

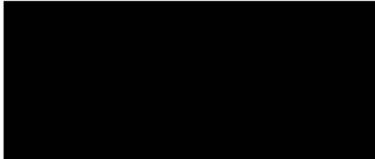


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 6, 2023

Via electronic mail



Via electronic mail

Mr. Jeffrey R. Jurgens
Corporation Counsel
City of Bloomington
115 East Washington Street, Suite 403
Bloomington, Illinois 61701
jjurgens@cityblm.org

RE: FOIA Request for Review – 2022 PAC 74512; City No. 1737-2022

Dear [REDACTED] and Mr. Jurgens:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the City of Bloomington (City) did not improperly redact the body camera footage responsive to [REDACTED] November 23, 2022, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the City seeking copies of a 911 call recording and body camera recordings concerning an incident involving her at a YMCA. On December 2, 2022, the City responded, providing her with copies of responsive records but redacting certain information pursuant to sections 7(1)(c) and 7.5(cc) of FOIA.¹ On December 8, 2022, [REDACTED] submitted a Request for Review contesting the partial denial

¹ 5 ILCS 140/7(1)(c) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022; 5 ILCS 140/7.5(cc) (West 2021 Supp.), as amended by Public Acts 102-813, effective May 13, 2022; 102-1042, effective June 3, 2022.

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of the body camera footage as to the redaction of some of the audio. She explained that the incident involved the YMCA calling the police over her dispute with the front desk staff member about whether she had properly checked in.

On December 15, 2022, this office forwarded a copy of the Request for Review to the City and asked it to provide this office with an unredacted copy of the body camera recording for our confidential review, together with a detailed explanation of the factual and legal bases for redacting audio from the recording. On December 30, 2022, this office received the requested materials. On January 4, 2023, ██████████ submitted a 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 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2020)). 15 ILCS 205/7(c)(3) (West 2020). FOIA governs the disclosure of existing public records; it does not govern other matters such as the actions of YMCA staff members or allegations of defamation. Accordingly, this determination letter is limited to analyzing whether FOIA permitted the City to redact portions of the audio of the body camera recording.

Section 7.5(cc) of FOIA exempts from disclosure "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act." Section 10-20(b) of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act)² provides, in relevant part:

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

²50 ILCS 706/10-20(b) (West 2021 Supp.).

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 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;

(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.

* * *

* * * Any recording disclosed under the Freedom of Information Act shall be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter. **Nothing in this subsection (b) shall require the disclosure of any recording or portion of any recording which would be exempt from disclosure under the Freedom of Information Act.** (Emphasis added.)

Under the plain language of section 10-20(b) of the Body Camera Act, even when body camera footage is potentially subject to disclosure under FOIA because the requester is the subject of the encounter under section 10-20(b)(3), a public body still may rely on any applicable FOIA exemptions to redact or withhold the footage.

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In its response to this office, the City asserted that it redacted the portions of the body camera recording depicting the YMCA staff members because they are not the officer, a subject of the encounter, or directly involved in the encounter, per the language of section 10-20(b) as quoted above. The City stated: "It is our understanding, from talking with the City of Bloomington Police Department, that the body camera video was not flagged per the Act, and only portions of the video that the requester was not on were blurred and muted."³ In her reply, ██████████ questioned how it could be that the staff members with whom she interacted were not directly involved in the encounter. On January 10, 2023, ██████████ sent this office an e-mail stating that she knows the name of the front desk employee who was involved in the incident, and that she recalled him and the facility manager.

This office has compared the redacted body camera recording that the City provided to ██████████ with the full version. In the redacted version, the video is completely muted and somewhat blurred as the police officer drives to the YMCA, enters the building and interacts with the front desk employee for approximately 40 seconds as they walk towards the locker room. When the body camera comes within view of ██████████, the audio turns on and her image is not blurred, though everything around her remains somewhat blurred. The audio captures the things said by ██████████, the police officer, the front desk staff member, and the facility manager or director, until ██████████ leaves. While all of those individuals are gathered, the police officer explains that the incident does not sound criminal in nature, but instead is a matter of whether the YMCA wishes for ██████████ to leave for the day as a result of the check-in dispute; the building manager or director confirms that the YMCA does want her to do so. After ██████████ exits the frame, the two staff members continue to discuss the matter with the police officer for approximately one minute before the video ends.

Even assuming that the two YMCA staff members whose images are blurred and words are muted in the redacted recording were "directly involved in the encounter" under section 10-20(b) of the Body Camera Act, the redacted audio is nonetheless exempt from disclosure. Section 7(1)(d)(iv) of FOIA⁴ exempts from disclosure information that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies." This exemption allows law enforcement agencies to withhold the identities of persons who provide them with information. *See Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because

³Letter from Jeffrey R. Jurgens, Corporation Counsel, City of Bloomington, to Joshua M. Jones, Deputy Bureau Chief, Office of the Attorney General, Public Access Bureau (December 21, 2022), at 1.

⁴5 ILCS 140/7(1)(d)(iv) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

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they provided information to police department); *see also, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 56481, issued January 25, 2019 (identities of individuals who complained to police about a person exempt from disclosure). Further, the contents of such statements to the police may be withheld if disclosure "would necessarily result in the disclosure of the identity of the source" of information and, therefore, "redaction * * * cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App 3d 421, 426 (4th Dist. 1994). The section 7(1)(d)(iv) exemption applies even if the person who submits the FOIA request is aware of the identity of a complainant. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 23372, issued August 21, 2013, at 2. The Public Access Bureau has previously determined that body camera recordings depicting individuals who provided information to law enforcement about an incident were exempt from disclosure under section 7(1)(d)(iv) where redactions not suffice to conceal their identities. Ill. Att'y Gen. PAC Req. Rev. Ltr. 74075, issued January 17, 2023.

In this instance, the City redacted the audio of the recording only when the two complainants were speaking with just the police officer, rather than when ██████████ was present. Disclosing the audio of these segments would unavoidably identify the complainants as having made these statements, as their identities are evident from their staff positions and ██████████ ██████████ personal knowledge. Although ██████████ argues that she has the right to know what was said about her, FOIA does not require such disclosure; section 7(1)(d)(iv) exists to permit withholding such information, even when the incident at issue is relatively minor in nature. Thus, under these circumstances, the City did not improperly redact the audio of the body camera footage pursuant to section 7(1)(d)(iv) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,

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JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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