

From: John Kraft
Sent: Wednesday, February 15, 2017 12:14 PM
To: publicaccess@atg.state.il.us; Access, Public <PAccess@atg.state.il.us>
Subject: FOIA Request For Review - Carlinville

NAME OF PUBLIC BODY: City of Carlinville

DATE(s) OF ALLEGED VIOLATION: Jan 24, 2017 (failed to respond) and Feb 14, 2017 (claim of commercial request)

Allegations: Violations of Sections 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 2(c-10), 2(f), 3.1(a), 3.1(c), 3.5, 6(a), 6(b), 6(d), 7 ask described below:

Carlinville is attempting to claim my request is a commercial request when it was clearly not one, and I even stated so in the FOIA request. This claim comes more than 3 weeks after failing to comply within the original 5-day response time as required under FOIA. It was not a commercial request and cannot be labeled as a commercial request.

5 ILCS 140/3(a): Carlinville failed to make the requested records available and gave Mr. Schuering exclusive rights to access and disseminate the requested public records.

5 ILCS 140/3(b): Carlinville is attempting to charge a fee inconsistent with Section 6 and failed to promptly provide a copy of the public records requested.

5 ILCS 140/3(c): Carlinville went beyond its authority in claiming the FOIA request was for a commercial purpose. This Section only grants them the right to ask if it is for commercial purpose (by disclosing it is for a commercial purpose under Section 3.1(c)) and/or the right to grant a request for a fee waiver.

5 ILCS 140/3(d): Carlinville failed to respond within the 5-day response time for them to either grant, extend, or deny the FOIA request. Carlinville also violated this Section by demanding prior payment of a \$200 estimate.

5 ILCS 140/3(e): Carlinville failed to properly extend the response time for any of the listed reasons under 3(e)(i) thru (vii).

5 ILCS 140/3(f): Carlinville failed to notify the requester for the reason(s) of any extensions.

5 ILCS 140/2(c-10): Carlinville, conveniently after failing to meet the 5-day mandated response time, violated this Section by labeling the request as a commercial request even though the FOIA request specifically stated it was not a commercial request, and the FOIA request specifically explains that:

I qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for

commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).

And further declared that: "This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of the Carlinville and will be used to inform citizens of the actions of their public officials and of their rights and responsibilities."

5 ILCS 140/2(f): Carlinville claims the request is a commercial request even though I specifically stated it was not a commercial request and that I met the definition of "News Media" under this Section.

5 ILCS 140/3.1(a): Carlinville, for the sake of argument, claimed this FOIA request was a commercial request (it is not a commercial request), and violated the requisite response time of 21 calendar days to respond to the requester. The 21st day was February 8, 2017, but Carlinville did not respond until February 14, 2017, six full days aft the requisite response time had elapsed.

5 ILCS 140/3.1(c): Carlinville claims my request was a commercial request even though I specifically stated in the FOIA request that it was not a commercial request. This section has no provision allowing a public body, beyond simply asking the question and receiving the response, to make any determination of whether or not a request is commercial request or for commercial purposes.

5 ILCS 140/3.5: Carlinville's FOIA officer did not "issue responses under this act" as this Section requires. It chose to have an attorney issue the responses in violation of this Section and in violation of Section 3(a).

5 ILCS 140/6(a) and (b): Carlinville demanded a prepayment of a \$200 estimate. As explained earlier, this is not a commercial request and any demand for payment from the City of Carlinville after violating Section 3(d) is invalid and deemed a denial of public records under Section 6(d).

5 ILCS 140/6(d): Carlinville is imposing a fee inconsistent with subsections (6) (a) and (b).

5 ILCS 140/7(1): Carlinville violated this section by denying records, in their entirety, under subsection (7) (1) (m), by failing to provide any information not exempt under this section. Surly any communications include nonexempted information that shall be provided under this Section since any claimed exemptions are "subject to this requirement" of Section 7(1) to provide all nonexempt portions of claimed exempted documents.

Summary of Timeline:

On January 16, 2017, I submitted a FOIA request to the City of Carlinville for copies of the public records (below).

No response was provided.

On February 10, 2017 I sent an email to the City of Carlinville asking how long I was going to have to wait for the FOIA response (below).

On February 15, 2017, I received a letter via USPS with the response (denial) from Carlinville (attached as a pdf).