

September 21, 2023

Via electronic mail

Public Access Counselor Leah Bartelt
Illinois Attorney General's Office
Public.Access@ilag.gov

Chicago Mayor's Office FOIA Request F048062-060623

Dear Ms. Bartelt:

I am writing to appeal the partial denial of my request under the Illinois Freedom of Information Act for emails and attachments from the Chicago Mayor's Office. I believe that FOIA Officer Thomas Skelton withheld or redacted information of public interest without adequate justification. I ask that you review my correspondence with the Chicago Mayor's Office and determine whether any further information responsive to my request should be publicly released.

I have appended to this letter (pp. 3–9) the full text of my requests for records and the substantive responses I received, which were processed through the MuckRock.com website.¹ Although Mr. Skelton provided a summary (pp. 6–7) of the reasons and corresponding subsections of FOIA that partially exempt these records from disclosure, the summary does not specify which reasons or subsections pertain to which records. This lack of specificity makes it difficult to judge the appropriateness of the partial denial of my request.

Notwithstanding this lack of specificity, there are at least two instances in which the public's interest in the information would seem to outweigh the most likely reason for redacting or withholding it. These records concern the Chicago Fair Workweek Ordinance, which establishes the most expansive new regulations on working time since the Fair Labor Standards Act of 1938. Below, I reference the redacted file of responsive records provided to me on August 28, 2023.²

First, pages 71–73 contain "talking points" for a meeting of Mayor Lightfoot with Alderman Osterman on July 25, 2019. The talking points are entirely redacted, most likely under the "deliberative process" exemption 7(1)(f). I contend that the redaction of information pertaining to the Fair Workweek Ordinance is not justified on these grounds, since the meeting occurred after the Ordinance (SO2019-3928) was passed by the full City Council (on July 24, 2019). In the appended correspondence, Mr. Skelton cites various court rulings to support the position that "[r]ecords where preliminary opinions are expressed and policies and actions are formulated are therefore exempt from production under Section 7(1)(f) of the Illinois FOIA" (p. 7).

¹ I left out pro forma responses such as extension notices. MuckRock maintains a public webpage with all communications and files related to my request: www.muckrock.com/foi/chicago-169/chicago-mayors-fair-workweek-emails-145180.

² This file is available at available on the MuckRock website at https://cdn.muckrock.com/foia_files/2023/08/29/Fugiel_Fair_Work_Week_Emails_redacted.pdf.

However, the Fair Workweek Ordinance had already been finalized and approved by a unanimous vote of the City Council, including Alderman Osterman.³ Thus information responsive to my request should not be redacted on “deliberative process” grounds from records that post-date the deliberations on SO2019-3928.

Second, page 322 was redacted and the attachment “Fair Workweek City Comparison 7.20.docx” was withheld, most likely under subsection 7(1)(f). This email was sent by a legislative staff person on July 20, 2019, prior to the final Council vote. Nevertheless, it is not clear to me that a document comparing provisions of existing fair workweek laws meets the statutory requirements for exemption. The laws are by definition public, so quotations of the legislative text or references to the statute or jurisdiction cannot be confidential. If there are advisory opinions, recommendations, or other deliberations contained in this document, Mr. Skelton can redact that information without withholding factual information such as the cities where fair workweek laws had already been enacted. I maintain that there is considerable public interest in knowing what other laws the Mayor’s Office referred to in developing the most expansive Fair Workweek Ordinance in the country.

Given the dubious legal assertions and compelling public interest at stake, I ask that you instruct Mr. Skelton to disclose the information described above, as well as any other responsive records that have been improperly redacted or withheld. These records will be made available to the general public through MuckRock.com and the Qualitative Data Repository housed at Syracuse University. Thank you for your consideration.

Sincerely,



Peter J. Fugiel, PhD

³ For the City Council meeting dates and vote records on this matter, see the Chicago City Clerk’s Electronic Legislative Management System:
<https://chicityclerkelms.chicago.gov/Matter/?matterId=AB0C30BB-E10D-ED11-82E3-001DD80698CB>.

APPENDED CORRESPONDENCE

1. Initial request

From: Peter Fugiel
Date: April 30, 2023
Subject: Illinois Freedom of Information Act. Request: Chicago Mayors' Fair Workweek Emails

To whom it may concern,

Pursuant to the Illinois Freedom of Information Act, I hereby request the following records:

All emails and attachments sent or received by Mayors Rahm Emanuel or Lori Lightfoot during the period 1/1/2017-12/31/2021 that contain any of the following phrases: "fair workweek", "fair work week" or "fair scheduling".

This request is being made for non-commercial research purposes. The requested documents will be made available to the general public.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer that the request be filled electronically, if possible, by email attachment.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Peter Fugiel
Postdoctoral Research Fellow
Rutgers School of Management and Labor Relations

2. Confirmation

Thank you for your FOIA request to the City of Chicago Office of the Mayor. Your FOIA request has been submitted and is being processed. Your reference number for tracking purposes is: F045481-043023. Track and view responses at [Public Records Center](#).

