

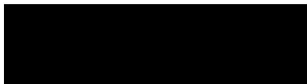


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 24, 2024

Via electronic mail



Via electronic mail

Ms. Karen Choudhury
Freedom of Information Counsel
Chicago Park District
4830 South Western Avenue
Chicago, Illinois 60609
foia@chicagoparkdistrict.com

RE: FOIA Request for Review – 2024 PAC 82465

Dear [REDACTED] and Ms. Choudhury:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons stated below, the Public Access Bureau concludes that the Chicago Park District (Park District) improperly denied information responsive to [REDACTED] July 11, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Park District seeking police logs for Touhy Park for the week of March 11, 2024, through March 18, 2024. On July 19, 2024, the Park District provided the requested police log with the entries for Beat #, Star #, Exterior Premise Check, Comment, Interior Premise Check, and Park Personnel Contacted redacted pursuant to sections 7(1)(b), 7(1)(d)(v), and 7(1)(v) of FOIA (5 ILCS 140/7(1)(b), (1)(d)(v), (1)(v) (West 2023 Supp.)), as amended by Public Act 103-605, effective July 1, 2024). On August 5, 2024, [REDACTED] submitted the above-referenced Request for Review contesting the partial denial.

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On August 13, 2024, this office forwarded a copy of the Request for Review to the Park District and asked it to provide an unredacted copy of the contested record for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On August 20, 2024, the Park District provided [REDACTED] with a copy of the police log with only the entries for Exterior Premise Check and Interior Premise Check redacted pursuant to section 7(1)(v). On August 21, 2024, [REDACTED] confirmed in an e-mail to this office that she still wished to contest the remaining redactions in the Park District's supplemental response. Accordingly, on August 25, 2024, this office asked the Park District to provide a written response addressing the applicability of the section 7(1)(v) exemption, along with an unredacted copy of the police log. On September 3, 2024, this office received the requested materials, which included both a complete version of the Park District's written response for this office's confidential review and a redacted version for this office to forward to [REDACTED].¹ On September 16, 2024, this office forwarded the Park District's non-confidential response to [REDACTED]; she replied on September 17, 2024.

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 Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2022). 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)(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

¹See 5 ILCS 140/9.5(d) (West 2023 Supp.) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").


personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

By its plain language, section 7(1)(v) applies to records involved in identifying, preventing, or responding to potential attacks. The legislative history behind the exemption further confirms that the exemption is largely intended to exempt records involved in homeland security and emergency preparations. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 48212, issued November 2, 2017, at 7 (House Sponsor James H. Meyer explained that the bill "exempts documents prepared for emergency and security procedures from being disclosed from homeland security where that would be compromised.").


In its non-confidential response to this office, the Park District argued:

The vulnerability exemption was appropriately applied to the FOIA 5676 Daily Police Log information that reveals the planning and procedures on 'how' to keep a park safe. First, 'Exterior Premise Check' and 'Interior Premise Check' fall within vulnerability assessments, security measures, and response policies or plans. Second, the FOIA 5676 Daily Police Log itself is a standard document created for the purpose of identifying, preventing, or responding to potential security concerns for a community or its infrastructure. Third, in this case, the disclosure of the redacted information would expose current security initiatives at Touhy Park and for its community, which, if revealed, could expose a security vulnerability or jeopardize the effectiveness of the measures, policies, or plans, or the safety of the personnel who implement them and/or the public.

In *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, the Illinois Appellate Court analyzed the applicability of section 7(1)(v) to rail platform camera recordings maintained by the Chicago Transit Authority (CTA). In *Chicago Sun-Times*, the CTA argued that it properly withheld surveillance camera video recordings from its rail platforms pursuant to section 7(1)(v) because the surveillance cameras were installed 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. *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶ 48. In concluding that "[t]he CTA sufficiently demonstrated that disclosure of its surveillance camera footage from the rail platform could reasonably be expected to jeopardize the effectiveness of its security measures[,] the court cited an affidavit in which a homeland security expert averred that the requested platform footage "revealed the quality, resolution, field of view, and blind spots of the CTA's surveillance cameras, and that information could enable individuals to evade these security devices when targeting passengers, planning

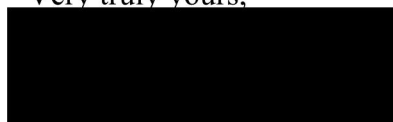

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attacks, or evading capture by law enforcement." *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶ 49.

Unlike the evidence the CTA set forth in *Chicago Sun-Times* concerning how exposure of the views from the platform cameras would jeopardize the CTA's counterterrorism measures, the Park District has not demonstrated that the redacted columns in the Touhy Park police log are vulnerability assessments, security measures, or 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, as is necessary to qualify for the exemption. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 71393, issued June 27, 2022, at 5 (explaining the homeland security purpose of the exemption). In contrast to the type of specialized security measures the section 7(1)(v) exemption is designed to protect, the daily police log reflects merely routine law enforcement activity. Further, it is not apparent to this office how the redacted information would expose the Park District's current security initiatives; the columns simply document dates, times, and general reasons that particular employees conducted surveillance. They do not reveal details of any security measures that could be exploited to jeopardize their effectiveness or the safety of personnel or members of the public. Because FOIA exemptions must be read narrowly and because the Park District's response does not show that the particular language of section 7(1)(v) applies to daily police activity logs, this office concludes that the Park District did not sustain its burden of proving by clear and convincing evidence that any portions of the log are exempt. This office asks the Park District to provide  with an unredacted copy of the record.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,



BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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