



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 13, 2020

*Via electronic mail*  
Mr. Christopher Hansen  
corruptcu@gmail.com

RE: FOIA Request for Review – 2020 PAC 63412; Urbana File No. 2020-F-269

Dear Mr. Hansen:

The Public Access Bureau has received the attached response to your Request for Review from the City of Urbana (City). You may, but are not required to, reply in writing to the public body'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 questions about this matter, please contact me at [tlim@atg.state.il.us](mailto:tlim@atg.state.il.us).

Very truly yours,

A handwritten signature in cursive script that reads "Teresa Lim". The signature is written in black ink and is positioned above the printed name.

TERESA LIM  
Assistant Attorney General  
Public Access Bureau

Attachment

cc: *Via electronic mail*  
Mr. Curt Borman  
Assistant City Attorney  
City of Urbana Legal Division  
400 South Vine Street  
Urbana, Illinois 61801  
c/o CityClerk@urbanaininois.us



LEGAL DIVISION  
400 S. VINE STREET  
URBANA, IL 61801

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217-384-2464

July 7, 2020

*By electronic mail to*

Teresa Lim  
Assistant Attorney General  
Public Access Bureau  
Office of the Attorney General  
500 South Second Street  
Springfield, Illinois 62701  
tlim@atg.state.il.us

Reference: FOIA Request for Review 2020 PAC 63412 (Hansen)

Dear Assistant Attorney General Lim:

This letter responds to Request for Review 2020 PAC 63412, wherein Mr. Christopher Hansen disputes the City of Urbana's response to his FOIA request of May 14, 2020, which Urbana has designated as number 2020-F-269. Your requests and Urbana's responses are below.

**Please provide a detailed explanation of the legal and factual basis for the fees, together with any relevant documentation supporting that basis.**

Mr. Hansen has submitted a FOIA request for electronic records. The Public Access Counselor previously determined that Urbana properly classified Mr. Hansen as a recurrent requester under section 2(g) of FOIA. PAC Req. Rev. Ltr. 2020 PAC 62547; 2020 PAC 62551; 2020 PAC 62552 (June 4, 2020). Section 3.2 of FOIA authorizes a public body to charge fees to recurrent requesters and to require full payment before copying the requested records. 5 ILCS 140/3.2(a). Section 6 of FOIA establishes the fees a public body may charge. In accordance with subsection 6(a-5), the fees for electronic records are as follows:

Item	Fee
PDF format:	
▪ not more than 80 megabytes of data	\$20
▪ more than 80 megabytes but not more than 160 megabytes of data	\$40
▪ more than 160 megabytes of data	\$100
Non-PDF format:	
▪ not more than 2 megabytes of data	\$20
▪ more than 2 but not more than 4 megabytes of data	\$40
▪ more than 4 megabytes of data	\$100

Subsection 6(a) of FOIA provides that a public body also may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. 5 ILCS 140/6(a). Urbana's actual cost of a USB flash drive (4 gigabyte capacity) is \$7.97; and its actual cost of a DVD (4.7 gigabyte capacity) is \$0.38.

Based upon the above fees, Urbana provided Mr. Hansen with the following accounting of fees, in accordance with subsection 6(a-5):

Part 1 of request: Any and all documents related to an incident on May 12 around 10 pm involving a damaged van on the 500 block of W Illinois St. Please include all reports, emails, and audio/video.

<u>Item</u>	<u>Cost</u>
Accident report #U20-1986: 0.619 megabytes in PDF format	\$20
Dispatch ticket: 0.00345 megabytes in PDF format	\$0
Dashcam video (Vogt): 509 megabytes in non-PDF format	\$100
USB flash drive	\$7.97
DVD	\$0.38
Part 1 total	<u>\$128.35</u>

Part 2 of request: Any and all documents related to the Urbana CPRB regarding the resignation of Grace Mitchell, the placement of Mikhail Lyubansky as chair, and the resulting vacant board seat which the City now seeks to fill (including documents about new applicants). Any related emails should be included.

<u>Item</u>	<u>Cost</u>
Miscellaneous responsive records: 5.74 megabytes in PDF format	\$20
Part 2 total	<u>\$20</u>

Part 3 of request: All emails to/from Council member Bill Brown from April 15 to May 15.

