



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 21, 2018

Via electronic mail

Via electronic mail
Ms. Christy Berkquist, FOIA Officer
Lake County Sheriff's Office
25 South Martin Luther King Jr. Avenue
Waukegan, Illinois 60085
cberkquist@lakecountyil.gov

RE: FOIA Request for Review – 2018 PAC 52871

Dear [REDACTED] and Ms. Berkquist:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons stated below, the Public Access Bureau concludes that the Lake County Sheriff's Office (Sheriff's Office) did not improperly withhold body camera footage in response to a FOIA request submitted on behalf of [REDACTED].

On April 10, 2018, [REDACTED] on behalf of the [REDACTED] submitted a FOIA request to the Sheriff's Office seeking "copies of the body camera footage (audio & visual) of the officers who responded to an incident that occurred at the Clerk's Office of the 19th Judicial Circuit Court in Waukegan on March 16, 2018 at approximately 11:33 a.m."¹ On April 25, 2018, the Sheriff's Office denied [REDACTED] request pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). The Sheriff's Office cited Illinois Supreme Court Rule 63 in connection with its assertion that the footage was exempt under section 7(1)(a) of FOIA. On April 26, 2018, this office received [REDACTED] Request for Review contesting the denial of the FOIA request submitted on his behalf.

¹Freedom of Information Act Request Form from [REDACTED] to the Lake County Sheriff's Office (April 10, 2018).

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On May 1, 2018, this office sent the Sheriff's Office a copy of the Request for Review and requested copies of the withheld footage for our confidential review, as well as a detailed explanation of the factual and legal bases for the asserted exemption. The Public Access Bureau received a letter from The Honorable Jay W. Ukena, Chief Judge, Circuit Court, Nineteenth Judicial Circuit, dated May 7, 2018, asserting that the body camera videos were property of the judicial branch and not subject to FOIA, or, alternatively, were exempt from disclosure pursuant to section 7(1)(a) of FOIA. On May 16, 2018, the Sheriff's Office responded by adopting the letter from Judge Ukena as its response to [REDACTED] Request for Review. On May 16, 2018, this office forwarded copies of Judge Ukena's letter and the Sheriff's Office's answer to [REDACTED]; he did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2016); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

In its answer to this office, the Sheriff's Office asserted that disclosure of the footage sought by [REDACTED] is limited by Illinois Supreme Court Rule 63. In particular, the Sheriff's Office asserted that footage captured inside the Lake County Circuit Clerk's Office (Circuit Clerk's Office) by Sheriff's Office deputies assigned to the Court Security Unit "are not public records but are records of the judicial branch and not subject to FOIA[.]"²

Illinois Supreme Court's rules "have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). The Illinois Supreme Court has explained:

When interpreting supreme court rules, our court is guided by the same principles applicable to the construction of statutes. [Citations.] With rules, as with statutes, our goal is to ascertain and give effect to the drafters' intention. [Citation.] The most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning. *People v. Marker*, 233 Ill. 2d 158, 164–65 (2009).

²Letter from The Honorable Jay W. Ukena, Chief Judge, Circuit Court, Nineteenth Judicial Circuit, Lake County, Illinois, to Matt Hartman, Assistant Attorney General, Public Access Bureau (May 7, 2018), at 3.

Illinois Supreme Court Rule 63, titled "A Judge Should Perform the Duties of Judicial Office Impartially and Diligently[,]" is one of the canons of the Judicial Code of Conduct.³ The Appendix to Rule 63 provides, in pertinent part:

All recordings from security cameras monitoring court facilities are the property of the local circuit courts and are deemed to be in the possession of the local circuit courts notwithstanding actual possession by another party. (Emphasis added.) Ill. S. Ct. R. 63, Appendix (last amended February 2, 2017).

On the other hand, section 1.2 of FOIA (5 ILCS 140/1.2 (West 2016)) provides that all public records "in the custody or possession of a public body are presumed to be open to inspection or copying." FOIA broadly defines "public records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body. 5 LCS 140/2(c) (West 2016).

To the extent Supreme Court Rule 63 conflicts with these provisions of FOIA by designating footage from security cameras monitoring court facilities as property of the circuit courts, even if the footage is in the physical custody of a public body such as the Sheriff's Office, the Rule takes precedence: "It is well settled in Illinois that where a supreme court rule conflicts with a statute on the same subject, 'the rule will prevail.'" *Dalan/Jupiter, Inc. ex rel. JRC Midway Marketplace, L.P. v. Draper & Kramer, Inc.*, 372 Ill. App. 3d 362, 370 (1st Dist. 2007) (quoting *O'Connell v. St. Francis Hospital*, 112 Ill. 2d 273, 281 (1986)).

The Illinois Supreme Court has held that "clerks of the circuit courts in this State *** are nonjudicial members of the judicial branch of State government." *Drury v. McLean County*, 89 Ill. 2d 417, 420 (1982). Thus, the Circuit Clerk's Office within the Lake County Courthouse (Courthouse) is a "court facility" as that term is used in the Appendix to Rule 63.

³Ill. S. Ct. R. 63.

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Based on its plain language, the clear intent of the Illinois Supreme Court in adopting the Appendix to Rule 63 was to designate recordings captured for security purposes from inside the Courthouse as Circuit Court property.⁴ In this matter, the footage was captured by members of the Court Security Unit, who are assigned to the Courthouse to "maintain the security of the courthouse." 55 ILCS 5/3-6023 (West 2016). The Circuit Court denied the Sheriff's Office request to release the footage at issue.⁵ Because the requested footage is Circuit Court property despite being in the physical custody of the Sheriff's Office, and because the Circuit Court directed the Sheriff's Office not to release the footage, this office concludes that there is no basis on which to find that the Sheriff's Office violated FOIA by withholding the footage.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address at the bottom of the first page if you have questions. This letter serves to close this file.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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cc: The Honorable Jay W. Ukena, Chief Judge
Circuit Court, Nineteenth Judicial Circuit
Lake County, Illinois
18 North County Street
Waukegan, Illinois 60085

⁴The Circuit Court is not subject to requirements of FOIA. *See Copley Press, Inc. v. Administrative Office of the Courts*, 271 Ill. App. 3d 548, 553 (1995) ("The lack of any reference to the courts or judiciary must be taken as an intent to exclude the judiciary from the disclosure requirements of the Act.").

⁵Court Surveillance/Body Camera Video Request Form, Administrative Office of the Nineteenth Judicial Circuit Court (April 20, 2018)