



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 20, 2025

Via electronic mail



Via electronic mail

Mr. Michael Castaldo, III
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.
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RE: FOIA Request for Review – 2024 PAC 83308; Village W010313-082524

Dear Mr. [REDACTED] and Mr. Castaldo:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons that follow, the Public Access Bureau concludes that the Village of Oak Brook (Village) improperly redacted the body camera footage responsive to Mr. [REDACTED]'s August 25, 2024, FOIA request.

On that date, Mr. [REDACTED] submitted a FOIA request to the Village via its FOIA portal seeking the body camera and dash camera footage of the officer who pulled over a named person and placed a stop stick device on his vehicle before arresting him. Mr. [REDACTED] identified the date, time, and location of the incident and specified the footage he sought:

The officer that pulled him over placed a "stop stick" device on the vehicle, anticipating that the driver would flee (which he did). * *
* I'm requesting 2 records that will show the totality of the incident and arrest **from the First Responder's perspective**: Body Camera and Dash Camera of the Officer that pulled him over. We're

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

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Mr. [REDACTED]
Mr. Michael Castaldo, III
March 20, 2025
Page 2

hoping for both records to begin about 1-2 minutes before the Officer first spots him to pull him over, and ends about 1-2 minutes after he's placed in the back of a squad car.^[2] (Emphasis added.)

On August 29, 2024, the Village responded to Mr. [REDACTED]'s FOIA request. The Village noted that there was no dash camera footage from the incident and stated: "Your request is denied as to the following records or redacted information contained in those records: private or personal information[.]"³ The Village further stated that "[t]he records are private information. § 2(c-5), §7(1)(b)."^{4, 5}

On October 8, 2024, Mr. [REDACTED] submitted the above-referenced Request for Review contesting the withholding of body camera footage. Mr. [REDACTED] contended he was only provided a few brief clips and questioned how "leading police on a chase on public roadways constitutes 'private information[.]'"⁶ On October 11, 2024, this office sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of the responsive body camera recordings for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions, including section 7.5(cc) of FOIA.⁷ This office also requested that the Village clarify how it construed Mr. [REDACTED]'s FOIA request.

On October 24, 2024, the Village provided this office with its response dated October 22, 2024. On October 25, 2024, this office forwarded a copy of the Village's written response to Mr. [REDACTED] and notified him of his right to reply; he did not reply. The Village separately provided this office with copies of the body camera recordings for this office's confidential review.

²FOIA portal submission from [REDACTED] to Village of Oak Brook (August 25, 2024).

³E-mail from Shana Galto, Deputy FOIA Officer, Village of Oak Brook, to [REDACTED] (August 29, 2024).

⁴E-mail from Shana Galto, Deputy FOIA Officer, Village of Oak Brook, to [REDACTED] (August 29, 2024).

⁵5 ILCS 140/2(c-5) (West 2023 Supp.); 5 ILCS 140/7(1)(b) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

⁶E-mail from [REDACTED] to Attorney General's Office (October 1, 2024).

⁷5 ILCS 140/7.5(cc) (West 2023 Supp.), as amended by Public Acts 103-592, effective June 7, 2024; 103-605, effective July 1, 2024; 103-636, effective July 1, 2024.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2022). The exemptions from disclosure contained in section 7 of FOIA⁸ are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Scope of FOIA Request

In order to properly construe a request, the public body must look to the full scope and precise language of the FOIA request when determining what records are responsive. *See Judicial Watch, Inc. v. U.S. Department of Energy*, 310 F. Supp. 2d 271, 306 (D.D.C. 2004), *aff'd in part, rev'd in part on other grounds*, 412 F.3d 125 (D.C. Cir. 2005) (holding an agency search to be unreasonable because it did not encompass the full scope or precise language of the plaintiff's request). Public bodies are not required to search beyond the four corners of a FOIA request, nor are they required to divine the requester's intent. *American Chemistry Council, Inc. v. U.S. Department of Health and Human Services*, 922 F. Supp. 2d 56, 62 (D.D.C. 2013).

This office has reviewed the precise language of Mr. [REDACTED]'s FOIA request, as well as the Village's response to this office's inquiry letter. In its response to this office, the Village explained:

The Village interpreted the request to include the dash camera footage and body camera footage of the responding officer that initially pulled Craig Singleton over and placed a 'stop stick' device under the vehicle. The responsive records pertaining to this interpretation of the request were provided to Mr. [REDACTED]. However, because of Mr. Singleton's attempt to flee from the initial scene triggering the stop stick device, many additional officers and vehicles were engaging to respond. The initial responding officer to deploy the stop stick device was not the same officer to "pull over" the fleeing vehicle at the final location on I-88, nor was the initial responding officer the same officer to place Mr. Singleton in 'the back of a squad car.' As stated in the Village's initial response, some of the requested recordings, or

⁸5 ILCS 140/7 (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

Mr. [REDACTED]
Mr. Michael Castaldo, III
March 20, 2025
Page 4

portions thereof, do not exist.^[9]

This office concludes that the Village reasonably interpreted Mr. [REDACTED]'s FOIA request for recordings "from the First Responder's perspective" as seeking only the initially responding officers' footage. Although the request expressed hope that the first responder's recordings would begin a minute or two before the vehicle was pulled over and end a minute or two after the suspect was placed in the back of a squad car, the Village has explained why they were not that comprehensive. If Mr. [REDACTED] was seeking all body camera footage from all officers involved in the incident, that was not clear from the precise language he used in his request for footage from "[t]he officer that pulled him over [and] placed a 'stop stick' device on the vehicle[.]"¹⁰ This determination will proceed by analyzing whether the Village improperly withheld portions of the footage from that officer.

