



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 31, 2017

Via electronic mail

Via electronic mail
Ms. Brenda Hunsley
FOIA Records Clerk
Springfield Police Department
City of Springfield
300 South Seventh Street, Room 106
Springfield, Illinois 62701
brenda.hunsley@springfield.il.us

RE: FOIA Request for Review – 2017 PAC 48793

Dear [REDACTED] and Ms. Hunsley:

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 explained below, the Public Access Bureau concludes that the City of Springfield (City) did not improperly withhold recordings responsive to [REDACTED] FOIA request.

On July 17, 2017, [REDACTED] submitted a FOIA request to the City seeking officer-worn body camera recordings and transcripts of the supervisors who were dispatched to 2127 East Stuart on February 27, 2017. On July 18, 2017, the City denied the recordings citing section 7.5(cc) of FOIA (5 ILCS 150/7.5(cc) (West 2016)), but did not address the request for transcripts. On July 19, 2017, the Public Access Bureau received a Request for Review from [REDACTED] contesting only the City's denial of the recordings.

On July 24, 2017, the Public Access Bureau sent a copy of the Request for Review to the City and asked it to provide copies of the officer-worn body camera recordings it had withheld together with a detailed explanation of the factual and legal bases for its assertion that the recordings are exempt from disclosure under section 7.5(cc) of FOIA. On July 24, 2017,

Ms. Brenda Hunsley
August 31, 2017
Page 2

[REDACTED] contacted this office stating that he "was, in fact, the subject of the video in question."¹ On August 1, 2017, the City furnished copies of the recordings for our confidential review and a written response. On August 4, 2017, this office forwarded the City's written response to [REDACTED]; he did not reply.

ANALYSIS

"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).

Section 7.5(cc) of FOIA and Section 10-20(b) of the Body Camera Act

Section 7.5(cc) of FOIA exempts from inspection and copying "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act [Body Camera Act], *except to the extent authorized under that Act.*" (Emphasis added.) Section 10-20(b) of the Body Camera Act (50 ILCS 706/10-20(b) (West 2016)) provides:

(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, discharge of a firearm, use of force, arrest or detention, or resulting death or body harm, 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;

¹E-mail from [REDACTED] to Barbara Yattoni, [Administrative Clerk], Office of the Attorney General (July 24, 2017).

(2) except as provided in paragraph (1) of this subsection (b), any recording which is flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and

(3) upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, the recording to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative.

Section 10-20(a)(7)(B) of the Body Camera Act provides:

[A]ny and all recordings made with an officer-worn body camera must be destroyed [after 90 days], unless any encounter captured on the recording has been flagged. An encounter is deemed to be flagged when:

- (i) a formal or informal complaint has been filed;
- (ii) the officer discharged his or her firearm or used force during the encounter;
- (iii) death or great bodily harm occurred to any person in the recording;
- (iv) the encounter resulted in a detention or an arrest, excluding traffic stops which resulted in only a minor traffic offense or business offense;
- (v) the officer is the subject of an internal investigation or otherwise being investigated for possible misconduct;
- (vi) the supervisor of the officer, prosecutor, defendant, or court determines that the encounter has evidentiary value in a criminal prosecution; or

[REDACTED]
Ms. Brenda Hunsley
August 31, 2017
Page 4

(vii) the recording officer requests that the video be flagged for official purposes related to his or her official duties.

The City's response stated that the withheld recordings capture "follow up conducted on February 28, 2017 by Sgt. Joe Behl and Lt. Andrew Dodd related to an altercation that took place between [REDACTED] and a family member of a suspect in Domestic Violence call from service on February 27, 2017."² The City further stated that although the officer-worn body camera recordings of the incident on February 27, 2017, were flagged, the requested recordings captured by the sergeant and lieutenant from February 28, 2017, were not flagged. The City asserted that it did not provide [REDACTED] with copies of the recordings because the recordings were not flagged and because he was not the subject of the encounter captured on the recordings.

The Public Access Bureau has previously determined that, under section 10-20(b) of the Body Camera Act, the subject of the encounter may obtain copies of an officer worn body camera recording even if the recording has not been flagged. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 46719, issued August 16, 2017, at 5; Ill. Att'y Gen. PAC Req. Rev. Ltr. 41069, issued, July 20, 2016, at 4. The plain language of section 10-20(b)(3) of the Body Camera Act (50 ILCS 706/10-20(b)(3) (West 2016)) restricts the disclosure of a non-flagged recording to the subject of the encounter *captured on the recordings*, the subject's attorney, the officer who captured the recording, and the officer's legal representative.

[REDACTED] asserted that he is authorized to receive copies of the recordings because he was the subject of the videos. As noted above, section 10-20(b)(3) of the Body Camera Act permits the "subject of the encounter" appearing on the recording to receive copies of the recording. Although the Body Camera Act does not define the term "subject of the encounter," it does define "law enforcement-related encounters or activities" as "traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd control, traffic control, non-community caretaking interactions with an individual while on patrol, or any other instance in which the officer is enforcing the laws of the municipality, county, or State." 50 ILCS 706/10-10 (West 2016). Thus, the "subject of the encounter" is the person who interacted with a law enforcement officer in the course of a law enforcement activity.

Based on our review of the withheld recordings, [REDACTED] does not appear on the recordings. Accordingly, he is not the subject of the encounter *captured on the recordings*. Further, based on the available information, [REDACTED] is not the attorney of the subject of the encounter, one of the officers who captured the recordings, or the legal representative of one of

²Letter from Brenda M. Hunsley, FOIA Records Clerk, Springfield Police Department, to Matt Hartman, Assistant Attorney General, Public Access Bureau (August 1, 2017), at 2.

[REDACTED]
Ms. Brenda Hunsley

August 31, 2017

Page 5

the officers. Because the recordings have not been flagged and because [REDACTED] is not one of the persons who are authorized to obtain copies of non-flagged recordings under section 10-20(b)(3) of the Body Camera Act, this office concludes that the City did not improperly withhold copies of the body camera recordings from [REDACTED] pursuant to section 7.5(cc) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This correspondence serves to close this matter. If you have questions, you may contact me at (217) 782-9054 or the Springfield address listed at the bottom of the first page.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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