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Attorney general backlogged on FOIA rulings

By BRUCE RUSHTON (bruce.rushton@sj-r.com) THE STATE JOURNAL-REGISTER Posted Jun 21, 2010 @ 11:30 PM

Nearly 600 cases have piled up at the Illinois attorney general's office from governments and people who want rulings on whether public bodies must release records under the state Freedom of Information Act.

As of June 3, 237 requests from governmental entities that wish to withhold records had been pending for at least 30 days. The attorney general's staff hasn't resolved 354 cases from requesters seeking government records that are more than 30 days old. Some of the cases have been pending since January, when revisions to the law gave the attorney general authority to settle disputes over public records.

"Wow," said Roger Huebner, general counsel for the Illinois Municipal League, whose members are required to respond to records requests within five business days. "Clearly, we have to re-think some of the revisions to this, quote, FOIA rewrite."

Cara Smith, public access counselor for attorney general Lisa Madigan, said the attorney general has received nearly 2,100 cases and closed nearly 1,500, which works out to a closure rate of 72 percent. The public access counselor's office, which handles FOIA matters, has seven full-time lawyers and three who handle other duties in addition to FOIA cases, Smith said. There are plans to hire two additional attorneys.

"There's a tremendous volume," Smith said. "We're doing our absolute best to work through them as quickly as we can"

The unresolved cases run the gamut. Some are from lawyers seeking police reports, others from entrepreneurs who want real-estate records, still others from citizens seeking information on public spending and even more from inmates who want forensic lab reports on cases that sent them to prison. Included are:

*A February request from the trustee of a village near Chicago who wants invoices on ambulance services provided by the village that he says have been improperly withheld.

*A request from the University of Illinois Springfield to withhold records showing what conduct resulted in the resignation of athletic coaches last year. The request, the result of a FOIA request from The State Journal-Register, has been pending since Jan. 19. In another case, the newspaper in March asked for the attorney general's help after the Department of Central Management Services refused to release records of state leases. That request remains pending.

*A March 11 request for help from a Galesburg radio station that was denied reports on a police officer arrested on suspicion of theft. Smith said the public access counselor's office requested additional information from the police department and is reviewing documents received Wednesday.

*A request from the Jacksonville Police Department to deny a records request from Human Rights Watch, which wants data on rape kits dating back to 1995 to determine how many rape kits have gone untested in Illinois. The kits are used to gather evidence from victims. Human Rights Watch asked for the records a year ago, and the police department referred the case to the attorney general in late March.

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Dan Beard, Jacksonville city attorney, said the city called the attorney general because the request would take weeks to fulfill.

"We can't punch a button on a computer and come up with a list of the information that they want," Beard said. "We'd like to cooperate if at all possible with this. Certainly, it can't be completed in the (five-day) time frame in the act."

One gives up

At least one requester says he's given up on the attorney general.

Paul Tomasik, a village trustee of Thornton near Chicago, says he may sue on his own after failing to get information on village ambulance billings.

Not everyone is paying their ambulance bills, and Thornton says he believes that the village may be treating residents differently than non-residents. When he asked for invoices to determine who was paying, who was not and where they lived, the village told him the records were in the hands of a private billing company that could not break the invoices down by ZIP code.

That's ridiculous, says Tomasik, who first asked the attorney general for help on Feb. 25. He's still waiting for the records.

"I can easily extract the data I requested if I am provided with a copy of the ... invoice database," Tomasik, a software consultant himself, wrote in an April 29 letter to the attorney general's office.

Tomasik also offered to travel to the billing company's office to review paper copies of invoices. He said he has received no answer to his letter.

Smith said the attorney general should be able to help find a solution.

"Of course we can be of assistance," Smith said. "Are we doing it fast enough for requesters? I'm sure, not yet. I know, absent our existence, every one of these (requests for help from requesters) is a denial (of records)."

Tomasik attended a FOIA seminar set up by the attorney general's office, and he can rattle off the names of assistant attorneys general assigned to the public access counselor's office. He says he's losing hope.

"It's a no-brainer: I want to see invoices," Tomasik said in an interview. "I called them (the attorney general) about two weeks ago and they didn't return the call. I don't know why, other than a backlog, I didn't get a better response from the attorney general."

"If it can't work in a village with 2,500 people, where can it work?"

Debra Piszczewski, the Thornton FOIA officer who is responsible for processing records requests, sounds as frustrated as Tomasik.

"I hate it," Piszczewski said. "We've had 61 FOIAs so far this year. That's more than we've had in total the last three years. Ninety percent of them are from two individuals, one being Paul."

Growing pains

Advocates on opposite sides of FOIA reform agree on one thing: When the attorney general last year crafted the bill that gave the public access counselor the power to referee FOIA disputes, the prospect of huge caseloads was discussed.

"We expressed our concerns to the attorney general that there was going to be a boatload of work in the public access counselor's office," said Don Craven, attorney for the Illinois Press Association.

"And, obviously, one of the concerns that advocates of open government have long had is the timeliness."

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Huebner said the municipal league, which opposed the FOIA revisions, was skeptical when Madigan's staff said they could handle the workload.

