

**River Forest
Public Schools**

Administration Building
7776 Lake Street
River Forest, IL 60305
Phone: 708-771-8282
Fax: 708-771-8291

September 17, 2020

Response VIA E-MAIL:

Dear Mr. Steadman,

District 90 has received your communications dated September 12, 2020. These consist of a written response to the District's August 17 denial of your August 11, 2020 Illinois Freedom of Information Act ("FOIA") request as unduly burdensome and a second FOIA request.

August 17, 2020 Denial

The District previously informed you that responding to your nineteen discrete requests for information would unduly burden District operations. This undue burden related to the categorical nature of your requests, including for "all documents," "all documentary evidence," and "all communications" related to the Board's decisions at its July 27, 2020 Board Meeting, District communications on August 3 and August 8, and generally communications with any member of the administration and Board with any representative of the teacher's union regarding COVID-19 or the pandemic. The District described the efforts that would be required to conduct a comprehensive search for potentially responsive records, including coordination with individual Board members to search for records that may be in the possession of those individuals. Based on the District's initial search efforts, the District identified thousands of pages of documents and communications. The District informed you that in addition to the added effort to search for and compile records responsive to your nineteen requests, responding to your request would require a significant diversion of District time and administrative resources to review the responsive records and to redact or exclude information anticipated to be exempt from disclosure under the Freedom of Information Act, including: private information; predecisional/deliberative information; attorney-client information; and records relating to collective negotiating matters.

While the District offered you the opportunity to respond to the burden identified by the District by reducing your request to manageable proportions, you have now informed the District you do not intend to withdraw any request from your August 11, 2020 request. You did offer to provide a USB hard drive or thumb drive. This does not address the burden to the District from coordinating with other individuals, fully searching for and compiling records responsive to your categorical requests, and reviewing and excluding or redacting information exempt from disclosure under FOIA. Instead, you have requested a log of the records. Not only does a "log of the records" that would be responsive to your nineteen requests not exist, but this proposal again does not address the burden to the District from coordinating with other individuals and conducting a full search for records responsive to your categorical requests and reviewing and excluding or redacting

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information. If anything, creating such a log only adds to the burden and diverts the District's limited personnel time and resources from other obligations.

Because the District denied your request as unduly burdensome, it did not substantively respond to the nineteen requests. An unduly burdensome response is in essence a denial of a FOIA request, and the District informed you of that. The District also informed you that any modified request would be subject to evaluation under FOIA to determine whether other provisions of FOIA may apply, including the provisions regarding voluminous requests, the timeframes for responding to requests, fees that may be associated with the request, and whether any records responsive to the modified request are exempt from disclosure or subject to redaction. Since you have now submitted an unmodified request for the same records, your request remains unduly burdensome under FOIA. 5 ILCS 140/3(g).

September 14 Request

The District received a second FOIA request from you dated September 12, 2020 (a non-business day for the District) on September 14, 2020. This request contains twenty-one requests for information:

FOIA M:

- M1. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on poor students.
- M2. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students of color.
- M3. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students of single-parent families.
- M4. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students with physical disabilities.
- M5. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students with mental, psychological or social disabilities.

FOIA N:

- N1. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on poor students.
- N2. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students of color.
- N3. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students of single-parent families.
- N4. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students with physical disabilities.
- N5. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students with mental, psychological or social disabilities.

FOIA O:

- N1. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on poor students.
- N2. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students of color.
- N3. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students of single-parent families.
- N4. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students with physical disabilities.
- N5. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students with mental, psychological or social disabilities.

FOIA P:

There is information circulating in the public that District 90 is considering and/or intends to adopt a plan at or around the time of it's next Board Meeting that would re-open schools only when daily COVID testing with instant results is available for every student attending a District 90 school.

- P1. If any such plan is under consideration, produce the current draft plan.
- P2. Produce all correspondence regarding such plan.
- P3. Produce all documents regarding the prospective future financial cost of such plan.
- P4. Produce all documents concerning when such a test may be available, who would produce it, and how it would be sourced by the District.
- P5. Produce all documents concerning the effects of such test, physical and psychological, on students in District 90.
- P6. Produce all documents concerning any known school district that has adopted a similar plan.

The District does not construe this as a proper request for the District's public records under FOIA. A request under FOIA must reasonably identify a public record and not general data or information, and FOIA does not compel a public body to create a new record or to provide answers to questions posed by the inquirer. See generally *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427, 8 N.E.3d 11. Moreover, a request for records of a draft plan or deliberative materials regarding an ongoing decision, if a proper request for public records was submitted under FOIA, would likely be exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act.

