

March 31, 2016

VIA US MAIL

Mr. Nicolas Albuquerk
Albuquerk & Associates
Attn: Rachel Smith
1450 West Randolph
Chicago, Illinois 60607
(Tel) 773.847.2600
(Fax) 773.847.0330
Email: Nick.albuquerk@gmail.com

RE: 16-FOIA-036 Info - 87th & Pulaski

Dear Mr. Albuquerk:

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 February 15, 2016, we received your request for the following:

1. Records pertaining to the intersection of 87th & Pulaski in Hometown, Illinois. Specifically:
 - A. All reports of any accidents occurring at 87th & Pulaski over the last ten (10) years;
 - B. Any and all reports, investigations or evaluations conducted by Metra of the railroad crossing at 87th and Pulaski for over the last ten (10) years;
 - C. Any and all reports, investigations or evaluations conducted by the Federal Railroad Administration, or any other entity of the railroad crossing at 87th and Pulaski – ever;
 - D. All video from trains or elsewhere of the intersection at 87th and Pulaski for the previous five (5) years; and
 - E. Any records of reports, complaints, comments, etc. concerning the railroad crossing at 87th and Pulaski from the last 10 years;
2. Records pertaining to an accident that occurred on 12/28/15 at approximately 1:00 p.m. at the rail crossing at 87th and Pulaski. Specifically:
 - A. The name of the conductor or driver of the Metra Train involved in the above stated accident;
 - B. The Conductor or Driver’s cell phone information (phone number, service provider, etc.);

- C. An electronic copy, burned to a CD or DVD regarding the above described accident, containing:
 - (i) All investigative reports generated by Metra or other investigative units (police, engineering, etc.) in Metra's control, regarding the accident;
 - (ii) All video of the accident in Metra's control or possession, including but not limited to: the video from the train, the video from the tracks (if any), the video from the car wash next to the tracks;
 - (iii) All "black box" data in a commonly readable electronic format, or with executable software so that the data may be viewed, (data should include information such as speed of train, timing of braking initiation, location, etc.);
 - (iv) All pictures of the accident in your possession or control;
 - (v) All audio recordings of the conductor/driver of the train, audio of radio communications or of the accident itself;
 - (vi) All reports of trouble, malfunction or other accidents at the crossing at 87th and Pulaski in the last ten (10) years;
- D. The name of the last person in charge of servicing the tracks prior to 12/28/15;
- E. The name of the last person to service the railroad crossing before 12/28/15;
- F. All policies and procedures for operating Metra commuter trains in bad weather;
- G. Any and all documents and memoranda alerting or otherwise discussing the weather conditions on 12/28/15;
- H. Any and all documents and memoranda alerting or otherwise discussing safety measures to be taken on 12/28/15; and
- I. Any and all documents, reports, or tests containing evidence of drug or alcohol testing of the driver of the Metra train involved in the above named accident and, if in your possession, of the driver of the vehicle, Mark Bibbs

Additionally, you requested that Metra supply you with these records and information in digital form via email or CD-ROM ("**Request**").

We sent you an email on February 26, 2016, asking if you would consider narrowing down the scope of your Request as we explained that to manually pull and review each document for up to the last ten (10) years (5-years in one circumstance), would be disruptive to the day-to-day operations of the various departments (Metra Police Department, included) tasked with gathering this information. It also would be disruptive to the day-to-day operations of the FOIA department and would inhibit our ability to process other FOIA requests. We asked if you would consider narrowing the scope of your request to a 3-year period of your choosing, with the understanding that you could submit future requests for additional years. We also asked if you would grant an extension March 21 to fulfill your Request. You responded that same day indicating your agreement to narrow the scope of your Request and to extend the due date to March 21, 2016. We sent you another email asking for the 3-year scope of documents

you were interested in receiving. You again responded stating that you wanted to narrow your request for all records requested from March 1, 2013 to March 1, 2016 and indicated that of particular importance were the report of the accident in question that occurred on 12/28/15; all engineering reports for the intersection at 87th and Pulaski, or at least the last one done whenever that was, even if done before the time period in question; and all reports, memos letters, and emails documenting work on or evaluations of, the intersection at 87th and Pulaski since the accident on 12/28/15.

(“**Narrowed Request**”).

We contacted you again on March 21 to advise that we were still reviewing your requested documents, but we would not be able to meet the deadline as scheduled. We sought another extension to March 25 in order to finalize our review, and you granted this extension. On March 25 we contacted you to advise that while finalizing our review of your requested documents, we found that there were documents missing and asked for another extension to March 31. You granted this extension.

