



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 23, 2024

Via electronic mail

Mr. Matt Chapman
matt@mchap.io

Via electronic mail

Mr. Rob Olmstead
Deputy General Counsel for Public Policy and Information
Cook County Sheriff's Office
50 West Washington Street, No. 704
Chicago, Illinois 60601
robert.olmstead@ccsheriff.org

RE: FOIA Request for Review – 2022 PAC 70612 (2021-PAC-C-0191)
FOIA R019181-073021

Dear Mr. Chapman and Mr. Olmstead:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹

On July 30, 2021, Mr. Matt Chapman submitted a FOIA request to the Cook County Sheriff's Office (Sheriff's Office) seeking certain data for calls made concerning individuals under electronic monitoring (EM). Specifically, he sought:

The following information for all audio for all calls made or received by Protocol relating to any person on EM under CCSO[:]

1. Person being called
2. Relationship to person being called
3. Whether call is for primary contact or secondary contact (or other)

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

4. Date and time of audio start.
5. Date and time of audio end.
6. Size of audio file.
7. Booking ID

Please limit the timeframe of this request from Jan. 1, 2020 to [July 30, 2021].^[2]

On August 6, 2021, the Sheriff's Office informed Mr. Chapman that it had previously produced call data to him in response to FOIA request number R016665-052521. Later the same day, Mr. Chapman responded to the Sheriff's Office, stating that the response to R016665-052521 did not satisfy his current request. He clarified that his request sought information about the call recordings and noted "[t]o the extent that Protocol BI has the ability to look up recordings by person, then the functionality, by necessity, exists to complete this request, though likely through a database query."³ On August 10, 2021, the Sheriff's Office informed Mr. Chapman that "Protocol's case management system cannot query audio files in conjunction with the fields requested"⁴ and stated that it could not generate a report responsive to his request. Mr. Chapman then asked the Sheriff's Office if it could contact the database vendor to arrange for it to run a query for the responsive information. On August 11, 2021, the Sheriff's Office responded:

The fields you are requesting are not extractable from the case management system as a collective. Your request would require dedicated development work by County vendors to create a customized query and functionality that serves no purpose except to address your FOIA. FOIA does not require the creation of a new record in response to a FOIA request that is not kept in the normal course of business.^[5]

Later the same day, Mr. Chapman submitted this Request for Review challenging the Sheriff's Office's denial. He contended that running a query in the database would not be the creation of a new record.

On August 26, 2021, this office sent a copy of the Request for Review to the Sheriff's Office and requested a detailed written explanation in response to Mr. Chapman's

²FOIA Request submitted by Matt Chapman.

³Message from [Matt Chapman] to Elizabeth [Scannell, Cook County Sheriff's Office, FOIA Officer/Legal Department] (August 6, 2021).

⁴Message from Beth Scannell to [Matt Chapman] (August 10, 2021).

⁵Message from Elizabeth Scannell, Cook County Sheriff's Office, FOIA Officer/Legal Department, to Matt Chapman (August 11, 2021).

allegations. On September 16, 2021, the Sheriff's Office responded. On September 17, 2021, this office forwarded the Sheriff's Office's response to Mr. Chapman; he replied on September 22, 2021. On February 7, 2022, Mr. Chapman submitted additional information to this office. In light of the information in Mr. Chapman's February 7, 2022, correspondence, on May 5, 2022, this office sent another letter of inquiry to the Sheriff's Office. It responded on May 31, 2022. On June 3, 2022, this office forwarded that response to Mr. Chapman; he submitted a reply on June 9, 2022.

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 2020); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). The requirements of FOIA apply to "public records," which are records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2020). "In this expansive definition of 'public records,' the legislature recognizes that information or documentation may be stored in myriad media, some physical and some not. Illinois case law has long held that electronic records may be public records subject to FOIA." *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836, ¶ 57. A public body must perform a reasonable search for responsive records under the circumstances of each request. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982).

In *Hites*, the Illinois Appellate Court analyzed a series of requests for information contained in multiple databases. The *Hites* court distinguished requests for raw data maintained in a public body's databases from requests seeking information about the data, which would require the creation of new records. The court analogized a database to a file cabinet and stated that "the data that populates the database is like the files. FOIA permits a proper request for a single file, some of the files, or all of the files." *Hites*, 2016 IL App (2d) 150836, ¶ 71. The court held that compiling raw data already maintained in databases and available through computerized searches of the public body's databases did not involve the creation of new records, even if the public body had to create and apply computer programming or coding to retrieve the information. *Hites*, 2016 IL App (2d) 150836, ¶¶ 75-81.

