



April 16, 2019

**VIA EMAIL**

Mr. Christopher M. Norem  
Parente & Norem, P.C.  
Email: [oh@pninjurylaw.com](mailto:oh@pninjurylaw.com)

RE: 19-FOIA-101 [REDACTED] Accident 1/29/2019

Dear Mr. Norem:

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 April 2, 2019, we received your request for information regarding an accident involving [REDACTED] on January 29, 2019. Specifically, you requested copies of any and all investigative reports, police reports, outside agency police reports, police photos, download data from the subject locomotive and any and all files associated with the accident which occurred on January 29, 2019 (“Request”).

We sent you an email on April 8 asking if your firm was representing [REDACTED] and if so, to please forward a copy of your firm’s letter of representation to us. To date, we have not received a response from you.

On April 9, we sent you an email regarding those portions of your Request for “any and all” records. We explained that your Request as written was overly broad as Metra would be required to canvas every department searching for records. This company-wide search would severely disrupt the day-to-day operations of our departments, thus making your Request for “any and all” records unduly burdensome. We asked if you would consider narrowing the scope of your Request to those records maintained by the Metra Police and Mechanical Departments, with the understanding that you may submit future requests for additional records. We asked that you respond to our email indicating whether or not you were agreeable to narrowing the scope of your Request as noted above. To date, we have not received a response from you regarding the narrowing of the scope of your request as noted above. Your Request is granted in part and denied in part.

**II. Responsive Documents**

As we have not received a response from you concerning narrowing the scope of your Request, Metra is providing you with only those records maintained by Metra’s Police and Mechanical Departments. Specifically:

- Metra Police report #MP-19-00004936, with supplemental reports and photos;
- One Metra Police Officer Body Camera Video;
- DVR video obtained from train #2234, cab car #8553;

- Assorted Mechanical Department Reports;
- Preliminary Incident Report;
- Tabular Data Cab Car #8553;
- Tabular Data Locomotive #109; and
- TOPS Conductor Trip Report

(“**Responsive Documents**”).

Metra’s Police Department does not maintain records of outside agencies; however, Metra’s Risk Department is providing you with a copy of Elgin’s Police report #2019-00006256, it received directly from the City of Elgin. For any revised or supplemental reports generated by the Elgin Police Department regarding this matter, you may visit this link to submit your request: <http://www.cityofelgin.org/63/Freedom-of-Information-Act-FOIA>.

### **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 Keith Pardonet 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, personal telephone numbers and home addresses of the parties mentioned in the Responsive Documents are redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Employee identification numbers,” “passwords,” “medical records,” “personal telephone numbers,” 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, as well as the name of the witness and third-parties, are 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.

### **IV. Denial**

One body camera video is denied in its entirety from disclosure under the Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706/10 (“**Act**”). Sections 11(b)(1)(A) and (B) state:

11(b) Recordings made with the use of an officer-worn body camera are not subject to disclosure under the Freedom of Information Act, except that:

(1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint . . . shall be disclosed in accordance with the Freedom of Information Act if:

(A) the subject of the encounter captured on the recording is a victim or witness; and

(B) the law enforcement agency obtains written permission of the subject or the subject's legal representative;

The officer's body camera video captured a witness to this incident and no written permission of the subject witness which was captured on this video was obtained by the Metra Police Department. As such, Attorney Keith Pardonnet has determined that this video is properly withheld from disclosure under the Act.

Additionally, we are denying that portion of your Request for "any and all" as unduly burdensome under Section 140/3(g) of the 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." 5 ILCS 140/3(g). On April 9, we sent you an email regarding that portion of your Request for "any and all" records. We explained that your Request as written, was overly broad as Metra would be required to canvas every department searching for records. This company-wide search would severely disrupt the day-to-day operations of our departments, thus making your Request for "any and all" records unduly burdensome. We asked if you would consider narrowing the scope of your Request to those records maintained by the Metra Police and Mechanical Departments, with the understanding that you may submit future requests for additional records. We asked that you respond to our email indicating whether or not you were agreeable to narrowing the scope of your Request as noted above. To date, we have not received a response from you regarding the narrowing of the scope of your request. Therefore, Attorney Keith Pardonnet has determined that your Request for "any and all" records is unduly burdensome and the denial of this portion of your Request is appropriate under Section 140/3(g) of the FOIA.

## **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](mailto: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.

Mr. Christopher M. Norem / Parente & Norem, P.C.

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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 we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,



Kathleen E. Haton

Freedom of Information Officer

[FOIA@metrarr.com](mailto:FOIA@metrarr.com)

FOIA Hotline #312-663-3642

Attachments