



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 1, 2020

*Via electronic mail*  
Ms. Tracy Chong  
[REDACTED]

RE: FOIA Request for Review – 2020 PAC 62648

Dear Mr. Chong:

The Public Access Bureau has received the enclosed response from the City of Urbana (Ciy) to your Request for Review. You may, but are not required to, reply in writing to the City's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2018). Please send a copy of your reply to the City as well.

If you have any questions, please contact me at (217) 782-9054, [mhartman@atg.state.il.us](mailto:mhartman@atg.state.il.us), or the Springfield address below.

Very truly yours,

A handwritten signature in black ink that reads "Matt Hartman" with the initials "LKD" written below it.

MATT HARTMAN  
Assistant Attorney General  
Public Access Bureau

cc: *Via electronic mail*  
Mr. Curt Borman  
Assistant City Attorney  
City of Urbana  
Legal Division  
400 South Vine Street  
Urbana, Illinois 61801  
[c.borman1@outlook.com](mailto:c.borman1@outlook.com)



LEGAL DIVISION  
400 S. VINE STREET  
URBANA, IL 61801

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217-384-2464

May 1, 2020

*By electronic mail to*

Matt Hartman  
Assistant Attorney General  
Public Access Bureau  
Office of the Attorney General  
500 South Second Street  
Springfield, Illinois 62701  
mhartman@atg.state.il.us

Reference: FOIA Request for Review 2020 PAC 62648 (Chong)

Dear Assistant Attorney General Hartman:

This letter responds to Request for Review 2020 PAC 62648, in which Ms. Tracy Chong disputes the City of Urbana's assertion that she is a recurrent requester. Your requests and the City's responses are below.

**I. Please provide this office with 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 requestor pursuant to section 3.2 of FOIA.**

Copies of the seven FOIA requests made by Ms. Chong in the seven-day period are attached to this email.

Under Section 2(g) of FOIA, a person properly is classified as a "recurrent requester," among other reasons, if he or she has submitted a minimum of seven requests for records within a seven-day period immediately preceding a request, 5 ILCS 140/2(g). Between April 10 and April 15, 2020, inclusive, Ms. Chong submitted the following seven FOIA requests to Urbana:

| No. | City request #     | Received  | Summary of Request  |
|-----|--------------------|-----------|---|
| 1.  | 2020-F- [REDACTED] | 4/10/2020 | The entire recording of the Urbana City Council Meeting that was held on Monday, 4/6/2020. This should be the complete recording of the Zoom session, as soon as recording was initiated and going on till the recording was stopped  |
| 2.  | 2020-F- [REDACTED] | 4/10/2020 | All emails sent and received by Todd Rent in November-December 2018 and October-December 2019   |
| 3.  | 2020-F- [REDACTED] | 4/10/2020 | Thanks for sending the documents. However, I noticed that some documents are missing. Among them - the letters of reference for Todd Rent when he was hired, letters of reference for Todd Rent from anyone representing the City of Urbana for his new job, as well as any communication from Todd Rent officially announcing his resignation to his supervisor/mayor/relevant city staff. |
| 4.  | 2020-F- [REDACTED] | 4/13/2020 | All documents and data related to the shooting incident and subsequent arrest of the man and woman in the area near East Colorado and South Cottage Grove Aves on 4/10/20. This includes body/taser/squad cam footage and any associated reports from all officers involved   |
| 5.  | 2020-F- [REDACTED] | 4/13/2020 | All documents, reports, and data related to the incident on January 7, 2020 where Carol Ammons allegedly took a purse from the Carle Auxiliary Resale Boutique.   |
| 6.  | 2020-F- [REDACTED] | 4/14/2020 | All documents and data related to the incident involving [REDACTED]<br>[REDACTED] The incident was reported to the Urbana Police Department at around [REDACTED] Officer Kaufman was one of the responding officers. Documents should include any reports, written notes, emails, photographs, video (including squad/bodycam video) by all officers involved.                              |
| 7.  | 2020-F- [REDACTED] | 4/15/2020 | I would like to add to the FOIA request sent on 4/13/2020:<br>[REDACTED]<br>This incident was reported to Urbana Police Department. I would like all documents and all video footage related to the incident on [REDACTED] in addition to what was requested in the previous email.   |

Because Ms. Chong did not submit at least seven requests for records within a seven-day period immediately before her April 15 FOIA request, the April 15 request could not result in her classification as a recurrent requester under Section 2(g). Therefore, Urbana did not properly classify Ms. Chong as a recurrent requestor pursuant to section 3.2 of FOIA based upon her April 15 FOIA request.