You have requested the following records: To whom it may concern, Pursuant to the Illinois Freedom of Information Act, I hereby request the following records: All emails and attachments sent or received by Mayors Rahm Emanuel or Lori Lightfoot during the period 1/1/2017-12/31/2021 that contain any of the following phrases: "fair workweek", "fair work week" or "fair scheduling". This request is being made for non-commercial research purposes. The requested documents will be made available to the general public. In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer that the request be filled electronically, if possible, by email attachment. Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires. Peter Fugiel Postdoctoral Research Fellow Rutgers School of Management and Labor Relations Upload documents directly: [URL omitted].

The City of Chicago Office of the Mayor responds to all public records requests in accordance with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq. If further time is needed to assemble and copy all documents responsive to your FOIA request, we will contact you with a time estimate and a request to extend.

3. Unduly burdensome denial

Subject: [Records Center] Office of the Mayor :: F045481-043023

Date: May 16, 2023

Your request is unduly burdensome under Section 3(g) of FOIA. Section 3(g) of FOIA provides that “requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.”

I ran the email search you requested, but it returned 573 responsive emails and attachments totaling 4,334 pages of responsive records. Assuming it would take between 1/2 to 1 minute on average to review each page of responsive records, it would take between 36 and 72 hours to review the records responsive to this request. While there is some public interest in some of the information requested, the request places a high burden on the Mayor's Office's time and operations. Overall, the burden on the Mayor's Office outweighs the public interest in the information, and the request is unduly burdensome under Section 3(g) of FOIA.

It is necessary that your FOIA request be narrowed and clarified. If you would like assistance in narrowing your request, please contact me, and I will assist you. Otherwise, for the reasons provided above, the Mayor's Office is unable to respond to your FOIA request as currently drafted.

If you agree to narrow your request, you must submit a revised written request to my attention. The Mayor's Office will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen calendar days of the date of this letter, your current request will be denied.

In the event that we do not receive a narrowed request and your current FOIA request is therefore denied, you have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, (877) 299-3642. You also have the right to seek judicial review of your denial by filing a lawsuit in Cook County Circuit Court.

If you have any questions or need additional information, please feel free to contact my office at 312-744-3844. Sincerely, Thomas Skelton

FOIA Officer
Mayor's Office

4. Amended request

May 16, 2023

This is a follow up to a previous request:

Dear Thomas Skelton,

Thank you for your initial response to this request. I recognize the need to balance the burden of fulfilling the request and the public interest in the information. While the latter side of the ledger is difficult to estimate as precisely as you have the former, I would note that the Chicago Fair Workweek Ordinance represents the most expansive labor standard of its kind. Along with a handful of other cities and one state, Chicago has established the most significant new rights and protections on working time since the Fair Labor Standards Act of 1938. My research seeks to understand the development and implementation of fair workweek laws, a project in which the National Science Foundation found sufficient merit to award me a competitive research fellowship (#2203815).

Notwithstanding the considerable public interest in this information, I am willing to narrow my request to the period 1/1/2018-12/31/2019. I would still like a copy, preferably in electronic format, of all emails and attachments sent or received by Mayors Emmanuel or Lightfoot during the specified period that contain either of the phrases "fair workweek" or "fair scheduling."

I appreciate your continued assistance and look forward to your response to this narrowed request.

Sincerely,
Peter Fugiel

5. Partial denial

Subject: [Records Center] Office of the Mayor :: F048062-060623

Date: August 28, 2023

Attachments: Fugiel_Fair_Work_Week_Emails_redacted.pdf

August 28, 2023 Peter Fugiel Via email at requests@muckrock.com RE: PUBLIC RECORDS REQUEST of June 06, 2023, Reference # F048062-060623. Dear Peter Fugiel, This correspondence is in response to the Freedom of Information Act ("FOIA") request received by the City of Chicago Office of the Mayor on June 06, 2023. The Office of the Mayor took a 5 business day extension to your request on June 13, 2023. You requested: "Requesting to narrow my request to the period 1/1/2018-12/31/2019. I would still like a copy, preferably in electronic format, of all emails and attachments sent or received by Mayors Emmanuel or Lightfoot during the specified period that contain either of the phrases "fair workweek" or "fair scheduling.""

Please find the attached records responsive to your request.

We have redacted certain material pursuant to Section 7(1)(b) of FOIA. That section exempts “private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.” 5 ILCS 140/7(1)(b). Section 2(c-5) defines “private information” as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5). The material we have redacted under this section is personal email addresses and personal phone numbers. Because these items are specifically exempted under Section 7(1)(b), they have been properly redacted.

