OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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March 8, 2023

Via electronic mail
Ms. Amy Thompson
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Via electronic mail
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RE: FOIA Request for Review – 2022 PAC 74214; CPD FOIA No. P785027

Dear Ms. Thompson and Mr. Cannatello:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly denied Ms. Amy Thompson's September 23, 2022, FOIA request as unduly burdensome.

On that date, Ms. Thompson submitted a FOIA request (CPD FOIA No. P785027) to CPD seeking copies of all e-mails between the Superintendent of Police, Bureau of Patrol Chief, Area 4 Deputy Chief, District 10 Commander, District 11 Commander, and District 15 Commander regarding traffic stops for the months of August, September, and October 2020. The same day, CPD extended its time for a response pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2020)). On October 13, 2022, CPD responded by stating that it had previously run an e-mail search for the same records as part of another request, CPD FOIA No. P739126.

CPD referred Ms. Thompson to the portion of its response to that matter in which it asserted that it had uncovered more than 500 responsive e-mails and therefore denied the request as still unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2020)). CPD stated it was closing P785027 "as a duplicate of P739126[.]"[1]

On November 7, 2022, this office received Ms. Thompson's Request for Review challenging CPD's claim that compliance with her September 23, 2022, request would be unduly burdensome. Ms. Thompson explained that she had submitted a two-part request in P739126, which CPD denied as still unduly burdensome after she narrowed the request. One of the items in the narrowed request sought the same e-mails at issue. Ms. Thompson contended that her present request was not a duplicate of P739126 because she had dropped the other item. She also argued that there is a substantial public interest in the subject of traffic stops, and that her request was targeted: "Our request asks for the precise information we seek – we want to see how traffic stops are communicated about from top CPD officials to district commanders to better understand how and why these neighborhoods experience the number of stops that they do."[2]

On November 18, 2022, this office forwarded a copy of the Request for Review to CPD and asked it to provide a written response addressing the factual and legal bases for the applicability of section 3(g) to Ms. Thompson's September 23, 2022, request, as well as copies of CPD's communications with Ms. Thompson related to P739126. On November 30, 2022, this office received the requested materials. On December 7, 2022, this office forwarded a copy of CPD's response to Ms. Thompson; she replied on December 15, 2022.

DETERMINATION

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2020). Section 3(d) of FOIA (5 ILCS 140/3(d) (West 2020)) provides, in pertinent part, that:

> Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. * * * Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be

[1]E-mail from G. Rubenstein, FOIA Officer, to [Amy Thompson] (October 13, 2022).

[2]Attachment to FOIA – Request for Review by Public Access Counselor (PAC) form submitted by Amy Thompson (November 7, 2022).

> considered a denial of the request. **A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).** (Emphasis added.)

As noted above, Ms. Thompson submitted her request on September 23, 2022, and later that day, CPD extended its time to respond by an additional five business days pursuant to section 3(e) of FOIA. Therefore, CPD had until October 7, 2022, to respond to the request. CPD issued a final response, however, on October 13, 2022. Because CPD did not respond to the request in a timely manner in accordance with section 3(d) of FOIA, CPD waived the opportunity to treat the request as unduly burdensome. Ill. Att'y Gen. Pub. Acc. Op. No. 14-007, issued August 14, 2014, at 8 (public body that failed to issue timely response and failed to comply with the requisite procedures in section 3(g) improperly denied request as unduly burdensome).

Even if the response was timely, CPD must also show by clear and convincing evidence that: (1) compliance with the request would be unduly burdensome, and that the burden on the public body outweighs the public interest in the information or (2) the request constitutes an unduly burdensome repeated request. Specifically, section 3(g) of FOIA provides:

> Requests calling 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. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.
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> Repeated 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 under this provision.

Under the plain language of section 3(g), a public body may only deny a request as an unduly burdensome repeated request if it has previously provided the requester with the responsive records or properly denied a prior, unchanged request. In this matter, CPD appears to have treated the September 23, 2022, request as an unduly burdensome repeated request, asserting that P785027 was a "duplicate" of P739126.[3] Assuming for argument's sake that P785027 was unchanged from P739126, this office will review whether the request for the e-mails at issue was properly denied, that is whether the request was unduly burdensome.

