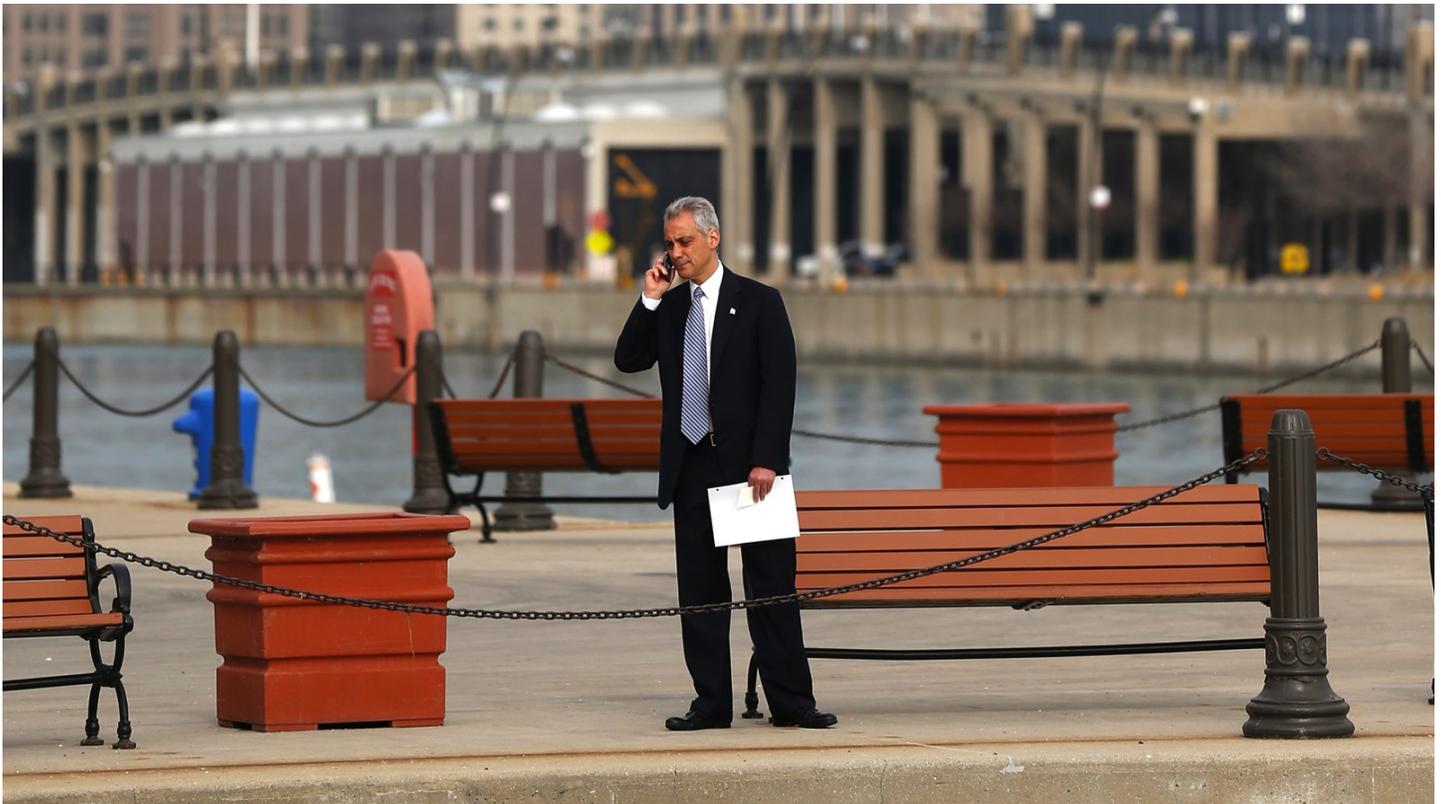


Judge OKs legal fees in city's failed battle on open records

Taxpayer cost for mayor's clash with media nears \$1.2M



The dispute involving Mayor Rahm Emanuel's electronic communications started in June 2015. (Jose M. Osorio/Chicago Tribune 2014)

BY TODD LIGHTY CHICAGO TRIBUNE

Mayor Rahm Emanuel's failed legal battle to keep secret government-related emails and texts that he had sent and received on his personal accounts will cost taxpayers \$1.18 million following a court ruling Friday.

The Emanuel administration's outside lawyers already have billed the city nearly \$800,000 to handle the mayor's fight with the Chicago Tribune and others over access to his emails and texts messages.

