

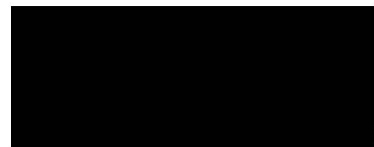


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 15, 2024

Via electronic mail



Via electronic mail

Ms. Ashley P. Neuhauser
Senior FOIA, Compliance, & Appeals Attorney
Chicago Transit Authority
Law Department
567 West Lake Street
Chicago, Illinois 60661
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RE: FOIA Request for Review – 2024 PAC 80130

Dear [REDACTED] and Ms. Neuhauser:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA).¹ For the reasons explained below, the Public Access Bureau concludes that no further action is warranted in this matter.

On October 6, 2023, [REDACTED] submitted a FOIA request to the Chicago Transit Authority (CTA) seeking reports regarding and the video footage from the Fullerton "L" platform of an August 21, 2018, incident when his brother allegedly fell onto the tracks and subsequently died of his injuries. On December 15, 2023, the CTA provided responsive records with redactions but denied the portion of his FOIA request seeking video

¹5 ILCS 140/9.5(c) (West 2023 Supp.).

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footage from the Fullerton "L" platform pursuant to section 7(1)(v) of FOIA.² On February 13, 2024, ██████████ submitted this Request for Review disputing the denial of the platform video footage.

In an effort to resolve this matter, an Assistant Attorney General in the Public Access Bureau spoke to ██████████ and an attorney for the CTA to ascertain if viewing the video footage at CTA offices would be a workable solution. While ██████████ was amenable to this solution, CTA declined, asserting that the video footage was exempt from release pursuant to section the 7(1)(v) of FOIA because it could jeopardize its security measures as explained in its response to ██████████. 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.

In *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, ¶¶ 48 -51, after the CTA showed that surveillance cameras were installed at its rail stations after the September 11, 2001, terrorist attacks with funds from a U.S. Department of Homeland Security program designed to protect the public and critical infrastructure, the Illinois Appellate Court held that CTA platform footage was exempt under section 7(1)(v) of FOIA. In concluding that the footage was exempt from disclosure, the court observed that section 7(1)(v) "is worded broadly and requires a government agency to demonstrate that release of a document 'could reasonably be expected to' jeopardize the effectiveness of its security measures—not that it *would* jeopardize them." (Emphasis in original.) *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶¶ 43-45 (explaining that "all that the CTA had to show was that it reasonably estimated that making this information public could risk making its security measures less effective."). In accordance with *Chicago Sun-Times*, the Public Access Bureau has previously determined that release of other platform footage could reasonably be expected to jeopardize the effectiveness of CTA's security system by revealing the capabilities and limitations of the cameras in the stations,

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

including the cameras' potential blind spots. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 70876, issued April 21, 2022 (concluding that video footage of train platform constituted a "security measure" within the scope of section 7(1)(v)).

In its response to ██████████, CTA explained:

CTA's rail station cameras serve as a security measure designed to identify and respond to potential attacks on CTA's rail system, or to identify other dangerous activity occurring in CTA's rail service area. The disclosure of this video footage would reveal the position of cameras installed in CTA's train station, the capabilities of the cameras, the area captured by the cameras and areas where the view of the cameras cannot reach.^[3]

Although, showing this video footage to ██████████ in its office would appear to lessen the possibility of jeopardizing its security measures because it could not be reviewed multiple times, CTA has shown that disclosure of the responsive footage *could* reasonably be expected to make its security measures less effective whether providing a copy of the video or by having a viewing in its office. As discussed above, the Illinois Appellate Court has held that CTA platform footage is exempt from disclosure pursuant to section 7(1)(v) of FOIA. Accordingly, this office will take no further action in this matter.

However, this office notes that a public body *may* elect to redact or withhold exempt information under 7(1)(v), but FOIA does not require it do so.⁴ In light of the specific circumstances in this matter, CTA may wish to work with ██████████ to explore whether it may be feasible for him to view at least a portion of the video in CTA's office.

³Letter from Ashley P. Neuhauser, Senior FOIA, Compliance, & Appeals Attorney, CTA to ██████████ (December 15, 2023).

⁴*See, e.g., Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1995) ("The purpose of the Act is to ensure disclosure of information, not to protect information from disclosure. * * * The exemptions cannot be read to prohibit dissemination of such information, but rather are simply cases where disclosure is not required."). *Crumpton v. Stone*, 59 F.3d 1400, 1404 (D.C. Cir. 1995) (FOIA allows an agency to withhold certain information but it does not limit an agency's discretion to disclose information as the exemptions are permissive rather than mandatory); *People v. Reed*, 177 Ill. 2d 389, 393 (1997) (legislature's use of the word "may" generally indicates a permissive or directory reading, rather than a mandatory one).

[REDACTED]
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This file is closed. If you have any questions, please contact me at 312-814-5201, edie.steinberg@ilag.gov, or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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