



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

March 11, 2024

*Via electronic mail*

[REDACTED]  
[REDACTED]  
[REDACTED]

*Via electronic mail*

Mr. Bryan Anderson  
Lieutenant  
Galesburg Police Department  
55 West Tompkins Street  
Galesburg, Illinois 61401  
c/o: jcolwell@ci.galesburg.il.us

RE: FOIA Request for Review – 2024 PAC 79651

Dear [REDACTED] and Mr. Anderson:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5 (West 2022), as amended by Public Act 103-069, effective January 1, 2024).

On October 19, 2023, [REDACTED] submitted a FOIA request to the Galesburg Police Department (Department) seeking, in relevant part, body and dash camera footage from an accident on September 28, 2023. On October 24, 2023, the Department responded that it was unable to provide responsive video recordings due to an operational issue with its GETAC system. On December 26, 2023, [REDACTED] submitted a second FOIA request for the same records. On December 28, 2023, the Department responded that its GETAC system was once again functional but that it was unable to recover video from the time period requested. On January 8, 2024, this office received [REDACTED] Request for Review contesting the Department's response.

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██████████  
Mr. Bryan Anderson  
March 11, 2024  
Page 2

On January 25, 2024, this office forwarded a copy of the Request for Review to the Department and asked it to provide an explanation of its search for records responsive to ██████████ ██████████ FOIA request, including an explanation of the operational issues with the Department's GETAC system and any ongoing efforts to retrieve the requested records. On February 16, 2024, the Department responded. On that same date, this office forwarded a copy of the Department's response to ██████████. On February 27, 2024, this office received ██████████ 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 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006).

In its response to his office, the Department explained that GETAC, a company that the Department contracts to operate its body-worn camera system, had accidentally deleted all recordings, both body and dash camera footage, for the time period that included the incident for which ██████████ requested video. The Department further explained that, although GETAC had recovered a substantial amount of data, the video requested by ██████████ had been automatically deleted after 90 days on December 27, 2023, which was one day after ██████████ second FOIA request.

Although not cited by the Department, section 7.5(cc) of FOIA (5 ILCS 140/7.5(cc) (West 2022), as amended by Public Acts 103-008, effective June 7, 2023; 103-034, effective June 9, 2023; 103-142, effective January 1, 2024; 103-372, effective January 1, 2024; 103-508, effective July 1, 2023; 103-580, effective December 8, 2023) expressly exempts from inspection and copying "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, **except to the extent authorized under that Act.**" (Emphasis added.) ██████████ contended in his Request for Review and reply to the Department's answer that the recording at issue should have been flagged by the Department because his brother was severely injured in the traffic accident, and that flagged footage should have been saved for two years.

Section 10-20(b) of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act) (50 ILCS 706/10-20(b) (West 2022)) 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, 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.)

The Public Access Bureau has previously determined that the plain language and intent of section 10-20(b) of the Body Camera Act requires only the disclosure of flagged recordings in which death or bodily harm resulted from some form of engagement with law enforcement. Ill. Att'y Gen. PAC Req. Rev. Ltr. S-0634, issued September 14, 2021, at 3 (body camera footage exempt from disclosure pursuant to section 7.5(cc) because "[t]he responding officer arrived on scene and initiated the recording after the construction accident had occurred; there is no indication that the subject of the recording was injured as a result of the discharge of a firearm or use of force by a police officer.").

Based on this office's review, ██████████ was not authorized to obtain the requested body camera footage under any of the exceptions that permit disclosure in section 10-20(b) of the Body Camera Act, even if the footage had not been inadvertently deleted. According to ██████████ FOIA request and the Department's response to this office, officers were dispatched to assist following an incident that injured a bicyclist, and the recording at issue captures only footage after the incident had occurred. There is no indication that the requested footage was flagged for purposes of section 10-20(b)(2) of the Body Camera Act because there was no injury resulting from some form of interaction with officers. Accordingly, this recording