"A request that is overly broad and requires the public body to locate, review, redact and arrange for inspection a vast quantity of material that is largely unnecessary to the [requester's] purpose constitutes an undue burden." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 17 (1st Dist. 2010). However, a request for a substantial volume of records is not unduly burdensome when there is a compelling public interest in disclosure that outweighs the public body's burden. *National Ass'n of Criminal Defense Lawyers*, 399 Ill. App. 3d at 17; *see also Bowie v. Evanston Comm'y Consolidated Sch. Dist. 65*, 168 Ill. App. 3d 101, 112 (1st Dist. 1988) ("[T]hat defendants will have to expend valuable labor and computer time to comply with plaintiffs' request does not impose a burden on defendants outweighing the public interest in the information.").

Section 3(g) does not define what constitutes an unduly burdensome request, other than that it is a categorical request for records in which the burden on the public body of producing the records would outweigh the public interest in obtaining the information. Thus, section 3(g) necessarily involves a case-by-case analysis in which the public body must demonstrate the extent of the burden of compliance on its operations, and that the burden outweighs the public interest in disclosure. *See Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶38, 122 N.E.3d 729, 738 (2018) ("What constitutes a clear and convincing showing of undue burden will likely vary from case to case, depending on the broadness of the request, the level of detail provided in the public body's response, and the nature of the parties' exchange.").

In its response to this office, CPD explained that the September 23, 2022, request "stems from a series of four (4) FOIA requests made by Ms. Thompson from the period of March 2022 through September 2022[,]" and that it had responded to each of them by "indicating that her [request] was unduly burdensome" and providing opportunities for Ms. Thompson to

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[3]E-mail from G. Rubenstein, FOIA Officer, to [Amy Thompson] (October 13, 2022).

narrow them.[4] CPD acknowledged that the September 23, 2022, request removed one of the items sought in P739126, but it argued that eliminating that item did not alleviate the burden because the remaining part still yielded more than 500 pages of responsive e-mails. According to CPD, it "would take a FOIA Officer approximately 20.8 hours to review [the responsive documents], not including time spent on document retrieval and all other tasks."[5] CPD contended that compiling and reviewing the records for potential redactions would put a substantial strain on the operations of its FOIA unit, as the unit had received more than 18,000 requests in the past year and "would lose the manpower of one trained FOIA Officer for nearly a week in order to comply with Ms. Thompson's speciously broad request."[6] CPD also argued that the request was broad in that it did not provide the names of specific individuals, therefore requiring its FOIA officers to spend time identifying individuals who held the requested title positions.

In reply to that answer, Ms. Thompson pointed out that in P739126, "the FOIA Officer had already determined precisely the six individuals holding the specified titled positions during the three-month period[.]"[7] Thus, CPD already had names of the relevant individuals. Ms. Thompson disputed CPD's claim that her request was overly broad, reiterating that her request was targeted to her stated interest. She asserted, in relevant part:

> The public has a substantial interest in understanding when and why CPD administrators direct traffic stops be made, because of escalating pervasiveness of traffic stops in recent years and the racial disparities exhibited among those stops. This request seeks information specifically tailored to that interest. The request has been narrowed to a three-month period in 2020 during which there was a spike in CPD traffic stops. It has been narrowed to the six individuals who would be communicating about traffic stops in

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[4]Letter from Robert A. Cannatello, Jr., Senior Attorney, Legal Affairs Division – Unit 114, Chicago Police Department, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 30, 2022), at [1].

[5]Letter from Robert A. Cannatello, Jr., Senior Attorney, Legal Affairs Division – Unit 114, Chicago Police Department, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 30, 2022), at [2].

[6]Letter from Robert A. Cannatello, Jr., Senior Attorney, Legal Affairs Division – Unit 114, Chicago Police Department, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 30, 2022), at [3].

