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May 31, 2019

VIA EMAIL

Mr. Sam Stecklow
Invisible Institute
Email: foia@invisibleinstitute.com

RE: 19-FOIA-125 Request for MPD Disciplinary Records

Dear Mr. Stecklow:

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 May 2, 2019, we received your request for copies of the following documentation relating to every internal affairs, HR, and/or EEO complaint and/or investigation regarding all employees of the Metra Police Department which were closed between May 2, 2015 and December 31, 2015:

- Complaint or other initiation report;
- Any lists describing underlying documentation to the investigation;
- Investigatory memos;
- The investigator's case log;
- Investigatory Hearing transcript;
- All records showing discipline and/or the Chief or other supervisor's final decision in each case, if applicable; and
- All records relating to appeals of discipline, if applicable, including but not limited to any written appeals, and any written appellate decisions

("Request").

I spoke with you by phone on May 14, 2019 and explained that we were still compiling records that may be responsive to your Request and asked for an extension to May 24, 2019 in order to finalize your Request. You granted our request for this extension. An email was sent to you summarizing our brief conversation, which you acknowledged. I contacted you again on May 24, 2019 to advise we were still reviewing records that may be responsive to your Request, however, we would need additional time to complete this review. I asked for and you granted us an additional extension to May 31, 2019.

Your Request for these records is denied.

III. Denial

Your Request is denied in its entirety under the following exemptions of the FOIA, Company Policy and related regulation:

1. Section 7(1)(n) states that “[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases” shall be exempt. “However, this exemption shall not extend to the final outcome of cases in which discipline is imposed.” No discipline was imposed by Metra’s Chief of Police or other personnel in a supervisory capacity regarding any complaints or investigations during the time frame requested. As such, it has been determined by Attorney Keith Pardonnet that Metra’s internal investigation documents, HR and/or EEO records relating to the adjudication of employee grievances or disciplinary action are properly exempt from disclosure per Section 7(1)(n) of FOIA. 5 ILCS 140/7(1)(n).
2. Information contained in the records requested is also denied under Section 7(1)(c) of FOIA. Section 7(1)(c) of FOIA 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, “[u]nwarranted 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy.”

The requested information is highly personal in nature and contains explicitly graphic statements. Disclosure of complaints and/or investigation documents containing such personal information would be an unwarranted invasion of privacy and, as stated in 7(1)(c), “[. . .] the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Notwithstanding the personal information exemption, disclosure of complaints and/or internal investigation reports against employee conduct or misconduct is not “information that bears on [their] public duties” and is, therefore, exempt from disclosure as well.

3. Additionally, Metra’s internal EEO Department Complaint Procedure specifically states that, “Metra investigates all complaints of unlawful discrimination/harassment in a discreet and confidential manner. The EEO department instructs involved parties and/or witnesses to keep their participation in investigations confidential.” To publicly release the requested records when they are intended to be kept confidential would not only render the company policy ineffectual but also create a “chilling effect” for Metra employees seeking to file grievances. It has been determined by Attorney Keith Pardonnet that disclosure of the requested information would be in direct conflict with the purpose of Metra’s EEO complaint procedures and therefore, withholding the information is appropriate.
4. Records containing recommendations and opinions are withheld from disclosure under Section 7(1)(f) of FOIA which states, “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed [. . .] shall be exempt.” 5 ILCS 140/7(1)(f). Since the requested records contain recommendations and opinions,

Attorney Keith Pardonnet has determined that these records are properly withheld under Section 7(1)(f) of the FOIA.

5. Further, the federal Equal Employment Opportunity Commission (“Commission”) has addressed the importance of protecting the privacy of those persons who file grievances. As noted in Title 29 CFR § 1611.10 *Disclosure of record to person other than the individual to whom it pertains:*

The Commission shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

The federal regulation also underscores the importance of protecting the privacy of those individuals who file grievances and exempting from disclosure any such record or information to anyone other than the individual to whom it pertains. Your request for complaints and/or investigation records filed against all employees in the Metra Police Department during the time frame is overreaching and encroaches upon the right of privacy of those who may have filed such grievances. Your request is accordingly denied.

V. Right of Review

You have the right to have the 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 denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your 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