While raw data that were previously compiled and available through computerized searches of a database are subject to disclosure, "FOIA was not designed to compel the compilation of data not ordinarily kept by the public body." *Hites*, 2016 IL App (2d) 150836, ¶¶ 75-80 (public body not obligated under FOIA to provide a listing of search results or to create records reflecting totals that had not been previously compiled from its data); *see also Chicago Tribune Co. v. Dep't of Financial & Professional Regulation*, 2014 IL App (4th)

130427, ¶ 37 (State agency not required to respond to a request seeking the number of claims against certain doctors by calculating the number and creating a new record). Additionally, FOIA does not require a public body to manually compile information from multiple sources and create a custom report for a requester. *See Martinez v. Cook Cty. State's Attorney's Office*, 2018 IL App 1st 163153, ¶ 25 (request that would have required public body to manually review its files and compile each "instance" in which it "used" specific information did not reasonably describe a record but instead was a general request for data that was "scattered throughout [the public body's] records"); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 61967, issued November 18, 2020, at 4-5 (concluding that where school district did not maintain responsive demographic and testing data in one database, but rather across multiple sources and departments, "FOIA does not require a public body to collect, cross reference, match, and collate various data scattered through its departments and multiple databases.").

Arguments

In its September 17, 2021, answer to this office, the Sheriff's Office explained that Cook County contracted with Track Group, Inc. to provide equipment and technology for its EM programs "and Track Group has in turn subcontracted with B.I. Incorporated (d/b/a Protocol) to provide call center monitoring and case management services. B.I. Incorporated uses a case management system called Protocol to track alerts generated by EM devices and how those alerts are resolved."⁶ The Sheriff's Office explained that B.I. maintains records of outbound calls using a telephone switch, but that data is maintained separately from the Protocol database, "meaning there is no formal data integration between the telephone switch and the case management system."⁷ Neither Protocol nor the telephone switch database contains all of the information Mr. Chapman requested:

Audio files are maintained separately by B.I. Incorporated and are categorized and retrievable based on the outbound call number. They are not maintained or categorized by participant name or ID.
* * * The data imprint of an audio file cannot be extracted in conjunction with other data fields related to a participant, nor is the audio file stored in such a way that it captures any of the other fields Mr. Chapman requested.^[8]

⁶Letter from Elizabeth Scannell, Deputy General Counsel, Cook County Sheriff's Office, to Laura Harter, Deputy Bureau Chief, Public Access Counselor, Illinois Attorney General (September 16, 2021), at 1.

⁷Henry Conforti Aff. ¶6 (June 1, 2021).

⁸Letter from Elizabeth Scannell, Deputy General Counsel, Cook County Sheriff's Office, to Laura Harter, Deputy Bureau Chief, Public Access Counselor, Illinois Attorney General (September 16, 2021), at 2.

The Sheriff's Office explained that while outbound call data may be exported from the telephone switch database, it would include all B.I. customers, not just Sheriff's Office data. There are no identifiers, such as booking ID numbers, within the telephone switch database by which the records could be sorted by Sheriff's Office data.

In his September 22, 2021, reply, Mr. Chapman suggested that the Sheriff's Office provide B.I. with a list of EM participants' phone numbers and booking ID numbers. Mr. Chapman argued that the Sheriff's Office or its contractors could then filter the telephone switch call log records by calls made only to devices that are worn by the Sheriff's Office's EM participants and then provide him with information sufficient to satisfy his request. He also noted that he is aware "that agents at the call center track their calls through notes and I'm aware that the notes themselves cannot be compiled in a way to satisfy the requirements of my request without undue burden."⁹

In response to Mr. Chapman's suggestion, the Sheriff's Office explained that "[t]o fulfill Mr. Chapman's FOIA request, all phone numbers provided for each EM participant would need to be pulled from the case management system and merged with the call data system to find matches."¹⁰ The Sheriff's Office explained that:

a query [in the telephone switch database] for an individual record can take 2 to 30 minutes. We estimate that around 10,000 people spent at least one day on EM during the timeframe Mr. Chapman seeks (18 months). Among those 10,000 participants, multiple phone numbers may be associated with the participant (between the site host and other contacts for the participant). The amount of time and effort required to pull those records would put extraordinary strain on Protocol's monitoring capabilities.^[11]

⁹Letter from Matt Chapman to Illinois Attorney General's PAC Office (September 21, 2021), at [1].

