



September 12, 2019

VIA E-MAIL

Mr. Matthew B. Brady

Quaere, Inc.

Email: MBrady@quaereinc.com

RE: 19-FOIA-233 Request for Collision Report(s) and Photographs of Damage

Dear Mr. Brady:

Metra's FOIA Department ("FOIA Department") is 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 August 15, 2019, the FOIA Department received your request for "any and all records, reports, photographs, damage assessments, claim forms, repair appraisals or other documents in the care, custody and control of METRA regarding a grade crossing collision occurring on January 30, 2001 at 0740 hours at the Lawn Avenue grade crossing (DOT Grade Crossing Number 079515J) in Western Springs, IL" ("**Request**").

On August 28, the FOIA Department contacted you by telephone and asked if you would be agreeable to eliminating the "any and all" phrase from your Request to which you agreed. Additionally, you agreed to narrow the scope of your Request by stating you were interested in acquiring photographs, damage assessments, claim forms and repair appraisals in the care, custody and control of Metra. ("**Narrowed Request**"). An email summarizing your agreement and discussion over the phone narrowing the scope of your Request was sent to you following the phone call. Accordingly, you narrowed the scope of your Request on August 28, 2019.

On September 4, the FOIA Department emailed you seeking clarification regarding the "claim forms" portion of your Narrowed Request and whether you sought personal injury or property claim forms. You responded that you wanted both.

In an effort to respond to your Narrowed Request, the FOIA Department contacted Metra's police, mechanical, engineering, safety and claims departments to locate the BNSF initial incident report, as the BNSF was the reporting railroad to the Department of Transportation. The FOIA Department was informed that in 2001, the Metra Police Department would not have responded to a grade crossing incident involving the BNSF. The mechanical, engineering and safety departments also were unable to locate any record of this incident as their recordkeeping does not date back to 2001. Finally, the FOIA Department contacted Metra's Claims department to inquire if it had a record of this incident and were informed that one personal injury claim had been filed.

II. Denial

One personal injury claim in Metra's possession is being denied in its entirety under Section 7(1)(s) of FOIA. Section 7(1)(s) of FOIA authorizes units of government to withhold "[a]ny and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool Insurance or self-insurance (including any intergovernmental risk management association or self-insurance pool) claims, loss or risk management information, records, data, advice or communications." 5 ILCS 140/7(1)(s). Metra is a self-insured entity in such claims, operating essentially as both the insured and the insurer and has a duty to defend itself. Personal injury claims and information related to are therefore "proprietary information and records related to [Metra's] risk management." Accordingly, per Attorney Aruj Chaudhry the above-referenced personal injury claim is properly exempt from disclosure under 7(1)(s).

III. 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 partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
FOIA@metrarr.com