



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 13, 2022

Via electronic mail

Mr. Gregory Pratt
Chicago Tribune
gpratt@chicagotribune.com

Via electronic mail

Mr. Marc Augustave
Senior Counsel
City of Chicago Department of Law
Legal Information and Prosecutions Division
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RE: FOIA Request for Review – 2022 PAC 70212 (2021-PAC-C-0071)
FOIA No. F211648-060121

Dear Mr. Pratt and Mr. Augustave:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the City of Chicago (City) Office of Emergency Management and Communications (OEMC) improperly redacted some portions of the slide deck responsive to Mr. Gregory Pratt's June 1, 2021, FOIA request.

On that date, Mr. Pratt, on behalf of the *Chicago Tribune*, submitted a FOIA request to OEMC seeking a certain April 8, 2021, slide deck entitled "2020 Civil Unrest Overview and 2021 Preparedness Workshop." The document was attached to an e-mail between City of Chicago Mayor Lori Lightfoot and OEMC Director Richard Guidice. On June 29, 2021, OEMC provided Mr. Pratt with a copy of the responsive slide deck, but redacted information pursuant to sections 7(1)(f) and 7(1)(v) of FOIA (5 ILCS 140/7(1)(f), (1)(v) (West 2021 Supp.)). On June 30, 2021, Mr. Pratt submitted a Request for Review challenging OEMC's redactions.

On July 2, 2021, this office sent a copy of the Request for Review to OEMC and asked it to provide an un-redacted copy of the slide deck responsive to Mr. Pratt's FOIA request,

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together with a detailed explanation of the legal and factual bases for its assertion of sections 7(1)(f) and 7(1)(v) of FOIA. On July 13 and 14, 2021, OEMC provided a written answer and the requested materials. On July 14, 2021, this office forwarded OEMC's answer to Mr. Pratt; he replied the same day.

DETERMINATION

Under FOIA, "[a]ll 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 2020); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that denies 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 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary 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 is equivalent to the deliberative process exemption in the federal FOIA (5 U.S.C. §552(b)(5) (West 2020)),¹ which 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 discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248. Factual material generally is not within the scope of section 7(1)(f) unless it cannot be reasonably segregated from deliberative material and, therefore, would provide insight into the public body's decision-making process. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App 4th, 120881, ¶27, 994 N.E.2d 705, 713 (2014).

In its response to this office, OEMC stated that "the redacted contents demonstrate the opinions and deliberations by the authors in preparation for an action or policy

¹Because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. *Margolis v. Director, Ill. Department of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

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which had not yet been accomplished."² Mr. Pratt argued that the slide deck appeared to be a historical review with some forward-looking guidelines.

This office has reviewed the unredacted version of the slide deck and concludes that most of the redactions were of facts concerning the City's response to past events. In other instances, the City withheld final decisions, not deliberative or predecisional material. Such factual material and final directives may not be withheld pursuant to section 7(1)(f). Only two slides, 55 and 56, contained pre-decisional opinions which may be withheld pursuant to section 7(1)(f). There is no indication that slides 55 or 56 were publically cited or identified by the head of the City or OEMC. Accordingly, with the exception of the redactions on slides 55 and 56, this office concludes that OEMC violated FOIA by redacting other pages of the slide deck pursuant to section 7(1)(f).

Section 7(1)(v) of FOIA

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

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

This office has previously determined that section 7(1)(v) concerns homeland security and emergency preparations rather than routine duties carried out by an agency. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 21-005, issued June 2, 2021, at 7; Ill. Att'y Gen. PAC Req. Rev. Ltr. 48212, issued November 2, 2017, at 7.

In its response in this matter, the OEMC stated "[t]he portions of the slide deck which were redacted pursuant to section 7(1)(v) of FOIA relate to OEMC's after action report

²Letter from Marc Augustave, Senior Counsel, City of Chicago, Department of Law, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General, at 3.