[7]Letter from Amy Thompson, Staff Counsel, Criminal Legal Systems and Police Accountability, BPI, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 15, 2022), at [2].

> three of the police districts that typically conduct the highest number of traffic stops. It has been narrowed to only include emails regarding traffic stops, providing the precise search subject for the FOIA Officer.[8]

Ms. Thompson further argued that "processing FOIA requests is part of the CPD FOIA Office's normal operations, and the 20.8 hours of one FOIA Officer's time at issue is not so burdensome that it would obstruct the other" FOIA officers from responding to other requests.[9] She maintained that the public interest in the information outweighed the burden of compliance.

Having reviewed the information submitted by the parties, this office is unable to conclude that the burden of compiling and reviewing the responsive e-mails outweighed the public interest in the requested information. CPD contended, in part, that the request was overly broad because it did not provide the names of any particular individuals. Yet, as Ms. Thompson noted, CPD had already determined the names of the individuals who would possess responsive e-mails. Even if the names had not been previously determined, CPD did not demonstrate that it would be an undue burden to identify the relevant persons who served in the six specific leadership positions, such as the commanders of particular districts. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 72542, issued August 23, 2022, at 5 ("A requester is not required to identify specific employees or e-mail accounts in order to reasonably describe communications concerning a particular subject matter."). Additionally, CPD did not describe the types of information likely contained in the e-mails that would require a significant amount of staff time to inspect and redact. Ms. Thompson explained she was interested in any instructions provided to the commanders regarding when to conduct traffic stops. While some exemptions could potentially apply to certain communications, CPD did not illustrate that most of the e-mails contain the type of information that would require a time-consuming review.

Further, the expending of valuable staff work time alone does not render a request unduly burdensome. *National Ass'n*, 399 Ill. App.3d at 17 (production of records related to a specific study not an undue burden because there was a compelling public interest in disclosure, even if compliance with the request would require several weeks of full-time work by employees of the public body). *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 45458, issued March 9, 2017 (public body improperly denied as unduly burdensome a request for copies of all

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[8]Letter from Amy Thompson, Staff Counsel, Criminal Legal Systems and Police Accountability, BPI, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 15, 2022), at [2].

[9]Letter from Amy Thompson, Staff Counsel, Criminal Legal Systems and Police Accountability, BPI, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 15, 2022), at [4].

communications pertaining to the impact of a legislative bill because there was a compelling public interest in the topic); Ill. Att'y Gen. PAC Req. Rev. Ltr. 39384, issued March 30, 2016 (public body failed to demonstrate that compiling and producing 317 responsive e-mails would unduly burden its operations). Here, the request concerned a specific, targeted topic—traffic stops in three districts during the months of August, September, and October 2020. Ms. Thompson explained that those three districts typically have a high number of traffic stops, and that there was a spike in traffic stops during those three months. There is a compelling public interest in information that sheds light on when and why traffic stops appear to be higher in certain neighborhoods. The scope of the request was reasonably tailored to the purpose of understanding how CPD's administrators have addressed traffic stops in those areas by seeking only e-mails related to traffic stops between six CPD officials and commanders who oversee the three districts, limited to three particularly active months. This office recognizes that compiling and reviewing the responsive-mails would not be an insignificant task, but the information provided by CPD is insufficient to make a "clear and convincing" showing that the burden of compliance outweighs the public interest in disclosure of the records. Accordingly, this office concludes that CPD improperly denied the request for the e-mails at issue as unduly burdensome.

This office requests that CPD search for and compile the e-mails responsive to Ms. Thompson's September 23, 2022, request and furnish her with copies of those records, subject only to permissible exemptions under section 7 of FOIA.[10] If CPD redacts information or withholds any of the records, it should issue a notice of denial that meets the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2020)).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[redacted]

TERESA LIM
Supervising Attorney
Public Access Bureau

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[10]5 ILCS 140/7 (West 2021 Supp.), as amended by Public Acts 102-752, effective January 1, 2023; 102-753, effective January 1, 2023; 102-776, effective January 1, 2023; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.