



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

September 28, 2023

*Via electronic mail*

Mr. Jonah Newman  
Editor  
Injustice Watch  
55 East Jackson Boulevard, Suite 640  
Chicago, Illinois 60604  
jonahnewman@injusticewatch.org

*Via electronic mail*

Ms. Sarah M. Smith  
Assistant General Counsel - FOIA  
Cook County Sheriff's Office  
50 West Washington Street, Room 704  
Chicago, Illinois 60602  
Sarah.Smith@ccsheriff.org

RE: FOIA Request for Review – 2022 PAC 70185

Dear Mr. Newman and Ms. Smith:

This determination 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 Bureau concludes that the Cook County Sheriff's Office (Sheriff's Office) failed to prove by clear and convincing evidence that the disputed record responsive to Mr. Jonah Newman's December 16, 2021, FOIA request is exempt from disclosure.

On that date, Mr. Newman submitted a FOIA request to the Sheriff's Office on behalf of Injustice Watch seeking copies of certain e-mails from e-mail logs. On February 18, 2022, the Sheriff's Office responded, in relevant part, by denying the e-mail "RE: Incident Log

Mr. Jonah Newman  
Ms. Sarah M. Smith  
September 28, 2023  
Page 2

30 May 2020" pursuant to sections 7(1)(a), 7(1)(d-5), and 7(1)(d)(v) of FOIA.<sup>1</sup> On March 1, 2022, Mr. Newman submitted a Request for Review contesting the denial of that e-mail.

On March 16, 2022, this office forwarded a copy of the Request for Review to the Sheriff's Office and asked it to provide a copy of the withheld record for this office's confidential review, together with a detailed description of the applicability of the asserted exemptions. On that same date, the Sheriff's Office furnished those materials. On March 25, 2022, this office forwarded a copy of the Sheriff's Office's response to Mr. Newman; he did not submit 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 2022); *see also Southern Illinoisan 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 2022).

In its answer to this office's inquiry letter, the Sheriff's Office explained the context of the e-mail in question as follows:

We denied production of this record after I spoke to Director Aracelis Gotay of our Incident Command Center. Director Gotay provided that the record was highly confidential and had only been seen by one other person. The email concerns "Operation Cermak", an operation monitoring protests of the death of George Floyd and other unrest in the city on May 30, 2020.<sup>[2]</sup>

### **Section 7(1)(a) and LEADS**

Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Sheriff's Office asserted that it properly denied the request under section 7(1)(a) because "Direct Gotay provided that the email includes information

---

<sup>1</sup>5 ILCS 140/7(1)(a), (1)(d-5), (1)(d)(v) (West 2022).

<sup>2</sup>E-mail from Sarah M. Smith, Assistant General Counsel-FOIA, Cook County Sheriff's Office, to Steven Silverman (March 16, 2022).

Mr. Jonah Newman  
Ms. Sarah M. Smith  
September 28, 2023  
Page 3

provided by other law enforcement agencies, including information from CLEAR<sup>[3]</sup> and LEADS[,]"<sup>4</sup> though the Sheriff's Office acknowledged that "[t]he email also includes information gathered while monitoring social media and other public websites."<sup>5</sup> The Sheriff's Office referenced section 1240.80(d) of title 20 of the Administrative Code (20 Ill. Adm. Code §1240.80(d) (2022), last amended at 23 Ill. Reg. 7521, effective June 18, 1999), which provides that "LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information." This provision specifically prohibits disclosure of LEADS data. *See Better Government Ass'n v. Zaruba*, 2014 IL App (2d) 140071, ¶ 27 ("The regulations make clear that the public is not entitled to view or possess data that is transmitted through, received through, or stored in LEADS.").

This office's review of the withheld record revealed that it does not contain any LEADS print-outs; no portion of the record is self-evidently LEADS data or data that appears to derive from LEADS, such as criminal history record information. In addition, the Sheriff's Office did not identify LEADS as the source of any specific information in the withheld record. Therefore, the Sheriff's Office failed to prove by clear and convincing evidence that any information in the record is exempt from disclosure under section 7(1)(a) of FOIA as confidential LEADS data.