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related to the civil unrest which occurred in 2020 and OEMC's improvement plan in preparation for 2021."³

The redacted slides contain detailed descriptions of the city's preparedness, provides recommendations, and identifies strengths as well as specific areas for improvement to the city's preparedness plan. As such, the report describes a response plan, response policy, and vulnerability assessment designed to identify, prevent, or respond to potential attacks and civil unrest. The redacted slides contain detailed information concerning the logistics for responding to attacks and unrest.

Because the redacted information provides detailed information concerning mobilization and tactical deployment of emergency response personnel, as well as policies or plans designed to protect the community, it is believed that its release would compromise the security of emergency first responders. Should these security measures get into the hands of criminals or other individuals with nefarious intent, this information could be used to circumvent the ability of emergency response team members. Furthermore, this information could be exploited by these individuals to evade or overcome safety and security measures. Disclosure of the contents of these slides could reasonably be expected to jeopardize the effectiveness of the city's response, the safety of its personnel and that of the public.^[4]

In his reply, Mr. Pratt questioned whether disclosure of the withheld information would undermine the effectiveness of the City's security plans. He noted that the City has "issued press releases detailing plans to shut down roads, raise bridges, detail cops downtown, bring out garbage trucks and line commercial corridors throughout the city. * * * [T]he city has repeatedly described its tactics to prevent looting without seeing them undermined or destroyed by the disclosure."⁵

³Letter from Marc Augustave, Senior Counsel, City of Chicago, Department of Law, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General, at 3.

⁴Letter from Marc Augustave, Senior Counsel, City of Chicago, Department of Law, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General, at 4.

⁵E-mail from Gregory Pratt, Chicago Tribune, to [Laura Harter] (July 14, 2021).

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This office's review of the withheld information confirmed that the slides address the City's emergency response to past protests, civil unrest, and looting. Even though many of the slides concerned past events, the overall purpose of the slide deck appears to be for training and for preparing the City's future responses to similar emergency situations. Disclosure of certain slides would reveal vulnerabilities and specific emergency response plans and it is apparent from the face of the slides that their disclosure would undermine those plans' effectiveness.⁶

Other slides in the presentation, however, report on information that is already publicly known. Specifically, on February 18, 2021, the City of Chicago Office of Inspector General (OIG) issued a detailed report on "Chicago's Response to the George Floyd Protests and Unrest."⁷ The report described the City's response to the events following Mr. Floyd's death on May 25, 2020. OEMC redacted from its April 8, 2021, slide deck certain details that the OIG had already disclosed at the time of Mr. Pratt's FOIA request. In other instances, OEMC withheld information that has been previously disclosed through other public sources. OEMC has not explained how disclosure of these publicly known details could reasonably be expected to jeopardize the effectiveness of the City's emergency response plans. Other information redacted from the slide deck is non-specific or presented without enough context to make it apparent how it constitutes a vulnerability assessment, security measure, or response policy or plan. Even if some of that information could be construed as a vulnerability assessment, security measure, or response policy or plan, OEMC has not demonstrated how disclosure of the information would undermine the effectiveness of its emergency response plans designed to protect public safety. Accordingly, this office concludes that OEMC has not met its burden of establishing that all of the information it redacted is exempt pursuant to section 7(1)(v) of FOIA.

Consistent with the conclusions in this letter, this office requests that OEMC provide Mr. Pratt with a copy of the responsive slide deck with redactions made only to slides 21, 23, 27, 43, 44, 55, 56, 63-68, 75, and 87.

⁶Slides 21, 23, 27, 43, 44, 63-68, 75, 87.

⁷City of Chicago Office of Inspector General, Report on Chicago's Response to George Floyd Protests and Unrest (February 18, 2021), <https://igchicago.org/wp-content/uploads/2021/02/OIG-Report-on-Chicagos-Response-to-George-Floyd-Protests-and-Unrest.pdf>.

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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 serves to close this matter. If you have any questions, please contact me at (217) 843-0564 or laura.harter@ilag.gov.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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