Further Response

No part of the District's response was intended to convey an unwillingness to provide public records to you. The District is willing to respond to a reasonable request for public records, and has an extensive precedent of responsiveness to FOIA requests. I appreciate your interest in a further conversation. I agree a discussion may best facilitate better understanding of the crux of your request to allow for consideration of whether there might be a reasonable request for public records (for example, one that invokes a more limited search) that

would not unduly burden the District's operations and still addresses the information you desire. I am available on the following dates and would ask that you confirm your availability for a discussion about your request.

September 22, 9:30 AM
September 22, 11:15 AM
September 23, 11:15 AM
September 23, 1:45 PM
September 25, 10:00 AM

As further background, the following information may provide a framework for our discussions. Public records are those that "pertain[] to the transaction of public business, ... hav[e] been prepared by or for, or hav[e] been or [are] being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2. The District previously provided you with a list of readily available records and records under its control. To the extent it is not otherwise apparent through that information, the type of public records that pertain to the transaction of public business under the District's control include:

- Information related to the receipt and obligation of public funds, such as levy resolution and certificate of tax levy; audit; line-item budget; grant documents; account statements; accounts payable list; contracts; legal notices; bidding specifications; requests for proposals
- Information related to Board governance including Board meeting calendar and notices; agendas; minutes; resolutions; ordinances
- Information related to District operations including Board policies; reports required to be filed with the Illinois State Board of Education or other governmental agencies
- Personnel information that pertains to the expenditure of public funds, including final collective bargaining agreements; employee handbook; list of employees' names, salaries, titles and dates of employment
- Information related to students and instruction, including accountability documents; calendars; student handbooks; learning outcomes
- Final reports or studies prepared by or for the District.

Much of the District's transaction of public business is readily available for review and examination through the District's website. This includes minutes of Board meetings referenced in your requests:

<https://www.district90.org/boe/past-meetings-minutes>; the District's remote learning plan and updates: <https://www.district90.org/updates>; and Board policies, including those related to Board members: https://boardpolicyonline.com/?b=river_forest_90.

In your September 12 letter, you specifically requested "a description of the manner in which public records stored by means of electronic data processing may be obtained from District 90 (in a form comprehensible to persons lacking knowledge of computer language or print out format)." Board Policy provides that if an individual is unable to access public records on the District's website, the District will provide the record. Certainly, if you are seeking records stored by means of electronic data processing, you may notify the District that you prefer records to be provided in an electronic format. If records are only maintained in an electronic format that cannot be submitted to a requestor electronically, the District's FOIA Officer will provide a printout.

If needed, the District will work with a requestor to explain electronic records that are not comprehensible because of the requestor's lack of knowledge of computer language or printout format.

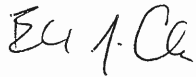
Please understand that while I am available to meet with you to discuss this matter, the law does give you the right to seek a review by the Office of the Attorney General's Public Access Counselor, who can be contacted as follows:

Public Access Counselor, Office of the Attorney General
500 South 2nd Street, Springfield, Illinois 62701
Phone: (877) 299-3642 / Fax: (217) 782-1396
E-mail: publicaccess@atg.state.il.us

When a request for public records is denied, the requester also has the right to judicial review under Section 11 of FOIA.


I look forward to your confirmation of a meeting date and time to discuss how we can constructively move forward and what public records the District might be able to provide you that would not present an undue burden to District operations and still fulfill your information requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Condon".

Ed Condon, Ph.D.
Superintendent

(708) 771-8282
condone@district90.org

From: Paul Steadman p@steadmans.org 
Subject: Re: FOIA Requests - Correspondence dated 9.12.2020
Date: September 12, 2020 at 12:27 PM
To: Ed Condon condone@district90.org



Dear Mr. Condon:

I apologize. My letter from earlier this morning worked from a prior version of the FOIA requests. Please work from this letter instead, so that we are working from the same version of the FOIA requests. Thank you.

Paul@Steadmans.org
CELL: 312.927.8135

On Sat, Sep 12, 2020 at 11:30 AM Paul Steadman <steady.p@gmail.com> wrote:
Dear Mr. Condon:

Please see attached letter responding to yours dated August 17.



Steadman to
Condo...ed).pdf

Paul R. Steadman
7800 Augusta Street
River Forest IL 60305
p@steadmans.org

Mr. Edward Condon
Superintendent
District 90
Administration Building
7776 Lake Street
River Forest, IL 60305

Re: FOIA Requests dated August 11, 2020
and your letter dated August 17, 2020

Dear Mr. Condon:

My letter of earlier this morning included some errors in stating the FOIA requests. Please substitute this letter.