<u>Item</u>	<u>Cost</u>
Miscellaneous responsive records: 18.5 megabytes in PDF format	\$20
Part 3 total	\$20
Estimated total fee	\$168.35

A copy of the above accounting is attached to Mr. Hansen's request for review.

**If the City treated the request as a voluminous request, please include a copy of the City's notice to Mr. Hansen designating the request as a voluminous request.**

Urbana did not treat the request as a voluminous request but did treat it as a request from a recurrent requester. A copy of Urbana's recurrent requester notice is attached to this message.

**Please also provide a copy of the withheld body camera footage for this office's confidential review, together with a detailed explanation of the legal and factual basis for the applicability of section 7.5(cc) to that footage.**

Earlier today, the Urbana City Clerk's Office sent a DVD containing the unredacted video footage to you via certified U.S. Mail. The footage consists of three body camera recordings and one dashcam video. As shown on the accounting of the estimated fee for part 1 of Mr. Hansen's request, Urbana is not asserting that the dashcam video is exempt from release.

Section 7.5(cc) of FOIA exempts from inspection and copying recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act. 5 ILCS 140/7.5(cc). Under the Act, recordings made with an officer-worn body camera are not subject to disclosure under FOIA except as follows:

(1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, shall be disclosed in accordance with the Freedom of Information Act if:

(A) the subject of the encounter captured on the recording is a victim or witness; and

(B) the law enforcement agency obtains written permission of the subject or the subject's legal representative;

(2) except as provided in paragraph (1) of this subsection (b), any recording which is flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and

(3) upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, the recording to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative.

50 ILCS 706/10-20(b).

In part 1 of his FOIA request, Mr. Hansen seeks "[a]ny and all documents related to an incident on May 12 around 10pm involving a damaged van on the 500 block of W Illinois St. UPD responded. Please include all reports, emails, and audio/video."

The Urbana Police Department found three body camera videos responsive to Mr. Hansen's request. Video No. 1 was recorded with Officer's Fink's body camera and shows him issuing a ticket to a traffic violator. Video No. 2 also was recorded with Officer Fink's body camera and contains additional footage showing Officer Fink issuing the ticket to the violator. Video No. 3 was recorded with Officer Vogt's body camera and captures her interactions with persons at the accident scene. According to the Police Department, Mr. Hansen was a bystander who was not directly involved in Officer Vogt's interactions and was not the subject of any of the videos.

The Urbana Police Department, further advises that the responsive recordings have not been flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm. Therefore, subsections 10-20(b)(1) and (2) of the Law Enforcement Officer-Worn Body Camera Act do not authorize the release of the responsive recording. Further, Mr. Hansen is not the subject of the encounters captured on the recordings, and he has offered no evidence that he is the subject's attorney or his or her legal representative. As such, subsection 10-20(b)(3) of the Law Enforcement Officer-Worn Body Camera Act does not authorize the release of the responsive recordings to Mr. Hansen.

**Please provide a detailed explanation of the legal and factual basis for the applicability of section 3(g) to items 3- 5, including an estimate of the number of e-mails responsive to those items.**

Section 3(g) of FOIA allows a public body to deny an unduly burdensome FOIA request. 5 ILCS 140/3(g). A FOIA request is unduly burdensome if (1) the request is a categorical one, seeking "all records falling within a category"; (2) there is no way to narrow the request; and (3) the burden on the public body outweighs the public interest in the requested information. *Sargent Shriver Nat'l Ctr. on Poverty Law, Inc. v. Bd. of Educ. of City of Chicago*,

2018 IL App (1st) 171846, ¶ 28, 122 N.E.3d 729, 736, appeal denied, 119 N.E.3d 1021 (Ill. 2019).

Part 3 of request

Part 3 of the request seeks “[a]ll emails to/from Council member Bill Brown from April 15 to May 15.”