¹⁰Letter from Sarah M. Smith, Assistant General Counsel, FOIA Officer Law Department, Sheriff's Office of Cook County, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 26, 2022), at [2].

¹¹Letter from Sarah M. Smith, Assistant General Counsel, FOIA Officer Law Department, Sheriff's Office of Cook County, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 26, 2022), at [2].

The Sheriff's Office stated that "[e]ach phone number would have to be queried separately (with an estimate of 2-30 minutes for each query depending on the amount of information available)."¹²

Mr. Chapman disputed that it would take the Sheriff's Office a significant amount of time to run the necessary query, arguing that it should be able to run a query for all phone numbers at once, particularly if the database is relational and the Sheriff's Office can therefore run a search using structured query language (SQL).

On February 7, 2022, Mr. Chapman provided this office with a copy of information he had obtained from an attorney who represents an individual who is a participant in the Sheriff's Office's EM program.¹³ Specifically, Mr. Chapman submitted a screenshot of information he believed was automatically generated by Track Group from a database containing EM call information. The screenshot reflected the start time of a call, the duration of the call, the phone number called, a user name, and a reference number, among other things, for a specific Sheriff's Office EM participant. Mr. Chapman asserted that this screenshot supports his contention that the Sheriff's Office's contractors can run a database query to extract some or all of the information responsive to his request.

In response to the information submitted by Mr. Chapman, the Sheriff's Office stated that, without knowing more about the origin of the record, it could only assume that it was pulled using an individual's phone number. The Sheriff's Office contended that "Protocol and the CCSO have never disputed Protocol's capability to do this. However, Mr. Chapman's FOIA request does not seek call information based on an individual participant or phone number. Instead, it seeks all call data information for all CCSO EM participants between January 1, 2020 [and] July 30, 2021."¹⁴

Analysis

Mr. Chapman has conceded that to the extent information he sought is stored in Protocol's "Notes" field, it is unduly burdensome to compile that information in the manner he requested. Therefore, the data categories at issue are booking ID number from the Protocol database and any available outbound call data from the telephone switch database. It is undisputed that the Sheriff's Office possesses data on outbound calls to EM participants and that,

¹²E-mail from [Sarah Smith] to Laura [Harter] (June 1, 2022).

¹³Mr. Chapman informed this office that the attorney obtained the data shown in the screenshot pursuant to a subpoena issued to Track Group.

¹⁴Letter from Sarah M. Smith, Assistant General Counsel, FOIA Officer Law Department, Sheriff's Office of Cook County, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 26, 2022), at [2].

aside from the telephone numbers themselves, the data are public records subject to disclosure.¹⁵ It is also undisputed that the responsive information is stored in two separate databases. The Sheriff's Office first argued that compiling the information Mr. Chapman requested "would require dedicated development work by County vendors to build new features in the Protocol system to connect separately stored files to alert data."¹⁶ The Sheriff's Office then shifted its argument to assert that "all phone numbers provided for each EM participant would need to be pulled from [Protocol] and merged with the [telephone switch database] to find matches. This merging could require the creation of a record through a new query written by the third-party software vendor."¹⁷ The Sheriff's Office thereby acknowledged that extracting the responsive call data could be accomplished by running a query of the telephone switch database using EM participants' phone numbers to identify responsive call data. Rather than creating new records, querying databases to extract existing data is "[a]n electronic search that * * * meets the definition of 'copying' under FOIA." *Hites*, 2016 IL App (2d) 150836, ¶ 73.

There is no query that could be run in either database, however, that would generate a result that contains both booking IDs and the requested call data. Once the responsive outbound call data is extracted from the telephone switch database, it must be compiled and correlated with the correct booking ID information. The Sheriff's Office did not address what measures would be required to accomplish this compilation. Mr. Chapman suggested the use of automated tables in a spreadsheet to sort and link the booking IDs with EM users' phone numbers and the related call data:

The spreadsheet works as follows: Phone numbers, device IDs, and CCSO booking IDs are entered into the "Device Phone Numbers" worksheet. The switch's phone records can then be inserted into the [* * *] "Data" sheet. In the "Data" worksheet, the "Is CCSO" will then reflect a 1 (or TRUE) if that phone number's within the list of phone numbers in the "Device Phone Numbers" worksheet. Clicking on the dropdown at "Is CCSO" and selecting "1" (or TRUE) will then filter the relevant information.^[18]

¹⁵Section 7(1)(b) of FOIA exempts from disclosure "private information" and section 2(c-5) of FOIA defines "private information" to include, among other things, personal telephone numbers. 5 ILCS 140/7(1)(b) (West 2021 Supp.); 5 ILCS 140/2(c-5) (West 2020).