**II. Please address Ms. Chong's contention that the City counted as separate requests correspondence she sent supplementing prior FOIA requests.**

Ms. Chong contends that Urbana improperly treated request 2020-F- [REDACTED] as separate from 2020-F- [REDACTED] and request 2020-F- [REDACTED] as separate from 2020-F- [REDACTED]. Following is Urbana's explanation for classifying the correspondence at issue as separate FOIA requests.

1. *Each request meets the definition of a "request" in the recurrent requester subsection of FOIA, and neither is part of a prior request.*

For the purposes of the recurrent requester subsection of FOIA, a "request" is a written document, including an electronic mail message, submitted to a public body that identifies the particular public record or records the requester seeks. 5 ILCS 140/2(g). Request 2020-F- [REDACTED] is an email message in which Ms. Chong asks for several public records, including documents and video footage concerning an incident that occurred on [REDACTED]. Request 2020-F- [REDACTED] is an email message in which Ms. Chong asks for letters of reference and other public records concerning a former Urbana employee. Both requests are email messages that Ms. Chong submitted to Urbana in which she identifies particular public records she was seeking; so, each message is precisely the kind of communication that FOIA regards as a request when classifying someone as a recurrent requester. Therefore, each of these messages is a "request" as the recurrent requester subsection of FOIA defines this term. Nevertheless, in her request for review, Ms. Chong claims that requests 2020-F- [REDACTED] and 2020-F- [REDACTED] are not new FOIA requests but are "actually part of existing FOIA requests." This is not the case.

Request 2020-F- [REDACTED] is not part of request 2020-F- [REDACTED] because request 2020-F- [REDACTED] seeks the production of records not included in request 2020-F- [REDACTED]. In a 2017 advisory opinion, the Public Access Counselor has opined that a requester's submissions to a public body requesting different records from the requester's previous request constitute separate FOIA requests, even if the requester labels them as "addendums." FOIA Requests for Review — 2016 PAC 44205; 2016 PAC 44248; 2016 PAC 44312; 2016 PAC 44335; 2016 PAC 44376; 2016 PAC 44393; 2016 PAC 44461; 2016 PAC 44505; 2016 PAC 44506; 2016 PAC 44564; 2016 PAC 44603; 2016 PAC 44604 (February 24, 2017). In this case, request 2020-F- [REDACTED] is a request for all documents concerning an incident that occurred on April 11, 2020. By contrast, request 2020-F- [REDACTED] includes a request for all documents and video footage concerning a separate incident that occurred on April 13, 2020. In request 2020-F- [REDACTED] Ms. Chong acknowledges that the records she is asking for are "in addition to what was requested in the previous email." Because request 2020-F- [REDACTED] seeks different records from request 2020-F- [REDACTED] Urbana appropriately classified request 2020-F- [REDACTED] as a separate request.

As for request 2020-F- [REDACTED] this is not a part of request 2020-F- [REDACTED] but is, in fact, a separate and almost duplicate request. In pertinent part, request 2020-F- [REDACTED] is a request

for "[a]ll records and documents related to the hiring and resignation of Todd Rent, and all records and documents provided by the city pertaining to his current employment." Urbana received this request on March 3, 2020, and emailed responsive records to Ms. Chong on March 13, 2020. Request 2020-F-█████ largely duplicates request 2020-F-█████ by asking for "letters of reference for Todd Rent when he was hired, letters of reference for Todd Rent from anyone representing the City of Urbana for his new job, as well as any communication from Todd Rent officially announcing his resignation to his supervisor/mayor/relevant city staff." Urbana received request 2020-F-█████ on April 10, 2020, which is almost one month after Urbana had satisfied its FOIA obligation to respond to request 2020-F-█████

Nothing in FOIA states that a nearly duplicate request constitutes part of an earlier request rather than a separate request. On the contrary, Section 3 of FOIA provides that "[r]epeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome . . . ." 5 ILCS 140/3(g). That being the case, request 2020-F-█████ is unduly burdensome. Accordingly, Urbana accurately classified request 2020-F-█████ as a separate request that is subject to the procedures in FOIA applicable to unduly burdensome requests.