Section 7.5(cc) of FOIA and Body Camera Videos

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)¹¹ specifies when body camera recordings are subject to disclosure pursuant to FOIA, in relevant part:

(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:

* * *

(2) * * * 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[.]

* * *

⁹Letter from Michael Castaldo, III, Ottosen DiNolfo Hassenbalg & Castaldo, Ltd., to Katie Goldsmith, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (October 22, 2024), at 1.

¹⁰FOIA portal submission from [REDACTED] to Village of Oak Brook (August 25, 2024).

¹¹50 ILCS 706/10-20(b) (West 2022).

* * * 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.

In its response to this office, the Village restated some of the language of the Body Camera Act but did not address whether the recordings are flagged. Based on the scope of Mr. [REDACTED]'s FOIA request, for body camera footage from an arrest from a traffic incident, it is apparent that the recordings are flagged under section 10-20(b)(2) of the Body Camera Act due to the arrest, and thus the Body Camera Act does not prohibit disclosure. Accordingly, the remainder of this letter will analyze whether the Village demonstrated that the withheld footage is exempt from disclosure pursuant to the set of exemptions cited by the Village in its response to this office's inquiry letter: the law enforcement exemptions of section 7(1)(d) of FOIA.¹²

Section 7(1)(d) of FOIA

In totality, section 7(1)(d) of FOIA 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:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(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,

¹² ILCS 140/7(1)(d) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

law enforcement, or penal agencies; except that the identities of witnesses to traffic crashes, traffic crash 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;

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

(vi) endanger the life or physical safety of law enforcement personnel or any other person; or

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

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)). Rather, "[t]o meet its burden * * *, the public body must provide a detailed justification for its claim of exemption, addressing the requested records specifically and in a manner allowing for adequate adversarial testing." *Rockford Police Benevolent & Protective Ass'n*, 398 Ill. App. 3d at 150. The Illinois Supreme Court has determined that "[t]he appropriate time to measure whether a public record may be withheld is when the public body asserts the exemption and denies the request." *Green v. Chicago Police Department*, 2022 IL 127229, ¶ 72 (holding that where an injunction prohibited disclosure of records at the time of the public body's denial, the public body was not required to disclose the records once the injunction was lifted absent submission of a new FOIA request).

In support of the applicability of section 7(1)(d), the Village asserted:

With the understanding that the judicial proceedings (People Of The State Of Illinois – Vs- Craig V Singelton; Case No. 2023CF001109) relating to the traffic incident was, and still is pending, as of the date of this correspondence (See Case Summary Details noting the Defendant must appear at the next court date on

November 7, 2024), the Village withheld or redacted certain records in accordance with 5 ILCS 140/7(d) **not knowing the impact or level of interference** such release to an unrelated third-party would have on the still active judicial proceedings. (Emphasis added.)^[13]

This office has reviewed the responsive body camera recordings and the Village's response, which argues that most portions of the footage are exempt solely because the Village does not know what impact disclosure might have. With respect to sections 7(1)(d)(i) and 7(1)(d)(vii), the Village did not illustrate with any facts how or why disclosure of the body worn camera recordings would interfere with or obstruct an ongoing investigation or law enforcement proceeding; the mere speculation that there could be some untold type of harm is insufficient to prove that an exemption applies. For section 7(1)(d)(ii), the Village has not suggested the existence of active administrative enforcement proceedings; even if such proceedings did exist, it is apparent that the recordings were pre-existing rather than "created in the course of administrative enforcement proceedings[.]" For section 7(1)(d)(iii), the Village has not demonstrated that release of the recordings would create a substantial likelihood that a defendant would be deprived of a fair trial or an impartial hearing.¹⁴ Notably, based on information available on the DuPage County Circuit Clerk's website, at the time of the denial of Mr. [REDACTED]'s FOIA request, the most recent action concerning the court case related to the records occurred that same day when the court granted a continuance by the defendant and the speedy trial demand was tolled.¹⁵ Thus, it does not appear that a trial or adjudication of the matter was pending or truly imminent at the time the Village denied the request, but even if it was, the Village did not articulate how the disclosure of the footage under the circumstances would be more likely than not to interfere with the fairness of any prospective trial. For section 7(1)(d)(iv), the only interactions captured on the responsive body camera recording occur between law enforcement and the arrestee and therefore there is no witness information that is subject to redaction under this exemption. For section 7(1)(d)(v), the Village did not show that release of the responsive recordings would reveal unique or specialized investigative techniques. Furthermore, for section 7(1)(d)(vi), the Village did not establish that releasing the recordings would endanger the life or physical safety of law enforcement personnel, or any other person.

¹³Letter from Michael Castaldo, III, Ottosen DiNolfo Hassenbalg & Castaldo, Ltd., to Katie Goldsmith, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (October 22, 2024), at 2.

¹⁴Federal courts have held that a public body withholding records pursuant to the "fair trial" exemption, must establish: "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Washington Post Co. v. U.S. Department of Justice*, 863 F.2d 96, 102 (D.C. Cir. 1988).

¹⁵See Case Summary Details for 2023CF001109, 18th Judicial Circuit Court Clerk, DuPage County, Illinois, <https://epay.18thjudicial.org/Clerk/caseNumberSearch.do> (last accessed March 12, 2025).

Mr. [REDACTED]
Mr. Michael Castaldo, III
March 20, 2025
Page 8

In sum, the Village did not prove by clear and convincing evidence that the redacted portions of the recordings are exempt from disclosure pursuant to section 7(1)(d) of FOIA. Accordingly, this office requests that the Village provide Mr. [REDACTED] with unredacted copies of the responsive recordings.

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 matter. If you have any questions, please contact me at katherine.goldsmith@ilag.gov.

Very truly yours,

[REDACTED]

KATIE GOLDSMITH
Assistant Attorney General
Public Access Bureau

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