

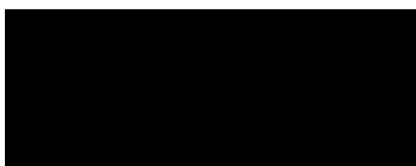


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 7, 2018

*Via electronic mail*



*Via electronic mail*

Ms. Charise Valente  
General Counsel  
Chicago Police Department  
3510 South Michigan Avenue  
Chicago, Illinois 60653  
pacola@chicagopolice.org

RE: FOIA Request for Review – 2018 PAC 51718; CPD No. [REDACTED]

Dear [REDACTED] and Ms. Valente:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly responded to the first item of [REDACTED] January 10, 2018, FOIA request, but did not improperly deny the second item.

On that date, [REDACTED] submitted a FOIA request to CPD seeking the following:

- (1) A Display copy of the following case reports that are not shown on the attached document under "Query RD Number Statuses"
- (2) A copy of AIRA's (AUTOMATED INCIDENT REPORTING APPLICATION[]) User Manual.<sup>[1]</sup>

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<sup>1</sup>Letter from [REDACTED] to [CPD] FOIA Officer (January 10, 2018).

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In reference to the first requested item, ██████████ provided CPD with a screenshot of a "Query RD Number Statuses" report from a database, which listed case statuses pertaining to a specific RD number. ██████████ also indicated in her request that she had attempted to access the AIRA manual via CPD's website but was unsuccessful because a hyperlink to the manual was blocked to the public. On January 12, 2018, CPD requested clarification from ██████████ regarding the first item of her request, asking if she sought a copy of the case report associated with the RD number listed in the attached screenshot. Later on that same date, ██████████ clarified that she had provided the first page of a "computer preview screen which has a total of 13 listings per page."<sup>2</sup> She stated that she sought the remaining listings, around 43 listings total: "If there are 13 listings per page there should be an addition[al] 3 or 4 pages that I'm looking for."<sup>3</sup> Later that day, CPD responded: "A screen capture of this nature is not something that is provided under the FOIA. The FOIA provides records which are created from the activities of a public body. A screen capture is not considered this type of record. Therefore, we cannot consider this a FOIA request."<sup>4</sup> With regard to the second item of the request, CPD asserted that it had already responded and referenced a CPD FOIA case number, ██████████. That same day, ██████████ responded to CPD, stating that she could not access the AIRA user manual using the link that was provided in the referenced FOIA case number and reiterating that the provided link was blocked to the public. On January 16, 2018, after additional communications with ██████████ regarding the website link, CPD informed ██████████ that it was re-opening her FOIA request with regard to the second item of her request. On January 23, 2018, CPD denied the portion of the request seeking a copy of the AIRA manual pursuant to section 7(1)(o) of FOIA (5 ILCS 140/7(1)(o) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017).

On February 14, 2018, this office received ██████████ Request for Review disputing the denial of her request. She stated that the requested AIRA user manual came out in June of 2003 in the 14th District and that a CPD FOIA officer had directed her to a specific CPD webpage where she could print the manual. Yet, she asserted that the site that she was directed to was blocked to the public. She further stated that the first page of the screenshot that she had included in her request was provided to her husband in response to a separate FOIA request. She stated that she sought the remaining listings.

On February 26, 2018, this office forwarded a copy of the Request for Review to CPD and asked it to provide a copy of the AIRA user manual, or a representative sample, for this office's confidential review, together with a detailed explanation of the legal and factual basis for

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<sup>2</sup>E-mail from ██████████ to Whom It May Concern (January 12, 2018).

<sup>3</sup>E-mail from ██████████ to Whom It May Concern (January 12, 2018).

<sup>4</sup>E-mail from CPD FOIA Intake to ██████████ (January 12, 2018).

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the asserted 7(1)(o) exemption. This office also asked CPD to provide a detailed explanation of its response to the first item of Ms. Ridley's request, addressing ██████████ claim that the screenshot included in her request had been previously provided by CPD to her husband.

Having received no response from CPD, this office sent additional letters to the department on March 12, 2018, and April 10, 2018, again asking it to respond. On April 11, 2018, CPD responded that it had sent a written response to this office on March 12, 2018; CPD provided this office with a copy of that response as well as a sample set of pages from the AIRA manual for this office's confidential review. In its response, CPD asserted that the database captured in the screenshot included preliminary information that was also exempt from disclosure under section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). That same day, this office forwarded a copy of the written response to ██████████. In an April 18, 2018, telephone conversation with an Assistant Attorney General in the Public Access Bureau, ██████████ emphasized that she needed the requested items to assist her husband.

#### 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 2016); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds a record "has the burden of proving by clear and convincing evidence" that the record is exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

#### "Query RD Number Statuses" Display

When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A public body is not required to answer questions or create new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989). However, the contents of a database constitute "public records" subject to disclosure under FOIA. *Hites v. Waubensee Cmty. Coll.*, 2016 IL App (2d) 150836, ¶70, 56 N.E.3d 1049, 1064 (2016), *appeal denied sub nom. Hites v. Waubensee Cmty. Coll.*, 65 N.E.3d 840 (2016) (concluding that "data in [a community college's database] constitutes public records under FOIA because such data is clearly 'recorded information \* \* \* pertaining to the transaction of public business \* \* \* prepared by \* \* \* being used by \* \* \* or under the control of [a] public body.'").