II. Responsive Documents

In response to your Narrowed Request, Metra is providing you with the following records:

1. Records pertaining to the intersection of 87th & Pulaski in Hometown, Illinois. Specifically:
 - A. All reports of any accidents occurring at 87th & Pulaski between the time frame of 3/1/2013 – 3/1/2016;
Response: Metra Police Report #16-00113. For additional responsive documents pertaining to section 1.A., see ***Denial*** below.
 - B. Any and all reports, investigations or evaluations conducted by Metra of the railroad crossing at 87th and Pulaski between the time frame of 3/1/2013 – 3/1/2016;
Response: *Assorted Field Test Reports for Y2015. Please note that these reports are retained until the next record is filed, but in no case less than one year. Therefore, reports for years prior to 2015 do not exist.*
 - C. Any and all reports, investigations or evaluations conducted by the Federal Railroad Administration, or any other entity of the railroad crossing at 87th and Pulaski - ever;
Response: *Federal Railroad Administration Report dated 1/5/2016. After performing a diligent search of Metra’s records, we have been unable to locate any additional records responsive to this portion of your Request. Metra’s Safety Department stated no other such reports were located for this crossing.*
 - D. All video from trains or elsewhere of the intersection at 87th and Pulaski between the time frame of 3/1/2013 – 3/1/2016;
Response: *Train video from Locomotive #21; Cab Car #8602; and video obtained from nearby car wash. After performing a diligent search of Metra’s records, we have been unable to locate any additional records responsive to that portion of*

*your Request for “all video from trains or elsewhere.” Metra’s Mechanical Department advised that train videos are overwritten when full. Therefore, with the exception of those videos you are being provided with pertaining to this accident, there are no videos for March 1, 2013 through December 31, 2015. Metra does not maintain videos from elsewhere. As for all train videos from Y2016 for 87th & Pulaski, see **Denial** below.*

- E. Any records of reports, complaints, comments, etc. concerning the railroad crossing at 87th and Pulaski between the time frame of 3/1/2013 – 3/1/2016;
- Response:** *After performing a diligent search of Metra’s records, we have been unable to locate any records responsive to this portion of your Request. Per Metra’s Mechanical Department, no such records were located.*
2. Records pertaining to an accident that occurred on 12/28/15 at approximately 1:00 p.m. at the rail crossing at 87th and Pulaski. Specifically:
- A. The name of the conductor or driver of the Metra Train involved in the above stated accident;
- Response:** *See document “Crew Information for Train #815”.*
- B. The Conductor or Driver’s cell phone information (phone number, service provider, etc.);
- Response:** *See **Partial Denial** below.*
- C. An electronic copy, burned to a CD or DVD regarding the above described accident, containing:
- (i) All investigative reports generated by Metra or other investigative units (police, engineering, etc.) in Metra’s control, regarding the accident;
- Response:** *Rail Equipment Incident Report; TOPS Conductor Trip Report; Routine Track Inspection Time Sheets; and Statements From Train #815.*
- (ii) All video of the accident in Metra’s control or possession, including but not limited to: the video from the train, the video from the tracks (if any), the video from the car wash next to the tracks;
- Response:** *See item 1.D above.*
- (iii) All “black box” data in a commonly readable electronic format, or with executable software so that the data may be viewed, (data should include information such as speed of train, timing of braking initiation, location, etc.);
- Response:** *Recorder logs-Tabular Data.*
- (iv) All pictures of the accident in your possession or control;
- Response:** *Thirty-six (36) photos of accident.*

- (v) All audio recordings of the conductor / driver of the train, audio of radio communications or of the accident itself;

Response: *One (1) audio recording of the train engineer's radio transmission.*

- (vi) All reports of trouble, malfunction or other accidents at the crossing at 87th and Pulaski between the time frame of 3/1/2013 – 3/1/2016;

Response: *See 1.A above. Per Metra's Risk and Claims Department, no other train versus vehicle accident has occurred at 87th and Pulaski between March 1, 2013 and March 1, 2016. After performing a diligent search of Metra's records, Metra's Mechanical Department been unable to locate any records responsive to the portion of your Request asking for reports of trouble or malfunction at this location.*

- D. The name of the last person in charge of servicing the tracks prior to 12/28/15;

Response: *Jose Cervantes, Roadmaster, would be the person in charge of servicing the tracks, however, Mr. Cervantes advised that the tracks are routinely inspected and that servicing this area of tracks has not been necessary for some time.*

