Appellate Court Sides With BGA Over City Officials’ Public Communications on Private Accounts

August 6, 2020

Contact: Matt Topic, Loevy & Loevy, 773-368-8812; Marie Dillon, BGA, 312-453-0632

Public officials’ private email and text accounts are subject to disclosure requirements of the Freedom of Information Act, the Illinois 1st District Appellate Court ruled on Wednesday, upholding a circuit judge’s ruling in a Better Government Association lawsuit against the city of Chicago.

“Allowing public officials to shield information from the public’s view merely by using their personal accounts rather than their government-issued ones would be anathema to the purposes of FOIA,” according to the opinion written by Justice
Cynthia Cobbs.

The BGA sued in 2017 to obtain records that were improperly withheld by the administration of then-Mayor Rahm Emanuel. Cook County Circuit Court Judge Michael Mullen ruled that the city did not conduct a reasonable search for records because its search did not account for emails or texts on employees’ private accounts. Mayor Lori Lightfoot’s Law Department appealed that ruling.

In 2016, the BGA filed FOIA requests for information on lead testing conducted in Chicago Public Schools after a pilot program found elevated levels in drinking water at a South Side elementary school. The BGA asked for communications among 10 city or schools employees related to “lead and CPS” between April 1, 2016 and June 17, 2016.

The city produced some records, but did not query the named officials about possible communications on private accounts. The city acknowledged that four officials named in the request used their private accounts for public business, but claimed that those communications are not subject to FOIA. The appellate court rejected that argument.

The justices also rejected a city claim that upholding the circuit court ruling would force public bodies to search employees’ private accounts “and potentially their homes and other private locations in response to almost any FOIA request.” The city is simply required to inquire about whether the records exist — an approach that “has been persuasively endorsed by several courts,” the Illinois appellate panel said.

“We were frankly disappointed that Mayor Lightfoot’s administration continued to litigate this case, embracing the anti-transparency argument staked out by her predecessor,” said BGA President David Greising. “This losing battle has been costly to taxpayers and is incompatible with the mayor’s stated commitment to transparency in her administration and access to public records.”

The BGA was represented by Matt Topic and Josh Burday at Loevy & Loevy.

“The city’s position would have allowed public officials to gut our transparency laws,” Topic said. “This is the last state in the country that needs that kind of secrecy.”
The complete ruling is shared below.