



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 4, 2023

Via electronic mail

[REDACTED]

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

RE: FOIA Request for Review – 2022 PAC 75330

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 2022)). For the reasons stated below, the Public Access Counselor concludes that the City of Bloomington (City) improperly redacted records responsive to [REDACTED] November 27, 2022, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the City seeking body camera footage from two specified officers in connection with an incident that occurred on September 11, 2022. On December 5, 2022, the City provided body camera recordings with portions redacted pursuant to sections 7(1)(c) and 7.5(cc) of FOIA (5 ILCS 140/7(1)(c) (West 2022); 5 ILCS 140/7.5(cc) (West 2022)). On February 2, 2023, this office received [REDACTED] Request for Review contesting the City's redaction of portions of the body camera recordings. [REDACTED] stated objection was that the recordings he received were extensively blurred.

On February 14, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the City and requested both unredacted and redacted copies of the recordings for this office's confidential review, along with a detailed explanation of the factual and legal bases

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for the asserted exemptions. On February 27, 2023, the City responded. On March 8, 2023, this office forwarded the City's response to [REDACTED]; he did not reply.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoian v. Illinois Dept. 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 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).

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)¹ 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 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,

¹50 ILCS 706/10-20(b) (West 2022).

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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. (Emphasis added.)

Thus, sections 10-20(b)(1) and 10-20(b)(2) generally require the disclosure of flagged recordings, but the consent of the subject of the underlying encounter is also required if the subject had a reasonable expectation of privacy at the time of the recording.

Section 10-20(b) further provides, in pertinent part:

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.)

The plain language of this section authorizes public bodies to redact portions of recordings that are exempt from disclosure under the various exemptions in FOIA other than section 7.5(cc) even if they are not prohibited from being disclosed by the Body Camera Act or section.

In its response to this office, the City acknowledged that it had blurred the images in the recordings to conceal the identities of persons in the videos who are not the subjects of the encounter. The City further argued that it needed to blur even the subject(s) of the encounter because it could not confirm that [REDACTED] was a subject. The City also offered to provide a revised copy of the recordings if [REDACTED] presents identification to verify and match his identity to the video. The City did not dispute [REDACTED] contention in both his FOIA request and Request for Review that these recordings are flagged due to the filing of a complaint.

Section 10-20(b)(1) of the Body Camera Act only prohibits disclosure of a flagged recording without the consent of the subject if the subject "has a reasonable expectation

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of privacy, at the time of the recording[.]" This office has previously determined that a subject has a reasonable expectation of privacy in his own home. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 60599, issued January 10, 2020. There is a lesser expectation of privacy in public settings. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 42379, issued September 6, 2016, at 4 (sheriff's office improperly denied a video of a hallway inside a courthouse under the exemption in section 7(1)(c) of FOIA,² for information that would constitute an unwarranted invasion of personal privacy if disclosed, noting that "[i]n indeed, there is no indication that a member of the public who was present at the time of the recordings could not have viewed and recorded the same activities"); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 34486, issued July 2, 2015, at 5 (school district did not meet its burden of showing that video of the outside of a school after school hours was exempt under section 7(1)(c) when no evidence suggested that area was not fully visible to the public).

The recordings responsive to [REDACTED] FOIA request occurred on a busy public street. The subject of the recording was not detained or incapacitated. Instead, he was voluntarily present and engaged in an extended interaction with police as bystanders walked by, even after police repeatedly ordered him to leave the area. Under these circumstances, the subject of the recording does not have a reasonable expectation of privacy at the time of the encounter. Accordingly, section 10-20(b)(1) of the Body Camera Act is not applicable to the recording at issue in this matter; instead, the recording is subject to disclosure under section 10-20(b)(2) of the Body Camera Act.

The City argued that it blurred the video to avoid facial recognition of all individuals present on the video, as required by section 10-20(b) of the Body Camera Act, quoted above. The City highlighted the portion of that provision that requires a public body to redact a recording "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[.]" and argued:

In the instant case, the subjects of the encounter did not identify themselves and the City accordingly had no way of verifying whether the individual that made the request is actually a subject of the encounter. As a result, in accordance with Section 10-20(b), the City blurred the images of those clips, while leaving the audio.³

²5 ILCS 140/7(1)(c) (West 2022).

³Letter from Jeffrey. R. Jurgens, Corporation Counsel, City of Bloomington, Illinois, to Benjamin Silver, Assistant Attorney General, Office of the Attorney General, Public Access Bureau, at 2 (February 27, 2023).

The Public Access Bureau has previously determined that "the subject of the encounter" for purposes of the Body Camera Act means a person who appeared in the recording and "interacted with a law enforcement officer in the course of a law enforcement activity."⁴ Ill. Att'y Gen. PAC Req. Rev. Ltr. 48793, issued August 31, 2017, at 4 (concluding that police officer who was discussed in, but not depicted in, body camera recordings was not authorized to receive copies of the recordings under section 10-20(b)(3) of the Body Camera Act).

Based on this office's review of the video, more than one individual engaged in interactions with the officers during the encounter; each of these individuals is either "a subject of the encounter, or directly involved in the encounter." In contrast, the individuals in the background of the recording that do not speak with the officers are neither subjects of the encounter nor directly involved in the encounter. Contrary to the City's reading, section 10-20(b) neither requires the City to blur any subjects' faces, nor does it permit the City to do so. This is the case regardless of whether the requester is one of the subjects of the encounter captured on the recording. A public body may redact a recording subject to disclosure under 10-20(b)(2) only to remove the identities of individuals who appear on the recording and are not the officer, a subject of the encounter, or directly involved in the encounter, or if any portion of the recording is exempt from disclosure under FOIA.

Section 7(1)(d)(iv) of FOIA⁵ exempts from disclosure:

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

* * *

(iv) 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; except that the

⁴The Body Camera Act defines "law enforcement-related encounters or activities" as any "instance in which the officer is enforcing the laws of the municipality, county, or State. * * * [but] does not include when the officer is completing paperwork alone, is participating in training in a classroom setting, or is only in the presence of another law enforcement officer." 50 ILCS 706/10-10 (West 2022).

⁵5 ILCS 140/7(1)(d)(iv) (West 2022).

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identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request[.]

One of the individuals whose image was blurred in the redacted recordings is an individual who provided information to police, apparently in connection with a complaint against the requester. Because disclosure of the image would unavoidably identify that individual, it is permissible for the City to blur that person's image pursuant to section 7(1)(d)(iv) of FOIA.⁶

In accordance with the conclusions expressed above, this office requests that the City furnish [REDACTED] with copies of the video recordings responsive to his request subject only to permissible redactions pursuant to section 7(1)(d)(iv) of FOIA and also "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." 50 ILCS 706/10-20(b) (West 2022).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,
[REDACTED]
BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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⁶In its response to the FOIA request, the City explained that it redacted the recording in reliance on section 7(1)(c) of FOIA; the City did not renew the argument in its response to this office. Regardless, because the recording documents an encounter on a public street that became the subject of a complaint against the officers involved, and the recording does not display any highly personal behavior or activities, section 7(1)(c) does not permit the City to blur the identity of the individual who interacted with officers throughout the majority of the encounter.