### **Section 7(1)(d)(v) of FOIA**

Section 7(1)(d)(v) of FOIA exempts from disclosure:

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:

\* \* \*

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of

---

<sup>3</sup>"CLEAR" is an acronym for "Citizen Law Enforcement Analysis and Reporting," a database system used by the Chicago Police Department.

<sup>4</sup>"LEADS" is an acronym for "Law Enforcement Agencies Data System."

<sup>5</sup>E-mail from Sarah M. Smith, Assistant General Counsel-FOIA, Cook County Sheriff's Office, to Steven Silverman (March 16, 2022).

Mr. Jonah Newman  
Ms. Sarah M. Smith  
September 28, 2023  
Page 4

crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request[.]

The Sheriff's Office asserted that "[b]ecause of the highly sensitive nature of the information in the email and the techniques used to gather the information," it denied the request under section 7(1)(d)(v) "to protect disclosure of unique or specialized investigative techniques."<sup>6</sup>

Bare assertions without a detailed rationale do not satisfy a public body's burden of explaining how exemptions are applicable. *See Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 151 (2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)). "The public body satisfies its burden when it provides a detailed justification for the claimed exemption which addresses the specific documents requested and allows for adequate adversarial testing." *Turner v. Joliet Police Department*, 2019 IL App (3d) 170819, ¶ 10.

The Sheriff's Office's sparse explanation for the section 7(1)(d)(v) exemption is generalized and conclusory. The Sheriff's Office did not set forth facts suggesting that any unique or specialized techniques are depicted in the withheld record, nor did the Sheriff's Office provide facts suggesting that any law enforcement techniques discussed in the record are not generally used and known. Further, the Sheriff's Office did not explain how or why disclosure of the e-mail would cause it to endure demonstrable harm. Law enforcement monitoring of social media and other public websites is a common and generally-known technique. Accordingly, the Sheriff's Office failed to prove by clear and convincing evidence that the e-mail is exempt from disclosure under section 7(1)(d)(v).

### **Section 7(1)(d-5) of FOIA**

Section 7(1)(d-5) of FOIA exempts from disclosure:

A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and

---

<sup>6</sup>E-mail from Sarah M. Smith, Assistant General Counsel-FOIA, Cook County Sheriff's Office, to Steven Silverman (March 16, 2022).

Mr. Jonah Newman  
Ms. Sarah M. Smith  
September 28, 2023  
Page 5

only has access to the record through the shared electronic record management system.

The Sheriff's Office did not explain its assertion of section 7(1)(d-5) of FOIA to deny the request, except perhaps by stating that the record includes information obtained from CLEAR. By its plain language, the section 7(1)(d-5) exemption does not apply when the law enforcement agency that received the FOIA request created the record. The withheld e-mail was created by the Sheriff's Office. Further, while the exemption expressly does not apply when the law enforcement agency that received the request did not have a role in the events at issue in the record, the Sheriff's Office plainly participated in the events that are the subject of the e-mail. Lastly, although the exemption expressly applies only when the law enforcement agency solely has access to the record through a shared electronic record management system, the e-mail was sent by the Sheriff's Office, and the Sheriff's Office did not set forth facts illustrating that the record consists of information to which it had access only through a shared electronic record management system. Therefore, the Sheriff's Office failed to prove by clear and convincing evidence that the e-mail is exempt from disclosure under section 7(1)(d-5).

For the reasons stated above, to remedy its improper denial, the Public Access Bureau asks the Sheriff's Office to provide Mr. Newman with a copy of the withheld record.

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](mailto:joshua.jones@ilag.gov).

Very truly yours,

A solid black rectangular redaction box covering the signature of Joshua M. Jones.

JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

70185 f 71a improper 71d5 improper 71dv improper co