2. *A public body need not allow a FOIA requester to supplement or clarify her original request.*

Neither FOIA nor Illinois case law offers guidance as to how a public body should classify a requester's correspondence that supplements a FOIA request. However, the General Assembly patterned the Illinois FOIA after the federal FOIA. Accordingly, case law construing the federal FOIA should be used to interpret the Illinois FOIA. *Better Gov't Ass'n v. Vill. of Rosemont*, 2017 IL App (1st) 161957, ¶ 24, 82 N.E.3d 710, 716; *Cooper v. Dep't of the Lottery*, 266 Ill. App. 3d 1007, 1012-13, 640 N.E.2d 1299, 1303 (1st Dist. 1994).

Federal courts have held that a reasonable effort to satisfy a FOIA request does not require a public body to search anew based upon a subsequent clarification. *Kowalczyk v. Dep't of Justice*, 73 F.3d 386, 388-89 (D.C. Cir. 1996). The rationale for this rule is that the law places a premium on the rapid processing of FOIA requests. Hence, a requirement that a public body perform an additional search in response to a FOIA request each time it receives a letter clarifying that request "could extend indefinitely the delay in processing new requests." *Id.*

For this reason, federal courts repeatedly have held that a public body has no obligation to permit a FOIA requester to add to, clarify, or otherwise supplement his or her original request after submitting it to the public body. *Coss v. United States Dep't of Justice*, 98 F. Supp. 3d 28, 34 (D.D.C. 2015) (holding that a FOIA requester may not expand the scope of his or her request once the original request is made); *Negley v. F.B.I.*, 766 F. Supp. 2d 190,

195 (D.D.C. 2011), *aff'd*, 11-5296, 2012 WL 1155734 (D.C. Cir. Mar. 28, 2012) (holding that an agency complying with a FOIA request is not required to search for records which are beyond the scope of the original request); *McCarthy v. United States Section, Int'l Boundary & Water Comm'n, U.S. - Mexico*, EP-11-CV-0208-PRM, 2011 WL 13324291, at \*3 (W.D. Tex. Aug. 18, 2011) (holding that an agency need only conduct a search as to the original request, and not to subsequent additions or clarifications); *Wilson v. U.S. Dept. of Transp.*, 730 F. Supp. 2d 140, 155 (D.D.C. 2010), *aff'd*, 10-5295, 2010 WL 5479580 (D.C. Cir. Dec. 30, 2010) (holding that an agency's reasonable response to a FOIA request may be limited to the original request because agencies must read and interpret a FOIA request as it was drafted and not as either an agency official or the requester might wish it was drafted).

Therefore, Urbana was not required to classify request 2020-F-████ as a supplement to 2020-F-████ or request 2020-F-████ as a supplement to 2020-F-████.

3. *No provision of FOIA gives the requester the unilateral right to change the statutory time period for a public body to respond to a request.*

Except for requests that have a commercial purpose or requests from recurrent requesters, FOIA requires each public body to comply with or deny a request for public records within five business days after receipt of the request, unless the public body extends the time for response for not more than five business days for reasons provided in FOIA. 5 ILCS 140/3(d) and (e). FOIA does not authorize a requester to unilaterally reduce the statutory time period given to a public body to respond to a request.