Now, those costs have gone up further. Cook County Judge Anna M. Loftus ruled Friday that the city also has to pay the Tribune's legal bills in the case — amounting to more than \$387,000.

The open records law, known as the Freedom of Information Act, allows those who successfully sue a government agency to recover their legal costs.

Loftus agreed with the Tribune's argument that the case against Emanuel was of "great public interest" and reiterated a prior finding that the mayor and his office had violated the state's open records act. "Tribune was clearly the prevailing party in this case," Loftus said as she announced her ruling from the bench.

Loftus' decision is the latest setback for Emanuel in his yearslong battle with the Tribune over the public's right to see emails and texts about public business that reside on government officials' personal, electronic accounts.

Another judge, who has since retired, earlier found that Emanuel and his office violated state law by withholding emails about public business that resided on his personal accounts. That judge sided with the Tribune when she found the public records law does not distinguish between official and personal accounts so long as the matter relates to government business.

Emanuel continues to maintain that emails and texts on personal accounts are not subject to the state's open records law, regardless of whether they pertain to city business. Ultimately, however, Emanuel agreed to release city-related emails stored on his personal accounts. That led to Tribune stories exposing that a number of people had illegally lobbied the mayor. In one instance, a former Uber executive who had served as Barack Obama's campaign manager was fined \$90,000 by the city's ethics board for illegally lobbying Emanuel on behalf of the ride-sharing company.

Emanuel has agreed to periodically release emails from his personal accounts after the Tribune, and later the Better Government Association (BGA), sued and accused the mayor of hiding government correspondence on his personal accounts.

The lawsuits led to the Emanuel administration issuing a new policy barring employees from using their personal devices and noncity email accounts to conduct government business. Any email employees receive on their personal accounts that relates to city business must be forwarded to their city-issued email account. Emanuel, who promised to run "the most open, accountable and transparent government that the city of Chicago has ever seen," did not seek a third term and leaves office in May.

The Tribune previously reported that the Emanuel administration paid out more than \$670,000 in 2016 in other lawsuits that alleged government workers repeatedly violated the Illinois open records law. That was nearly five times what the city paid in the previous eight years combined. Those lawsuits were brought by taxpayers, advocacy groups and news organizations.

In seeking its lawyer fees in its case, the Tribune argued Emanuel and the mayor's office violated state law by withholding public records for 1½ years. Lawyers who worked on the case for the Tribune reduced their standard fees, adding that what they were seeking in reimbursement for over three years' worth of work was more than reasonable.

"There is no question Tribune prevailed in this action, and decisively so, in the face of an opponent that, determined not to comply with what the law requires, deployed a combative litigation strategy asserting every possible legal challenge and refusing to accept the court's conclusion that defendants were wrong on the law," the Tribune's attorneys argued in a court filing.

Emanuel's administration contended that the city should pay nothing or, if anything, less than half of the legal costs the Tribune sought. It also took issue with the Tribune's characterization that it achieved a "complete victory" in the dispute, noting, for instance, a judge sided with Emanuel by ruling that the mayor did not have to produce an index of his private emails and text messages.

"Because the Tribune achieved only limited success in this case, this court should award only the amount of fees reasonable in relation to the results obtained," lawyers for the city argued.

But Loftus rejected the city's arguments and entirely sided with the Tribune. She awarded the company \$387,394.50 in legal fees and costs.

The Emanuel administration has been billed \$793,393.73 from the city's outside lawyers through 2018 for the Tribune and BGA cases. With the Tribune's fees, that brings the total bill to \$1,180,788.23.

That amount will only grow. The city has not received legal bills from its outside lawyers for work done so far this year. The city has not decided whether to appeal Loftus' ruling. "We are disappointed in the ruling and are evaluating our options," said Emanuel spokeswoman Shannon Breymaier.

The dispute started in June 2015 when Tribune reporters sought emails and text messages about the city's controversial red light camera system. Separately, reporters also asked for electronic communications between Emanuel and Michael Sacks, chief executive of a Chicago hedge fund and who was selected to lead World Business Chicago, which the mayor formed to attract business to the city.

The mayor's office refused to search for any emails or texts pertaining to city business from Emanuel's personal cellphones or his non-city accounts.

The Tribune sued in September 2015, arguing that Emanuel and his office violated the open records act and the Local Records Act relating to the preservation of government documents, including emails and texts.

tlighty@chicagotribune.com

Twitter @ToddLighty