¹⁶Letter from Elizabeth Scannell, Deputy General Counsel, Cook County Sheriff's Office, to Laura Harter, Deputy Bureau Chief, Public Access Counselor, Illinois Attorney General (September 16, 2021), at [3].

¹⁷Letter from Sarah M. Smith, Assistant General Counsel, FOIA Officer Law Department, Sheriff's Office of Cook County, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 26, 2022), at [2].

¹⁸Letter from Matt Chapman to Illinois Attorney General's PAC Office (September 21, 2021), at [3-4].

Even if Mr. Chapman's suggestion is feasible, it is clear that compiling the requested information would require more than merely running a query and extracting data from a database; the available information indicates that the Sheriff's Office would have to link and manipulate extracted data from two separate databases into a unique arrangement. This office has previously concluded that combining two reports to create a unique digital record constitutes the creation of a new record. Ill. Att'y Gen. PAC Req. Rev. Ltr. 73026, issued October 19, 2022, at 3. FOIA does not require public bodies to manipulate data found in separate locations into custom reports for requesters. *See Everytown for Gun Safety Support Fund v. BATFE*, 403 F. Supp. 3d 343, 359 (S.D.N.Y. 2019), *rev'd and remanded on other grounds*, 984 F.3d 30 (2d Cir. 2020) ("whether information in a database constitutes an agency record hinges not on whether the information is housed in the form requested, but whether generating the information requires the agency to engage in additional research or conduct additional analyses above and beyond the contents of its database.").

In an e-mail to this office, Mr. Chapman cited *ACLU Immigrants' Rights Project v. United States Immigration & Customs Enforcement*, 58 F.4th 643, 656 (2d Cir. 2023), for the proposition that a government agency cannot make an exempt record, such as personal phone numbers, "the sole 'key' or 'code' necessary to access non-exempt records in a particular manner; itself use the exempt record to obtain non-exempt records in that manner; and then invoke the record's exempt status to deny the public similar access to the non-exempt records."¹⁹ In that case, the ACLU had requested data from United States Immigration & Customs Enforcement (ICE) for five categories of information pertaining to stages of the deportation process. The FOIA request specified that there should be a row in the spreadsheet for each individual alien and that the agency should substitute exempt "A-Numbers" for unique identification numbers for each individual "because such a substitution is necessary to allow ACLU to track individual" aliens across the five different categories of data. *ACLU Immigrants' Rights Project*, 58 F.4th 643 at 648. The United States District Court for the Southern District of New York found that FOIA did not require the agency to substitute unique IDs for the A-Numbers because to do so would be the creation of a new record. *ACLU Immigrants' Rights Project v. United States Immigration & Customs Enforcement*, 19 Civ. 7058, 2021 U.S. Dist. LEXIS 45109, 2021 WL 918235 (S.D.N.Y. Mar. 10, 2021). The Second Circuit reversed, concluding that "to hold otherwise could have the perverse effect of encouraging agencies to make exempt records the singular means for gaining access to non-exempt records responsive to a particular query and, thereby, effectively to conceal those records from the public, at least in the way responsive to the query." *ACLU Immigrants' Rights Project*, 58 F.4th 643 at 656.

The facts here are distinguishable from *ACLU Immigrants' Rights Project* in two notable respects. First, unlike the ACLU, Mr. Chapman's FOIA request did not request

¹⁹E-mail from Matt [Chapman] to Laura [Harter] (January 27, 2023), quoting summary of *ACLU Immigrants' Rights Project v. United States Immigration & Customs Enforcement*, 58 F.4th 643 (2d Cir. 2023).

Mr. Matt Chapman
Mr. Rob Olmstead
August 23, 2024
Page 9

telephone switch data in which unique identifiers were substituted for personal phone numbers.²⁰ Second, the facts in *ACLU Immigrants' Rights Project* did not involve the combination of data from two separate databases; therefore, the case did not address the central issue in this matter.

Accordingly, this office concludes that preparing the information Mr. Chapman requested would require the creation of a new record, which is not required by FOIA.

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

70612 C-0191 f 3d response complete co

²⁰This office has previously concluded that substituting unique codes for exempt identifying information is the creation of a new record that is not required by Illinois FOIA. Ill. Att'y Gen. Req. Rev. Ltr. 71031, issued April 25, 2022; Ill. Att'y Gen. PAC Req. Rev. Ltr. 67739, issued June 29, 2021.