Urbana received request 2020-F-████ on April 14, 2020, and request 2020-F-████ on April 15, 2020. Thus, Urbana's responses to these requests, respectively, were due on April 21 and April 22. If requests 2020-F-████ and 2020-F-████ actually were separate parts of one request, the time period for Urbana's response to both parts started on the date Urbana received the first part – April 14. In that case, Urbana's receipt of the second part of the request the following day would have the effect of giving Urbana only four business days to respond to the additional records requests contained in 2020-F-████. This is contrary to Section 3(d) of FOIA. Section 3(d) gives Urbana five business days to respond to each request. A requester cannot reduce this amount of time. Therefore, request 2020-F-████ could not have been a part of request 2020-F-████ which Urbana received on an earlier date. Put another way, if a FOIA requester could keep adding to her request during the time period for a public body's response, this would mean Ms. Chong could have then continued asking for more and more records as part of request 2020-F-████ on each consecutive day during Urbana's five business day response period. She could have even waited until the last day for Urbana's response before expanding her request. In either case, this would have resulted in Urbana having less and less time to respond to her ever-increasing requests.

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In a similar vein, a FOIA requester does not have the unilateral right to force a public body to violate FOIA by providing an untimely response. Urbana received request 2020-F-████ on March 3, 2020. Urbana extended its time for a response for five business days so that its response was due on March 17, 2020. Urbana responded to this request on March 13, 2020.

On April 10, 2020, Urbana received a near duplicate of request 2020-F-████ from Ms. Chong and designated it as request 2020-F-████. Although Ms. Chong claims request 2020-F-████ is a supplement to 2020-F-████ almost a month had passed since Urbana provided her with a response to request 2020-F-████ and, in actual fact, the deadline for Urbana to act on request 2020-F-████ had expired. If request 2020-F-████ were really a part of request 2020-F-████ Urbana could not possibly comply with or deny request 2020-F-████ within the time FOIA requires because the deadline for responding to request 2020-F-████ expired weeks before Urbana had even received request 2020-F-████. Consequently, Urbana would have been placed in the untenable position of responding to a FOIA request after expiration of the statutory deadline. Certainly, FOIA does not permit a requester to slip in a new FOIA request under the guise of clarifying a completed request so that the public body must then respond to the new request after expiration of the statutory deadline.

Further, the Seventh Circuit United States Court of Appeals has recognized "the importance of finality in the FOIA search process." *Rubman v. U.S. Citizenship & Immigration Services*, 800 F.3d 381, 391-92 (7th Cir. 2015). If a FOIA requester were allowed to supplement her request for records after a public body already has responded to her request, the FOIA search process would have no finality. The requester endlessly could keep coming back with more and more additions, clarifications, addenda, and supplements to her original request, long after a public body has furnished its response to the request. This would mean no FOIA matter would ever truly be closed. Nothing in FOIA compels this outcome.

Moreover, a statute must be construed to avoid absurd results. *Roser v. Anderson*, 222 Ill. App. 3d 1071, 1075, 584 N.E.2d 865, 869 (2d Dist. 1991). As previously stated, FOIA requires a public body to comply with or deny requests for public records within specified time periods. No exceptions in FOIA give requesters the exclusive power to (a) reduce a public body's response time by dribbling in separate pieces of a single request over a period of time; or (b) compel a public body to respond again to a request after the public body has completed its response and the deadline for such response has passed. Construing FOIA so as to give this immense authority to requesters in direct contradiction to the statute's explicit timeframes for a public body's response obviously would be absurd. In addition, if called upon to interpret FOIA, a court would not depart from FOIA's plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the legislature's expressed intent. *Gaffney v. Bd. of Trustees of Orland Fire Prot. Dist.*, 2012 IL 110012, ¶ 56, 969 N.E.2d 359, 372.

Therefore, Ms. Chong may not alter Urbana's time for responding to requests 2020-F-████ and 2020-F-████ by attempting to supplement these requests with two more requests.

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4. *Conclusion*

In conclusion, Urbana believes Ms. Chong submitted seven FOIA requests in a seven-day period for the reasons specified above.

**III. Please explain how the City properly invoked the recurrent requester provision with respect to Ms. Chong's April 15, 2020, request.**

Urbana has provided an explanation in its response to Request No. I above.

Please let me know if I can be of further assistance in your review. Please also direct any further correspondence concerning this matter to City of Urbana FOIA Officer Charles A. Smyth at [casmyth@urbanaininois.us](mailto:casmyth@urbanaininois.us).

Sincerely,

Curt Borman  
Assistant City Attorney

Attachments (7)

Copies: Charles A. Smyth, City of Urbana FOIA Officer