I have carefully considered your August 17 letter, conferred with several other attorneys and parents, and considered my response. I urge you to reconsider your response; while I will consider reasonable suggestions to narrow or focus the requests, I do not intend to withdraw them, and I am prepared to litigate to get the information I have requested. Given the State of Illinois' stated goals of openness, litigation would be an incredible waste of District 90's resources, and against the public interest. You are also hereby on notice that if forced to litigate to get the requested information, I will seek my attorneys fees for doing so.

Your letter states that "the burden to the School District outweighs any public interest in the requested information." Please reconsider this position. The Board's and School District's response to the current COVID pandemic is by far the one action in this history of District 90 affecting the public interest. The District and the Board have shut down our schools, entirely. You have affected taxpayers, and our children. Many children will end up a least one year behind in their education, perhaps permanently. Your actions have desperate adverse impact on the poor, persons of color, the youngest students, and especially students with disabilities. District 90 has never in its history faced this kind of issue, nor taken such a broad and radical response. In essence, there is no issue in the history of District 90 where the public had more interest in understanding the District's and the Board's decisionmaking. It is essentially impossible that "the burden to the School District" outweighs any public interest in the requested information, and your answer that it does only makes it appear that you are hiding something.

On a request-by-request basis, I respond as follows:

FOIA A1:

Please produce all documents revealing, referring to, reflecting or otherwise sufficient to show the District 90 student COVID 19 positivity rate (or any investigation by District 90 into same).

FOIA A2:

Please produce all documents revealing, referring to, reflecting or otherwise sufficient to show the District 90 faculty and staff COVID 19 positivity rate (or any investigation by District 90 into same).

FOIA B:

The August 8 Communication refers to “mounting concern about the sustained increase of the COVID-19 positivity rate in Cook County, shifting guidance from local, state and national public health agencies, and lack of specific directives for schools about responding to potential disease transition.”

- Please produce all documentary “mounting concern about the sustained increase of the COVID-19 positivity rate in Cook County” upon which the Board or District relied in order to move from the District’s Return to School plan to full-remote instruction for all students.
- Please produce all documentary “shifting guidance from local, state and national public health agencies” upon which the Board or District relied in order to move from the District’s Return to School plan to full-remote instruction for all students.
- Please produce all documentary “directives for schools about responding to potential disease transition” of which the Board or District was aware on August 8, 2020
- Please produce all documentary evidence of “lack of specific directives for schools about responding to potential disease transition” upon which the Board or District relied in order to move from the District’s Return to School plan to full-remote instruction for all students.
- Please produce all emails between Board members, or between Board members and Ed Condon, regarding any of “mounting concern about the sustained increase of the COVID-19 positivity rate in Cook County,” or “shifting guidance from local, state and national public health agencies,” or “lack of specific directives for schools about responding to potential disease transition.” You may limit your response to the period of July 20, 2020 to date.

FOIA A seeks documents regarding the positivity rate in District 90. FOIA B seeks documents and communications about and directly relevant to evidence that District 90’s communications to the public and to parents specifically stated exists, and upon which the District was relying for the most important decision it has ever made. You respond: “The District conservatively estimates ... thousands of pages of documentary records responsive to ‘FOIA A1’ through ‘FOIA D.’

There is no burden to the production of these documentary records. First, I am willing to accept them in electronic format, and I am willing to supply a USB hard drive or thumb drive at my own trouble and expense. All you have to do is copy them to the hard drive in a single copy/paste. Second, these are the records you used during an approximately one month period to decide to close the schools, and they are undoubtedly filed all in one place.

You state: “Once the District has identified potentially responsive records, those records will need to be reviewed to determine whether they specifically relate to your request, whether they are exempt from disclosure, or whether they should be provided only with appropriate redactions.”

This is a non-sequitur. I am asking for the public records and guidance upon which the District and Board allegedly relied in order to close the schools indefinitely, and the positivity rate in the school. These cannot require redaction, and no statutory exemption from disclosure can possibly apply. I note that your rejection of my request did not raise any statutory exemption and I consider any such exemption now to be *waived*.

If you continue to refuse to produce these records, in the spirit of compromise, please produce a log of the records so that I can select the ones that I need produced.

FOIA C1:

Please produce all scientific or medical evidence considered by the Board and/or District prior to the July 27, 2020 Board Meeting, or relied upon in reaching its COVID 19 related decisions at that meeting.