"We said, 'Are you sure you're prepared to do this?'" Huebner recalls. "They assured us they were, and we really did not believe them."

Smith said the cases under review by her office can be complex, and there are no guiding precedents, she said.

"There are going to be growing pains," Smith said. "It's my expectation and belief the turnaround time will decrease. We're talking about a state where people couldn't spell FOIA if you spotted them everything but the 'F.'

"Give me more than six months to teach them that lesson."

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FOIA requests bedevil communities large and small

The state Freedom of Information Act gives the attorney general the power to settle disputes over public records, but governments large and small have rejected rulings from Lisa Madigan's office.

In Cook County, the attorney general on June 4 ruled that the autopsy report on Christopher Kelly, former fundraiser for former Gov. Rod Blagojevich, is a public record except for photographs and must be released to the media.

But the county has not turned over the records and has no plans to do so unless ordered by a court.

Richard Velazquez, special counsel to the president of the Cook County Board, said the county plans litigation, which is allowed under the law when public bodies disagree with the attorney general's decisions on FOIA cases.

"This determination has the potential of setting precedent," he said. "Given the county's concerns with the determination, we've decided to seek administrative review."

Local battle swamps Wapella

Worlds away from Chicago, the village of Wapella, population 651, is defying an order from the attorney general to make paper copies of records in response to FOIA requests.

Since February, the village 50 miles northeast of Springfield has posted on its website 149 FOIA requests, almost all from the same four village residents, and accompanying responses. At least 19 requests for review from village residents are pending at the attorney general's office.

Nothing is easy when it comes to FOIA in Wapella.

When the village provided photocopies on yellow paper, requesters objected, saying copies were hard to read and pointing out that the law requires white paper. Requesters have, among other things, asked for copies of water bills, W2 income tax forms and receipts for purchases dating back as far as 2005. The request for W2s turned into a mess when officials posted the documents on the village website, with Social Security numbers still legible.

A full-time employee now gets \$10 an hour to process FOIA requests and a part-time employee also helps, said village trustee Sharon Riddle.

"I think Wapella is a snapshot of what can go wrong with FOIA requests and how a very local, very isolated political battle can explode into something that swamps the (attorney general's) public access counselor," said Don Craven, an attorney for the Illinois Press Association who litigates FOIA cases. "They obviously have a very active electorate and a curiosity about public records unknown anywhere else in the state of Illinois."

Paper copies

In March, the attorney general's office issued a binding opinion to the village, ordering officials to provide paper copies instead of posting documents on the village website. It is one of two binding opinions issued by Madigan's office since the attorney general gained the power to issue such opinions in FOIA cases this year. Only a judge can overrule the attorney general.

Despite the ruling, the village still refuses to provide paper copies. It's a matter of cost and efficiency, Riddle said.

"Our stance is, they don't have to be paper copies," Riddle said. "We got a new copy machine because we were running ours ragged. They wanted a copy of the instruction book for the copy machine. How ridiculous is that?"

Ridiculous or not, the attorney general can get a court order.

"It remains my hope that we don't have to take out that particular tool, sharp as it is, but we will do it," said Cara Smith, public access counselor for the attorney general's office.

Roger Huebner, general counsel for the Illinois Municipal League, questioned the wisdom of suing Wapella.

"Are they really going to file an action saying you have to make the copies?" Huebner asked. "And Wapella's going to be compelled to defend that? All for what most of us would admit is for someone who's just jerking Wapella around on FOIA requests?"

'Very trying' to get documents

Jane Buraglio, who has made at least 49 FOIA requests in Wapella this year, says she isn't jerking anyone around.

"It's essentially taxpayer money that they're spending," said Buraglio, a former village clerk who was fired last year. "The only way to know if they're operating in the best interest of the taxpayer is to have access to the financial records. ... It's been a very, very trying situation to get any documents out of this village."

In addition to financial, payroll and utility records, Buraglio has requested copies of all ordinances and resolutions approved since 2008, copies of FOIA requests received by the village, a copy of the village insurance policy, receipts showing what equipment the village has sold (learning that someone bought a wheel barrow with no wheel for \$2, cash) and a copy of everything posted in the window of the village hall on April 13, including lists of people who had made FOIA requests.

Buraglio said the village has attempted to harass requesters by posting their names at the village hall and on the Internet. Riddle says it's the other way around.

"It's harassment," Riddle said. "They're just FOIA'ing everything. They know they can FOIA, so they just do it."

And the attorney general's office is square in the middle of the fight.

"No one seems to be speaking the same language in Wapella - our office is inundated with requests concerning that village," Smith said.

Smith thinks her office can play peacemaker, so she's scheduled a June 30 mediation session.

"We are looking forward to getting everyone in a room," Smith said. "I have every belief we are going to be successful in calming the waters in Wapella - that's my goal. I'm quite capable of bringing that about."

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Smith also said she isn't worried about other government bodies disobeying orders from the attorney general.

"I am not concerned that there's going to be a groundswell of public bodies saying 'No, attorney general,'" Smith said. "They're trying to follow the law, we're trying to enforce the law. In the end, we'll get there."

-- Bruce Rushton

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