Urbana has located 764 pages responsive to this request. Urbana does not assert that producing records in response to part 3 would be unduly burdensome. The responsive records consist of 18.5 megabytes of data in PDF format. Based on section 6 of FOIA, Urbana has determined that the estimated fee for complying with part 3 is \$20. As noted in Urbana’s response to Mr. Hansen’s FOIA request, Urbana is awaiting his payment before copying these records.

Part 4 of request

Part 4 of the request seeks “[a]ll emails to/from Vacellia Clark during 2020. Clark seems to have at least two email addresses (vpclark@urbanaininois.us and hro@urbanaininois.us).”

Urbana received this request on May 14 and searched for all emails from January 1 to May 14, 2020. Urbana has located 3,529 pages responsive to this request (3,447 pages for vpclark@urbanaininois.us and 82 pages for hro@urbanaininois.us). If Urbana takes just one minute to examine each page and redact exempt information, Urbana would need over 58 hours to complete the necessary review. Spending this much time would impede the ability of Urbana staff members to respond to other FOIA requests and perform other required duties in a timely manner. As such, Urbana has determined that the request is unduly burdensome. Urbana’s analysis follows.

The first factor of the unduly burdensome test is whether the request is a categorical one seeking all records falling within a category. Merriam-Webster defines the word “categorical” to mean absolute or unqualified. *Merriam-Webster*, Definition of categorical, <https://www.merriam-webster.com/dictionary/categorical> (last visited Jun 30, 2020). By its express terms, part 4 is a categorical request because it is an absolute and unqualified request for all emails from two email addresses for the year 2020. Therefore, part 4 satisfies the first criterion of an unduly burdensome request.

The second factor is that there is no way to narrow the request. On May 30, Urbana invited Mr. Hansen to narrow this part of his request. On June 8, in response to Mr. Hansen’s request for guidance, Urbana suggested that he limit his request to shorter timeframes and identify the particular subjects or topics of the messages he would like Urbana to locate. Mr. Hansen did not subsequently narrow this request. Because Mr. Hansen has declined to

reduce this request to manageable proportions, there is no way to narrow this request. Therefore, part 4 satisfies the second criterion.

The third factor is that the burden on the public body outweighs the public interest in the requested information. In his FOIA request to Urbana, Mr. Hansen did not identify any public interest in the disclosure of all emails to/from Vacellia Clark during 2020. In his request for review, however, he identifies the purpose of his requests as "attempts to learn more about how the City handles police complaints." While the topic of police complaints is one of public concern, part 4 of the request is not tailored toward revealing emails concerning police complaints.

A request that is overly broad and requires a public body to locate, review, and redact a vast quantity of material that is largely unnecessary to the requesters' purpose constitutes an undue burden. *Nat'l Ass'n of Criminal Def. Lawyers v. Chicago Police Dept.*, 399 Ill. App. 3d 1, 17, 924 N.E.2d 564, 577 (1st Dist. 2010). Human Relations Officer Vacellia Clark performs a wide variety of duties that do not necessarily involve police complaints. As head of the Human Relations Office, her functions include, without limitation: (1) promoting and protecting human rights, civil rights, and optimal community relations within Urbana; (2) providing staff support to the Urbana Human Relations Commission; (3) educating the public on rights and responsibilities under the Urbana Human Rights Ordinance; (4) investigating and responding to claims of unlawful discrimination in employment, housing, credit, and public accommodations in violation of the Urbana Human Rights Ordinance; (5) providing technical assistance to Urbana employers, landlords, financial institutions, and businesses related to compliance with the Urbana Human Rights Ordinance; (6) implementing the City's equal opportunity program in purchasing and contracting and implementing affirmative action for City vendors and contractors; (7) collaborating with the Urbana Human Resources Division in the recruitment of minorities, women and disabled persons; (8) collaborating with the Urbana Police Department to enhance police-community relations; (9) representing the City with various community related programs to improve community relations among diverse ethnic and racial segments of Urbana; and (10) monitoring the City's compliance with federal A.D.A. laws to ensure equal access to city employment, services, activities, and physical structures for disabled persons.