FOIA C2:

Please produce all scientific or medical evidence considered by the Board and/or District prior to the August 3 Communication, or relied upon for that communication.

FOIA C3:

Please produce all scientific or medical evidence considered by the Board and/or District prior to the August 8 Communication, or relied upon for that communication.

FOIA D:

Please produce all emails between Board Members, or between Board Members and Ed Condon (or any other senior administrator of District 90), regarding scientific or medical evidence to be considered by the Board and/or District prior to the August 8 Communication.

FOIAs C-D seek only scientific and medical evidence, and discussion of same, for a limited time period during which the district was considering the return to school plan. You respond: "The District conservatively estimates ... thousands of pages of documentary records responsive to 'FOIA A1' through 'FOIA D.'"

There is no burden to the production of these documentary records. First, I am willing to accept them in electronic format, and I am willing to supply a USB hard drive or thumb drive at my own trouble and expense. All you have to do is copy them to the hard drive in a single copy/paste. Second, these are the records of scientific evidence you used during an approximately one month period to decide to close the schools, and they are undoubtedly filed all in one place.

You state: "Once the District has identified potentially responsive records, those records will need to be reviewed to determine whether they specifically relate to your request, whether they are exempt from disclosure, or whether they should be provided only with appropriate redactions."

This is a non-sequitur. I am asking for the *scientific evidence and medical evidence* upon which the District and Board allegedly relied in order to close the schools indefinitely. These cannot require redaction, and no statutory exemption from disclosure can possibly apply. I note that your rejection of my request did not raise any statutory exemption and I consider any such exemption now to be *waived*.

If you continue to refuse to produce these records, in the spirit of compromise, please produce a log of the records so that I can select the ones that I need produced.

FOIA E:

Please produce all emails or other communications between any representative of the Teachers Union, and the Administration or Board, concerning COVID 19 or the pandemic.

FOIA F:

Please produce all emails or other communications between any representative of the Teachers Union, and the Administration or Board, concerning the District's Return to School plan.

FOIA G:

Please produce all emails or other communications between any representative of the Teachers Union, and the Administration or Board, concerning full-remote instruction for all students.

FOIAs E, F and G seek a limited set of communications, between the Teachers Union and the Administration or Board, concerning the Return to School Plan and full remote instruction. Members of the public reasonably believe that the Teachers Union halted the hybrid plan that was announced this summer. The tax-paying public has a right to know whether the Teachers Union – which lives on our tax dollars – stymied a plan that would have allowed our children to return to school, provided a more fair and equitable arrangement for the poorest students and those with disabilities.

You state: "A full search for responsive communications, including in response to your categorical requests in "FOIA D" through "FOIA I" will require additional time, effort and review to coordinate, and the District estimates that conducting the search for responsive records alone would exceed eight hours of dedicated staff time. Once the District has identified potentially responsive records, those records will need to be reviewed to determine whether they specifically relate to your request, whether they are exempt from disclosure, or whether they should be provided only with appropriate redactions."

Your response indicates that YOU HAVE NOT YET EVEN SEARCHED FOR THE RESPONSIVE RECORDS. How can you know it is too burdensome to produce them, if you have never even searched? This is in clear violation of the Illinois FOIA statute.

Furthermore, there is no statutory exemption here. The records, by their nature having been exchanged with the Teachers Union, cannot be privileged, nor confidential.

There is no burden to the production of these communications. First, I am willing to accept them in electronic format, and I am willing to supply a USB hard drive or thumb drive at my own trouble and expense. All you have to do is copy them to the hard drive in a single copy/paste. Second, these are the records of communications for a limited topic, and over a limited period of time – just this summer, while the Return to School plan was being considered.

If you will not produce the requested communications, please produce a log of them so that I can consider your unsupported "burden" allegation.

FOIA H:

Please produce any emails or other communications of the Board Members concerning Board Members' conflicts of interest as it pertains to any of COVID-19, the pandemic, full-time remote learning and/or the District's Return to School plan.

FOIA I:

Board Policy 2:100 "Board Member Conflict of Interest" states that "No Board of Education member shall: (1) have a beneficial interest directly or indirectly in any contract, work, or business of the District unless permitted by State or federal law." Please produce any emails or other communications about potential Board Member Conflicts of Interest, or consideration of same, prior to the Board's consideration of any of COVID-19, the pandemic, full-time remote learning and/or the District's Return to School plan.

FOIA J:

Please produce documents sufficient to show whether any member of the Board of Directors is a member of, spokesman for, holds a leadership position in, or is otherwise associated with any teachers union.