- E. The name of the last person to service the railroad crossing before 12/28/15;

Response: *John Sanchez, Foreman, would be the individual to service this area, however as noted above, servicing this area has not been necessary for some time.*

- F. All policies and procedures for operating Metra commuter trains in bad weather;

Response: *Metra's Severe Weather Policy & Procedure.*

- G. Any and all documents and memoranda alerting or otherwise discussing the weather conditions on 12/28/15;

Response: *One (1) email sent by Metra's Executive Director cautioning all employees of weather conditions on 12/28/2015.*

- H. Any and all documents and memoranda alerting or otherwise discussing safety measures to be taken on 12/28/15;

Response: *One (1) Safety Alert issued to all employees on 12/28/2015.*

- I. Any and all documents, reports, or tests containing evidence of drug or alcohol testing of the driver of the Metra train involved in the above named accident and, if in your possession, of the driver of the vehicle, Mark Bibbs;

Response: *After performing a diligent search of Metra's records, we have been unable to locate any records responsive to this portion of your Request. Per Metra's Risk Department, no such records exist.*

Additionally, when you narrowed your Request, you also asked for all reports, memos, letters, and emails documenting work on or evaluations of, the intersection at 87th and Pulaski since the accident on 12/28/15.

Response: *One (1) email dated 12/29/2015, referencing a download log; and one (1) email dated 1/5/2016 discussing tests that were performed the after the accident.*

(“**Responsive Documents**”).

You may access the Responsive Documents via Metra’s file transfer protocol (“**FTP**”) site. Direct your browser to <https://ftp.metrarr.com/>. The user name is: **foia**[] and the case sensitive password is: []. Access to this FTP site will expire [], 2016. *If you require additional time to download these documents, please let us know prior to the expiration date.*

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 Thomas Stuebner has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. The driver’s license number, password, employee identification number, personal telephone number, home address, and vehicle license plate number of the parties mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Driver’s license numbers,” “passwords,” “employee identification numbers,” “personal telephone numbers,” “medical records,” “home addresses,” and “vehicle license plate numbers” 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, as well as the names of juveniles, third-parties, and the vehicle insurance policy number 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. Section 7(1)(a) of FOIA 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). Accordingly, the home address, date of birth, driver’s license number, and any physical description of the parties mentioned in the Responsive Documents are exempt from disclosure per the Driver’s Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, which prohibits individuals from knowingly obtaining or disclosing “personal information” from a motor vehicle record.

IV. Denial

A Preliminary Incident Report is being withheld in its entirety under Section 7(1)(f) of FOIA, which exempts from disclosure any “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated ...[.]” 5 ILCS 140/7(1)(f). As such, Attorney Thomas Stuebner has determined that withholding this document in its entirety is proper under FOIA.

Additionally, While FOIA requires public bodies to provide access to public records generally, Section 7(1)(a) of FOIA authorizes units of government to withhold “Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.” 5 ILCS 140/7(1)(a). The Juvenile Court Act, in pertinent part, specifically 705 ILCS 405/5-905(1), states that the:

(1) Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following and when necessary for the discharge of their official duties:

....

(c) [T]he minor, the minor’s parents or legal guardian and their attorneys, but only when the juvenile has been charged with an offense . . .

As to the requested records, the subject is a juvenile under the age of 18 and had been investigated by authorities. Furthermore, you do not fall into any of the categories of persons to whom a juvenile arrest report may be released to, as stated above. Thus, these records fall within the exemption found in Section 7(1)(a) of FOIA, and per Attorney Thomas Stuebner, your Request is hereby denied. Please note, however, that these records may be available through the local prosecuting attorney for the county in which the incident occurred.

Further, your Request for “all train videos from Y2016 for 87th & Pulaski” is being denied as unduly burdensome under Section 3(g) of FOIA, which states that a public body may deny a request where “compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.” Despite the fact you narrowed your initial Request down for these videos, the Southwest Service line operates 15 outbound and 15 inbound trains Monday – Friday, and 6 round trips on Saturday. Norfolk Southern operates freight trains on this line as well. To obtain all videos from each train operating on this line for January 1, 2016 to March 1, 2016, would be unduly burdensome for Metra’s Mechanical Department to produce, and for the FOIA Department to review, without severely impacting the day-to-day operations of both departments. To attempt to provide the requested videos as written in your Request, places a burden on Metra which outweighs any public interest in these videos.

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:

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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