

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

42246/0
4215/0
4210 6

AMEER AHMAD,

Plaintiff,

v.

CITY OF CHICAGO, CITY OF CHICAGO
OFFICE OF THE MAYOR, ALDERMAN
JOE MORENO,

Defendants.

No. 16 CH 15152.
Cal. 6

OPINION AND ORDER

This matter comes to be heard on the City of Chicago, Office of the Mayor, and Alderman Joe Moreno's motion for summary judgment on Ameer Ahmad's complaint under the Illinois Freedom of Information Act (FOIA). *See* 5 ILCS 140/1 *et seq.* The motion is granted in part with further instructions detailed below.

BACKGROUND

This case involves whether and when an alderman's non-city emails and text messages are subject to public disclosure under FOIA.

Under FOIA, "All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2. "Each public body shall make available to any person for inspection or copying all public records," except as otherwise provided under FOIA. 5 ILCS 140/3.

Ameer Ahmad's complaint claims the City of Chicago, Office of the Mayor, and Alderman Joe Moreno violated FOIA by not producing records responsive to the request for non-city emails and text messages by or to Moreno discussing or related to Ahmad or his property located in Moreno's ward. The City, the Mayor, and Moreno move for summary judgment on

the grounds an alderman is not a public body for purposes of FOIA and non-city records are not public records subject to disclosure under FOIA. Ahmad contends Moreno is a public body in this instance because he has executive powers within his ward to deny any Grant of Privilege and direct city inspectors to issue tickets on Ahmad's property. Accordingly, the records constitute public records of a public body subject to disclosure under FOIA. The court disagrees.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, affidavits, depositions, admissions, and exhibits on file show no genuine issue of fact and that movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). In ruling on a motion for summary judgment, the court must view the materials in the light most favorable to the non-movant.

ANALYSIS

The court begins with determining what is a public record and who is a public body under FOIA.

Under FOIA, public records is broadly defined as "all records, reports, forms, writings, letters...electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c). At issue is whether the non-city emails and text messages pertaining to public business constitute public records as "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body."

FOIA only applies to public bodies. Public body under FOIA means: "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges,

counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code.” 5 ILCS 140/2(a).

The legislature, in defining public body, chose deliberately to use the term “bodies” and a plural form of the entities as a whole. The definition of public body conspicuously avoids naming an individual member except for the “head of the public body,” such as a mayor or president. *See* 5 ILCS 140/2(e). Therefore, while Moreno is a member of a public body, he is not a public body alone.

Illinois case law is well settled that an alderman acting alone is not a public body under FOIA. In *Quinn v. Stone*, 211 Ill. App. 3d 809, 811 (1st Dist. 1991), the court held that a FOIA request directed at an individual alderman was properly denied because a single alderman is not a public body subject to FOIA. In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662 ¶40, the court reaffirmed that an individual alderman is not a public body because he alone cannot conduct the business of the public body.

Aware of this long-standing precedent, the legislature has declined to broaden the definition of public body to include individual aldermen, despite amending FOIA several times. Therefore, the court finds an email or text message sent to the personal device of a single alderman does not on its own constitute a public record. As opined in *Champaign*, such records would have to be used, sent, or received during the time a city council meeting was in session, or used, sent, or received by enough members of the city council to constitute a quorum. *Champaign*, 2013 IL App (4th) 120662 ¶41-43.

Champaign specifically considered the issue presented here and held unequivocally that a message from a constituent received at home on a personal device pertaining to public business is not subject to FOIA unless it is forwarded to a quorum of city council or a publicly issued electronic device. In contrast, any message contained on any publicly issued device is subject to FOIA. The critical inquiry is whether the alderman is functioning collectively with colleagues as a public body. If not, the records are not subject to disclosure under FOIA.