FOIAs H-J seeks a limited set of communications concerning Board Members' conflicts of interest on a single issue. The public reasonably believes that a conflict of interest led to the Board vote to close or schools, indefinitely. The public has a right to know whether the Board even discussed that conflict of interest, and if it did, what that discussion entailed. You respond: "The District conservatively estimates that thousands of communications exist collectively in response to your requests 'FOIA D' through 'FOIA I'". This is a non-sequitur. There is no burden to the production of these communications. First, I am willing to accept them in electronic format, and I am willing to supply a USB hard drive or thumb drive at my own trouble and expense. All you have to do is copy them to the hard drive in a single copy/paste. Second, these are the records of communications for a limited topic, and over a limited period of time – just this summer, while the Return to School plan was being considered.

If you will not produce the requested communications, please produce a log of them so that I can consider your unsupported "burden" allegation.

You did not respond in any way to FOIA J. I consider all objections *waived*. Please produce the requested documents.

FOIA K:

Please produce documents referring to, reflecting, comprising, or otherwise revealing the Administration's and/or Board's criteria for returning students to school for in-person learning on or after October 1, 2020.

You did not respond in any way to FOIA K. I consider all objections *waived*. These documents are clearly of maximal public interest. Please produce the requested documents.

FOIA L:

A list of all types or categories of records currently under District 90's control, as provided in 5 ILCS 140/5. And a description of the manner in which public records stored by means of electronic data

processing may be obtained from the District 90 (in a form comprehensible to persons lacking knowledge of computer language or printout format), as provided in 5 ILCS 140/5.

Your response to this request was not responsive. I requested a list of all types or categories of records currently under District 90's control, as provided in 5 ILCS 140/5. You responded only with "Immediately Available Public Records and Web-Posted Reports and Records." The District is required by statute, in 5 ILCS 140/5, to maintain and produce upon request a list of ALL types and ALL categories of records under District 90's control.

I requested a description of the manner in which public records stored by means of electronic data processing may be obtained from the District 90 (in a form comprehensible to persons lacking knowledge of computer language or printout format), as provided in 5 ILCS 140/5. You responded only with "Immediately Available Public Records and Web-Posted Reports and Records." The District is required by statute, in 5 ILCS 140/5, to maintain and produce upon request a list of ALL public records stored by means of electronic data processing may be obtained from the District 90.

Your response appears to demonstrate that District 90 is in clear violation of 5 ILCS 140/5.

There is growing public interest in the requested records. I want to receive them well in advance of the next School Board meeting. If you continue to refuse to produce the requested public records, you leave me no choice but litigation. Please produce the requested records by September 21. If you wish to discuss possible agreement on a compromise production, you may reach me at 312.927.8135.

Best regards.
Paul Steadman

From: Paul Steadman steady.p@gmail.com
Subject: FOIA Requests
Date: September 12, 2020 at 11:42 AM
To: Ed Condon condone@district90.org



Adopting the introduction instructions and definitions from my prior FOIA Request dated August 10, 2020:

FOIA M:

- M1. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on poor students.
- M2. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students of color.
- M3. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students of single-parent families.
- M4. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students with physical disabilities.
- M5. Produce documents sufficient to show the District's and the Board's consideration of disparate impact of its remote learning plan on students with mental, psychological or social disabilities.

FOIA N:

- N1. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on poor students.
- N2. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students of color.
- N3. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students of single-parent families.
- N4. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students with physical disabilities.
- N5. Produce documents sufficient to show the District's and the Board's solutions to minimize disparate impact of its remote learning plan on students with mental, psychological or social disabilities.

FOIA O:

- N1. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on poor students.
- N2. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students of color.
- N3. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students of single-parent families.
- N4. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students with physical disabilities.
- N5. Produce documents sufficient to show the District's and the Board's solutions to mitigate financial costs of its remote learning plan on students with mental, psychological or social disabilities.

FOIA P:

There is information circulating in the public that District 90 is considering and/or intends to adopt a plan at or around the time of it's next Board Meeting that would re-open schools only when daily COVID testing with instant results is available for every student attending a District 90 school.

- P1. If any such plan is under consideration, produce the current draft plan.
- P2. Produce all correspondence regarding such plan.
- P3. Produce all documents regarding the prospective future financial cost of such plan.
- P4. Produce all documents concerning when such a test may be available, who would produce it, and how it would be sourced by the District.
- P5. Produce all documents concerning the effects of such test, physical and psychological, on students in District 90.
- P6. Produce all documents concerning any known school district that has adopted a similar plan.

Thank you.