Ms. Clark's email messages reflect her diverse responsibilities. Since Ms. Clark has broad ranging duties that far exceed addressing police complaints, Mr. Hansen's categorical request for all of her emails during 2020 for the express purpose of allowing him to "learn more about how the City handles police complaints" is largely unnecessary for his purpose. As written, Mr. Hansen's request encompasses any email on any subject matter, whether related to police complaints or not, and whether of significant public interest or not. Because of the breadth of Mr. Hansen's request, a significant number of the responsive emails are likely irrelevant to his purpose in submitting the request. Moreover, he has declined Urbana's invitation to reduce the scope of his request to one directed at achieving his purpose. Accordingly, part 4 satisfies the third criterion.

For the above reasons, part 4 is unduly burdensome.

Part 5 of request

Part 5 of the request seeks, “[a]ll emails to/from Diane Wolfe Marlin during March and April of 2020.” Urbana located 12,706 pages responsive to this request. If Urbana takes just one minute to examine each page and redact exempt information, Urbana would need over 211 hours to complete the necessary review. Spending this much time would impede the ability of Urbana staff members to respond to other FOIA requests and perform other required duties in a timely manner. As such, Urbana has determined that the request is unduly burdensome. Urbana’s analysis follows.

For the first factor, part 5 is a categorical request because it is an absolute and unqualified request for all emails to and from Mayor Marlin during March and April of 2020. Therefore, part 5 satisfies the first criterion of an unduly burdensome request.

For the second factor, Urbana invited Mr. Hansen to narrow this part of his request on May 30. After Mr. Hansen asked how to do so, Urbana sent him a response on June 8, suggesting that he limit his request to a shorter timeframe or focus on a particular subject. He declined to reduce the size of this request. As such, there is no way to narrow the request. Hence, part 4 satisfies the second criterion.

For the third factor, Mr. Hansen revealed his purpose to the Public Access Counselor as being “attempts to learn more about how the City handles police complaints.” As with part 4, part 5 of the request is so extensive and far-reaching as to be largely irrelevant to Mr. Hansen’s purpose. To reiterate, a request that is overly broad and requires a public body to locate, review, and redact a vast quantity of material that is largely unnecessary to the requesters’ purpose constitutes an undue burden. *Nat’l Ass’n of Criminal Def. Lawyers*, 399 Ill. App. 3d at 17, 924 N.E.2d at 577. Mayor Marlin is Urbana’s chief executive. Her duties include (1) overseeing the police, fire, public works, community development, executive, and human resources/finance departments; (2) planning and implementing Urbana’s goals, standards, and policies; (3) appointing and supervising Urbana staff members and citizen board and commission members; (4) serving as a member of the City Council; (5) serving as liquor commissioner; (6) representing Urbana on intergovernmental boards; (7) overseeing the hiring, regular review of compensation, benefits, working conditions, and discipline of all Urbana employees; (8) representing Urbana in various intergovernmental activities, in matters with the news media, and at public meetings and events; (9) managing other financial and administrative matters of Urbana; and (10) beginning in 2020, leading Urbana’s response to the COVID-19 pandemic.

Because of the wide assortment of the Mayor’s responsibilities, the vast majority of the 12,706 pages of records responsive to part 5 of the request are likely to have no bearing on



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police complaints and, therefore, are unnecessary to Mr. Hansen's purpose. Nevertheless, Mr. Hansen has declined Urbana's suggestion to limit his request to emails on a particular topic. What is more, the Mayor frequently uses email to communicate with Urbana's citizens. As such, many of the responsive messages contain personal or private information, such as personal email addresses, home addresses, or home phone numbers, or other information that is exempt from disclosure under FOIA. Consequently, Urbana would need at least 211 hours to redact these records. Given that part 5 of Mr. Hansen's request has yielded several thousand pages of records, many of which are irrelevant to the topic of police complaints and would require careful review to remove exempt information, his request constitutes an undue burden. Accordingly, part 5 satisfies the third criterion.

Because this part of the request meets all three factors of the unduly burdensome test, part 5 is unduly burdensome.

Please let me know if I can be of further assistance in your review. Please also direct any further correspondence concerning this matter to [CityClerk@urbanaininois.us](mailto:CityClerk@urbanaininois.us).

Sincerely,

Curt Borman  
Assistant City Attorney  
Freedom of Information Officer

Attachment