



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 6, 2020

Via electronic mail



RE: FOIA Request for Review – 2020 PAC 65010; CPD File No.: P591611

Dear [REDACTED]:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that your Request for Review is unfounded.

On July 15, 2020, you submitted a FOIA request to the Chicago Police Department (CPD) seeking copies of the officer-worn body camera footage captured by CPD officers' when responding to, and during the investigation of, a particular motor vehicle accident that was referred to in crash report JD296537. On September 29, 2020, CPD responded to your request by stating, "[y]our request was reviewed by CPD, search results for body worn camera [BWC] for RD#JD296537, FOIA determined Non-Responsive. Victim was not captured in any BWC Footage; therefore, CPD has no responsive records to your request as it is stated."¹ Your Request for Review disputes CPD's response, asserting your request sought **all** of the body camera recordings related to the accident not only the footage that included the victim.

¹Letter from A. Armour, Freedom of Information Act Officer, Chicago Police Department, to [REDACTED] (September 29, 2020).

Although not cited by CPD, section 7.5(cc) of FOIA²⁵ 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." With respect to disclosure of body camera recordings pursuant to FOIA, section 10-20(b) of the Body Camera Act 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;

(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.)

²⁵ ILCS 140/7.5(cc) (West 2018), as amended by Public Acts 101-013, effective June 12, 2019; 101-027, effective June 25, 2019; 101-081, effective July 12, 2019; 101-221, effective January 1, 2020; 101-236, effective January 1, 2020; 101-375, effective August 16, 2019; 101-377, effective August 16, 2019; 101-452, effective January 1, 2020; 101-466, effective January 1, 2020; 101-600, effective December 6, 2019; 101-620, effective December 20, 2019.

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Reading the Body Camera Act in its entirety, the Attorney General has previously determined that the Body Camera Act does not flatly prohibit the disclosure of all body camera recordings that have not been flagged. Ill. Att'y Gen. Pub. Acc. Op. No. 19-001, issued January 9, 2019, at 8. Instead, the Attorney General determined that the General Assembly intended section 10-20(b)(3) of the Body Camera Act to permit both a subject of the recording and the officer, and their legal representatives, to obtain a copy of the officer-worn body camera recording in accordance with FOIA, regardless of whether or why it had been flagged. Ill. Att'y Gen. Pub. Acc. Op. No. 19-001, issued January 9, 2019, at 10.

The Public Access Bureau has construed the "subject of the encounter" for purposes of the Body Camera Act as the person who appeared in the recording and "interacted with a law enforcement officer in the course of a law enforcement activity." Ill. Att'y Gen. PAC Req. Rev. Ltr. 48793, issued August 31, 2017, at 4 (concluding that a police officer who was not captured on the body camera recordings at issue, but whose conduct was discussed on the recordings, was not authorized to receive copies of the recordings under section 10-20(b)(3) of the Body Camera Act because the officer "[d]id not appear on the recordings."). Further, this office has previously determined that non-flagged officer-worn body camera recordings related to a traffic accident were not required to be disclosed to the injured party or her attorney because the injured party was not captured on the recordings, and therefore, was not the subject of the encounter. Ill. Att'y Gen. PAC Req. Rev. Ltr. 57517, issued August 1, 2019, at 5-6.

On October 5, 2020, in an e-mail with an Assistant Attorney General in the Public Access Bureau, Sergeant Peter Edwards, Commander of CPD's FOIA Unit, confirmed that the camera recordings you requested have not been flagged. Sgt. Edwards also informed this office and that he reviewed the requested recordings and verified that you were not captured on the footage because you were transported by ambulance prior to the officers' arrival at the scene. Therefore, as discussed above, you are not the "subject of the encounter" under section 10-20(b) of the Body Camera Act. Additionally, you have not alleged nor provided any information to indicate that you are the officer involved in the recording or the officer's legal representative. This office has not received any facts from which it could infer that any of the reasons in section 10-20(b)(2) of the Body Camera Act that require recordings to be flagged occurred during the encounter specified in your FOIA request. Because you are not among the persons who are authorized to obtain copies of non-flagged recordings under section 10-20(b)(3) of the Body Camera Act, CPD did not improperly withhold copies of the requested camera recordings you seek pursuant to section 7.5(cc) of FOIA. Accordingly, this office has determined that your Request for Review is unfounded.

[REDACTED]
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If you have questions, you may contact me at sbarnaby@atg.state.il.us or (312) 550-4480. This letter serves to close this file.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Ms. Dana O'Malley
Assistant General Counsel
Office of Legal Affairs
Chicago Police Department
3510 South Michigan Avenue, 5th Floor
Chicago, Illinois 60653-1020
pacola@chicagopolice.org