A thorough review shows a universal understanding among courts and legal scholars that an individual alderman acting alone is not a public body; however, FOIA applies only to public bodies and public records. "If the General Assembly intends for communications pertaining to city business to and from an individual city council member's personal electronic device to be subject to FOIA in every case, it should expressly so state. It is not this court's function to legislate." *Champaign*, 2013 IL App (4th) 120662 ¶44.

Ahmad acknowledges aldermen are members of city council and the powers of the council are purely legislative. *See* 65 ILCS 5/6-4-6. However, he contends in some instances, such as issuance of permits and citations, an alderman is imbued with executive power and is subject to FOIA, the same as the mayor or president. *See* 5 ILCS 140/2(e). Ahmad conflates perceived clout in a ward with executive authority. The building commissioner is the mayor's designee when it comes to issuing permits and building violations. No ordinance or law vests this type of executive authority in an alderman. Indeed, a separation of powers violation would occur were aldermen allowed to hold any other office or a dual legislative-executive role under city government.

While aldermen provide a myriad of services for constituents and ward residents, this assigned responsibility does not transform them into an executive body or mayor of their wards,

as Ahmad contends. Their power lies collectively when acting as a part of city council. Otherwise, they have the same rights as an ordinary citizen, including the right to report a building violation. Unlike the mayor or commissioner, they have no direct authority over city employees or building inspectors nor the executive right to issue citations or grant or deny any Grant of Privilege. The ultimate authority lies with the commissioner and city council in passing a permit ordinance, not Moreno. Moreover, Ahmad could have bypassed Moreno's office altogether and presented his request directly by introducing a permit ordinance of his own at city council.

There is a need for transparency in government. A city employee should not attempt to subvert the purposes of FOIA by using private devices. However, because an individual alderman is not a public body, communications on private devices are generally not subject to FOIA. To hold otherwise would effectively mean an alderman could not communicate with any constituent, ward resident, or staff member without being subject to FOIA. But if communications are received or created during a meeting or session of city council, forwarded to a publically issued electronic device, or sent to a quorum of city council, they are subject to FOIA because the individual alderman is then acting collectively as a public body.

Accordingly, to the extent communications requested by Ahmad pertaining to public business were sent or received by Moreno during a city council meeting or forwarded to a quorum of city council, those records, if any, should be turned over to the City's FOIA officer for review of what information is exempted under FOIA. Thereafter, the requested communications should be provided to Ahmad. This strikes a fair balance between the plain language of FOIA and the goal of transparency and public access to public records of the public body.

CONCLUSION

Under FOIA, public records are presumed to be open and accessible. However, the definition of public body references the legislative body as a whole, not an individual alderman. Since Alderman Moreno is not a public body under FOIA, he is not subject to FOIA's disclosure requirements and not the proper target of a FOIA request. Therefore, emails and text messages sent to or received on his private devices are not subject to disclosure under FOIA unless they are prepared by or for, used by, received by, in the possession of, or under the control of any public body. *See* 5 ILCS 140/2(c).

The motion for summary judgment is granted in part insofar as Moreno himself is not a public body under FOIA and not the proper recipient of Ahmad's FOIA request. *Quinn*, 211 Ill.App.3d at 811. However, public records requested by Ahmad pertaining to public business related to Ahmad or his property on Leavitt, from July 1, 2014 forward, which were sent or received by Moreno during a city council meeting or forwarded to a quorum of city council, shall be turned over to the FOIA officer for review and disclosure to Ahmad, barring some other exemption. *Champaign*, 2013 IL App (4th) 120662 ¶43. Although Ahmad's FOIA request was not limited in this fashion, his request is broad enough to encompass these public records responsive to a narrower request. Defendants shall provide affidavits of compliance and assert any other exemptions they may have within 35 days.

Status on compliance is set for January 8, 2018 at 9:45 AM in courtroom 2508.

Judge Celia Gamrath

NOV 28 2017

Circuit Court-2031

ENTER:



Judge Celia Gamrath, No. 2031
Circuit Court of Cook County
Chancery Division