We have redacted certain material pursuant to Section 7(1)(c) of FOIA. That section exempts:

[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. ‘Unwarranted invasion of personal privacy’ means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right of privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

We have redacted under Section 7(1)(c) City issued cell phone numbers. As publicly-available City issued cell phone numbers would subject these employees to invasive and unsolicited communications, the disclosure of this information would burden employees’ privacy interest. Additionally, the access to this information would not advance the public interest in understanding “the affairs of government and the official acts and policies of those who represent them[.]” 5 ILCS 140/1. Further, the landline numbers and other email addresses for these employees is available to the public, which further limits the de minimis public interest in the contact information of the requested employees. See *Shurtleff v. United States Environmental Protection Agency*, 991 F. Supp. 2d 1, 18 (D.D.C. Sept. 30, 2013) (“The EPA has proffered a substantial privacy interest at stake in disclosing the official internal email address of the EPA Administrator and the work email address of employees at the EOP: these few individuals have ‘a significant personal interest in preventing the burden of unsolicited emails and harassment.’”); *Buckovetz v. U.S. Department of the Navy*, Case No. 14-cv-2115-BEN, 2016 WL 4801335 at *2-3 (S.D. Cal. Apr. 7, 2016) (affirming the redaction of an employee’s cell phone number, because “the [employee’s] privacy rights in this information outweigh the

public's interest in disclosure”).”

We have redacted and withheld certain material pursuant to Section 7(1)(f) of FOIA. That section exempts:

Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.

5 ILCS 140/7(1)(f). The U.S. Supreme Court has determined that the deliberative process exemption under FOIA focuses on documents that reflect “advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *NLRB v. Sears and Roebuck*, 421 U.S. 132, 150-151 (1975). The purpose is to encourage “frank discussion of legal or policy matters” such that employees in government feel free to express their opinions before a final legal or policy decision is made. “Deliberative” has been found to mean being a direct part of the process where recommendations and opinions are expressed. *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). Records where preliminary opinions are expressed and policies and actions are formulated are therefore exempt from production under Section 7(1)(f) of the Illinois FOIA, and have been properly redacted and withheld.

We have redacted and withheld certain material pursuant to Section 7(1)(m) of FOIA. That section exempts:

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

5 ILCS 140/7(1)(m). Because the redacted and withheld records constituted privileged communications between an attorney and clients, they have been properly redacted and withheld under this section. You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62701, (877) 299-3642. You may also seek judicial review of a denial under 5 ILCS 140/11 of FOIA. If you have any questions or need additional information, please feel free to contact my office at 312-744-3844.

Sincerely,
Thomas Skelton
FOIA Officer
Mayor's Office

6. Objection to denials

August 29, 2023

Dear Mr. Skelton,

Thank you for providing these records. I appreciate your summary of the various reasons for redacting or withholding certain information. I have a couple of clarifying questions to be sure that these are the entirety of the records responsive to my request.

First, would you confirm that only one email (with the subject "Students Demand Action & Wisconsin Preemption - The DMO Digest") was sent or received by Mayor Emanuel during the period 1/1/2018-12/31/2019? For context, the Committee on Workforce Development and Audit, then chaired by Mayor Emanuel's floor leader Patrick O'Connor, held multiple meetings on the proposed Fair Workweek Ordinance in April 2018. Am I to understand that your search return no emails updating Mayor Emanuel of the status of this proposal in the final months of his term in office?

Second, could you clarify why certain email attachments ("Fair Workweek City Comparison 7.20.docx" and "BRIEF_0726_Osterman briefing.docx") were not included in the records provided? It is not clear to me that a document comparing provisions of existing fair workweek laws meets any of the statutory requirements for exemption. The laws are public, so why would a document quoting/summarizing them be withheld? Similarly, I don't understand why a briefing document mentioning fair workweek would not be subject to disclosure now that the law has been enacted and Alderman Osterman and Mayor Lightfoot have left office.

I would appreciate any clarification or additional records you can provide at this time. Given the considerable public interest in the Mayors' leadership around this major piece of policy, I may need to submit additional requests if this one is too narrow to yield relevant records, e.g. from the Emanuel administration.

Thank you for your continued attention to this matter,
Peter Fugiel

7. Reiteration of denials

Hi Mr. Fugiel,

I think the briefing with Ald. Osterman you reference was a duplicate. The chart was more than just copy and pasting other ordinances. There was comparative analysis, which I think makes it deliberative. Yes, I included Mayor Emanuel in this search.

Sincerely,
Tom Skelton

8. Request for additional redacted records

August 30, 2023

This is a follow up to request number F048062-060623:

Hi Mr. Skelton,

Thank you for those clarifications. Would you provide the "Fair Workweek City Comparison 7.20.docx" attachment with appropriate redactions? Surely there is factual information (i.e. which cities have what provisions in existing law) contained in the document that does not constitute deliberation. I believe the public has a right to know what information the Mayor considered, even if the preliminary opinions and discussions regarding this information remain confidential.

I have already appealed to the Public Access Bureau for information inappropriately withheld by the City Council FOIA Officer. I hope that I will not have to do so again.

Sincerely,
Peter Fugiel

9. Final partial denial

September 19, 2023

Hi Mr. Fugiel,

Yes, I provided all the responsive emails. I reviewed the chart you mentioned and withheld it because it appeared deliberative under Section 7(1)(f). I believed I provided a copy of the Osterman briefing but with talking points redacted. There were two copies of the briefing, so I only reviewed one of them since they were duplicates of the same record. There were over 500 pages of responsive email to review here. I applied the redaction I thought were appropriate under the FOIA. Let me know if you have any other questions.

Sincerely,

Tom Skelton