amended by Public Act 101-081, effective July 12, 2019.

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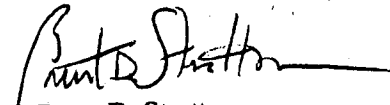
any portion of the responsive records is exempt from disclosure under section 7, it is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2018)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Scott J. Schweickert as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 20-002) upon:

Mr. Scott J. Schweickert
Schweickert Law Group, LLC
2101 Marquette Road
Peru, Illinois 61354
sjs@ganassin.com

Mr. Ken McCabe
Freedom of Information Officer
Kankakee County
3000 South Justice Way
Kankakee, Illinois 60901
kmccabe@k3county.net

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on February 11, 2020.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548