



November 3, 2016

VIA E-MAIL

Ms. Jeanette Samuels

Email: sam@jsamlaw.com

RE: 16-FOIA-261 Any / All Records - [REDACTED]; PO Misconduct

Dear Ms. Samuels:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“FOIA”).

I. Background

On October 13, 2016, we received your request for any and all documents, files, records, notes, memos, pictures, video, audio, or other documentary materials related to:

1. The arrest of [REDACTED] on or around April 24, 2016;
2. Allegations of misconduct against Metra Police Officer [REDACTED] and [REDACTED];
3. Allegations of misconduct against Metra Police Officer [REDACTED].

(“Request”). Your Request is granted in part and denied in part.

II. Responsive Documents

In response to your Request, Metra is providing you with:

- Metra police report #MP-16-00014645;
- Notices of Discipline regarding allegations against Officer [REDACTED] dated 12/3/2015, 1/11/2016 and 8/30/2016;
- Personnel Counseling Record regarding allegations against Officer [REDACTED] dated 7/6/15; and
- Waiver of Formal Investigation record dated January 29, 2013

(“Responsive Documents”).

After performing a diligent search of Metra’s records, we have been unable to locate any video / audio of this incident. The Metra Police Department has advised that the video cameras in the station do not retain data beyond 30 days, and they are unable to retrieve any video / audio for this incident.

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Jamie Harrmann has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. The employee identification numbers, passwords, medical records, and home address of the parties mentioned in the Responsive Document are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Employee identification numbers,” “passwords,” “medical records,” and “home addresses” are specifically mentioned within the definition of “private information” found in Section 2(c-5) of FOIA.
2. The dates of birth, and physical descriptions of the parties mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy...” Section 7(1)(c) goes on to say that, “‘Unwarranted invasion of personal privacy’ means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.” It has been determined that the aforementioned data falls squarely within that definition and its redaction is appropriate under FOIA.
3. Further, with respect to results of the LEADS background check, such records are exempt from release under Section 7(1)(d-5) of FOIA which states, “A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access to the record through the shared electronic record management system.” The Metra Police Department only has access to information contained within LEADS and has no role in the creation of this information.

IV. Denial

All records pertaining to Officer [REDACTED], and additional records pertaining to Officer [REDACTED] are being withheld in their entirety under Section 7(1)(a) of FOIA, which exempts “[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 5 ILCS 140/7(1)(a). Section 8 of the Illinois Personnel Record Review Act states, “An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.” 820 ILCS 40/8. Accordingly, Attorney Jamie Harrmann has determined that the above-referenced disciplinary records, which are more than 4 years old, are properly exempt from disclosure per the Illinois Personnel Record Review Act, 820 ILCS 40/8.

Additionally, any “records relating to a public body’s adjudication of employee grievances or disciplinary cases” are being withheld in their entirety under Section 7(1)(n) of FOIA. 5 ILCS 140/7(1)(n). Records indicating final disciplinary action are produced as described above.

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor (“PAC”) of the Illinois Attorney General’s Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
foia@metrarr.com
FOIA Hotline #312-663-3642

Attachments