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In its response to this office, CPD argued that the document that ██████████ provided with regard to the first item of her request did not constitute a public record. Specifically, CPD claimed that the document "is a screen capture of an internal CPD database, not a public record."<sup>5</sup>

However, CPS appears able to search that database and retrieve a listing of all case reports or status updates that have been entered for a specified Case Report ID Number and RD number. In contrast to a request that asks a public body to interpret or analyze case history information or otherwise create a record that did not previously exist, a request that asks for all case updates that have been entered into a database with respect to a particular case merely requires a compilation of existing data. ██████████ has conveyed that she seeks a listing of all case statuses that have been entered for a certain Case Report ID number and RD number with the specification that the listing be provided based on a "Query RD Number Statuses" search. The screenshot ██████████ provided simply illustrates the underlying case status information she seeks; CPD does not dispute that this data resides in its database. A search and gathering of data already present in a database does not constitute the creation of a new record, even if the public body must perform a computerized search and sorting of its database. *See Hites*, 2016 IL App (2d) 150836, ¶80, 56 N.E.3d at 1066-67 (request for zip codes of students enrolled in certain classes for certain years and other existing data requiring "the application of [computer] code or programming to retrieve stored information, or to sort a database by particular data fields (e.g., by zip code or 'raw input' for a specific registration-form field), does not create a new record."). Because ██████████ request sought existing data maintained in CPD's database, this office concludes that CPD improperly responded that she did not seek copies of public records.

### Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA exempts from disclosure:

Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.

The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open

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<sup>5</sup>Letter from Sarah Bown, Freedom of Information Act Officer, Chicago Police Department, Office of Legal Affairs, Unit 114, to Teresa Lim, Assistant Attorney General, Office of Attorney General, Public Access Bureau (March 12, 2018).

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discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248. Section 7(1)(f) does not exempt from disclosure purely factual material. See Ill. Att'y Gen. Pub. Acc. Op. No. 13-015, issued September 24, 2013, at 7. Rather, "[o]nly those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 748 (2014) (quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010)). "[T]he critical question is whether 'disclosure of the materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" *Chemical Weapons Working Group v. U.S. E.P.A.*, 185 F.R.D. 1, 3 (D.D.C. 1999) (quoting *Dudman Communications v. Department of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

In its response to this office, CPD contended that the database in question contained preliminary information that is exempt from disclosure under section 7(1)(f). This office has reviewed the information contained in the computer display at issue and determined that the information does not reflect the give-and-take deliberations of CPD as it investigated a matter. Rather, the entries reflect factual information about case statuses that have been entered, such as the name of the CPD personnel who entered the update and when the status entry was created. While CPD asserted that the information was "preliminary," it did not explain the role that the information played in any deliberative process. Accordingly, this office concludes that CPD has not demonstrated by clear and convincing evidence that the responsive case history information is exempt from disclosure pursuant to section 7(1)(f). This office requests that CPD provide ██████████ with a printout of all case history information entered for the specified RD number based on a "Query RD Number Statuses" search.

#### Section 7(1)(o) of FOIA

Section 7(1)(o) exempts from disclosure:

**Administrative or technical information associated with automated data processing operations, including but not limited to software**, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, **user guides**, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, **would jeopardize the security of the system or its data or the security of materials** exempt under this Section. (Emphasis added.)

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With regard to the second item of [REDACTED] request, CPD stated that it had consulted with its Information Services Division and determined that disclosure of the requested AIRA manual would cause a security breach of its Criminal History Records Information System (CHRIS). Specifically, CPD contended that release of the manual would reveal the "schema" or internal structure of the database. CPD asserted, in pertinent part:

The court system accepts CPD reports as authentic because they cannot be modified without record; any changes are logged and the operator / creator of those changes noted in a way so that the entire report can be verified at all stages.

Allowing knowledge of the schema through a complete disclosure of the database structure outside the department could allow the database integrity constraints to be circumvented. With such knowledge the possibility exists that the data tables could be altered. If the tables were ever altered the court would have no choice but to call into question any report generated by the system. Ultimately, the court could find our electronic reports unreliable and not accept them any longer.<sup>6</sup>

This office has reviewed a sampling of the AIRA manual and confirmed that the manual is a user guide on how to use the AIRA system. The manual contains technical information about the various components of the AIRA system as well as detailed instructions on how to enter reports or make changes to information that is already in the system. This office has determined that disclosure of such specific information about AIRA's structure and functions would jeopardize the security of the system. In her Request for Review, [REDACTED] asserted that CPD had initially provided her with a link to an online posting of the manual. However, as [REDACTED] stated, the link to the manual was not accessible to the public. While it appears that CPD mistakenly referred her to the online link, the available information indicates that only authorized CPD personnel are permitted access to the manual. Because disclosure of the technical and administrative information contained in the AIRA manual would potentially compromise the security of the AIRA system, this office concludes that the AIRA manual is exempt from disclosure under section 7(1)(o) of FOIA.

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<sup>6</sup>Letter from Sarah Bown, Freedom of Information Act Officer, Chicago Police Department, Office of Legal Affairs, to Teresa Lim, Assistant Attorney General, Office of Attorney General, Public Access Bureau (March 12, 2018).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]  
TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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