



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 22, 2020

Via electronic mail
Mr. Charles A. Smyth
Clerk
City of Urbana
400 South Vine Street
Urbana, Illinois 61801
casmyth@urbanaininois.us

RE: FOIA Request for Review – 2020 PAC 62648
Requester: Tracy Chong
Date of FOIA Requests: April 9, 2020 through April 15, 2020

Dear Mr. Smyth:

The Public Access Bureau has received the enclosed Request for Review of the response by the City of Urbana to Freedom of Information Act (FOIA) requests submitted by Tracy Chong. We have determined that further action is warranted.

Between April 9, 2020, and April 15, 2020, Ms. Chong submitted a series of FOIA requests to the City seeking various records. On April 17, 2020, the City responded by stating that it would be treating Ms. Chong's April 15, 2020, request as a request from a recurrent request pursuant to section 3.2 of FOIA (5 ILCS 140/3.2 (West 2018)), which provides that "a public body shall respond to a request from a recurrent requester, as defined in subsection (g) of Section 2, within 21 business days after receipt." The City notified Ms. Chong that she met the definition of a recurrent requestor in section 2(g) of FOIA¹ (5 ILCS 140/2(g) (West 2018)) because she submitted seven requests for records within a seven-day period. The City stated that it would respond to Ms. Chong's April 15, 2020, request by May 14, 2020. On April 20, 2020, Ms. Chong submitted this Request for Review disputing the City's assertion that she is a recurrent requester. In particular, Ms. Chong asserted that two of the requests that the City had

¹Section 2(g) provides, in pertinent part, "'Recurrent requester', as used in Section 3.2 of this Act, means a person that, in the 12 months immediately preceding the request, has submitted to the same public body * * * (iii) a minimum of 7 requests for records within a 7-day period."

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counted for purposes of the recurrent requester provision were correspondence that she sent to the City supplementing prior requests.

As required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2018)), please provide this office with a copies of the seven FOIA requests made by Ms. Chong in the seven-day period along with a detailed legal and factual explanation for the City's assertion that it properly classified Ms. Chong as a recurrent requester pursuant to section 3.2 of FOIA. In particular, please address Ms. Chong's contention that the City counted as separate requests correspondence she sent supplementing prior FOIA requests. In addition, please explain how the City properly invoked the recurrent requester provision with respect to Ms. Chong's April 15, 2020, request. Specifically, the plain language section 2(g) provides that a request may be treated as a request from a recurrent requester if, in the past year, the requester has submitted at least seven requests within a seven-day period. Because the City has counted Ms. Chong's April 15, 2020, request as one of the seven requests submitted within the seven-day period, it is unclear how there were at least seven requests submitted within a seven-day period by Ms. Chong prior to the submission of the April 15, 2020, request. In other words, a public body may treat only the requesters eighth request, and any subsequent requests, as a request from a recurrent requester, assuming that the requester had within the past year submitted seven requests within a seven-day period. As we review this matter, we will advise the City if we require additional information. If the City believes that other documents or information would help us as we review these issues, the City may submit additional records or affidavits with the requested information.

This information must be submitted to our office within seven (7) business days after receipt of this letter. Under FOIA, "[t]he Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing[.]" 5 ILCS 140/9.5(d) (West 2018). **If you claim that any portion of your written response is confidential, please send two versions of your response letter: a complete copy for this office's confidential review and a redacted version suitable for this office to forward to the requester.**

Please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the first page if you have questions or would like to discuss this matter. Thank you.

Very truly yours,



MATT HARTMAN *LKD*
Assistant Attorney General
Public Access Bureau