



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

March 30, 2018

*Via electronic mail*

Mr. John Kraft

Illinois Leaks

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Paris, Illinois 61944

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*Via electronic mail*

Ms. Diane L. Beggs

FOIA Administrator

Decatur Police Department

#1 Gary K. Anderson Plaza

Decatur, Illinois 62532

DBeggs@decaturil.gov

RE: Request for Review – 2017 PAC 50451

Dear Mr. Kraft and Ms. Beggs:

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 Decatur Police Department (Department) violated FOIA by improperly withholding video footage responsive to Mr. John Kraft's November 11, 2017, FOIA request.

On that date, Mr. Kraft, submitted a FOIA request to the Department seeking the Department's vehicle pursuit policy and all dashboard camera and body camera footage for an incident that occurred on October 31, 2017. On November 13, 2017, the Department denied Mr. Kraft's request for dashboard camera footage pursuant to sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(vii) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). The Department also stated that it does not possess body camera footage responsive to Mr. Kraft's FOIA request and that the Department would not release specific details about its vehicle pursuit policy because it would interfere with law enforcement efforts. On November 14, 2017, this

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office received Mr. Kraft's Request for Review contesting the denial of the dashboard camera footage.

On November 29, 2017, this office forwarded a copy of Mr. Kraft's Request for Review to the Department and asked it to furnish copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for its assertion that sections 7(1)(d)(i) and 7(1)(d)(vii) applied to the records. In particular, this office asked the Department to provide a detailed explanation of how the requested information would interfere with law enforcement proceedings and how the release of responsive records to Mr. Kraft's FOIA request would obstruct an ongoing criminal investigation. On December 1, 2017, this office received a copy of the un-redacted dashboard camera footage and the Department's response asserting that it properly denied Mr. Kraft's request; portions of that response were provided confidentially. On December 4, 2017, this office forwarded a copy of the non-confidential portions of the Department's response letter to Mr. Kraft; he did not reply.

#### **DETERMINATION**

All public records in the possession or custody 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 "has the burden of proving by clear and convincing evidence" that a 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, 408 (1997). If a record contains both exempt and non-exempt portions, "the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." 5 ILCS 140/7(1) (West 2016).

#### **Section 7(1)(d)(i) and 7(1)(d)(vii) of FOIA**

Sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA exempt from disclosure:

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request; [or]

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(vii) obstruct an ongoing criminal investigation  
by the agency that is the recipient of the request.

To properly withhold records pursuant to section 7(1)(d)(i) or 7(1)(d)(vii) of FOIA, a public body must demonstrate *how* disclosure of those records would interfere with or obstruct an investigation. The Attorney General has issued a binding opinion concluding that the mere existence of a pending investigation does not demonstrate by clear and convincing evidence that any records are exempt from disclosure. Ill. Att'y Gen. Pub. Acc. Op. No. 17-001, issued March 14, 2017. "The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." *Baudin v. Department of Crystal Lake*, 192 Ill. App. 3d 530, 536 (2d Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *See Day v. Department of Chicago*, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

This office has reviewed the dashboard camera recording in question. The video quality is low and it is difficult to make out specific details. The Department argued that Mr. Kraft's request was received during the initial stages of a homicide investigation and at a time when additional evidence needed to be gathered and additional arrests were possible. The Department also stated that releasing the video could compromise the investigation and prosecution of that matter. The Department's explanation is largely conclusory, and primarily focuses on the status of the investigation rather than the content of the recording. It did not provide any facts or details demonstrating *how* disclosure of the information documented in the dashboard camera recording would interfere with or obstruct an ongoing investigation or potential criminal charges. Accordingly, this office concludes that the Department has not sustained its burden of showing by clear and convincing evidence that the dashboard camera video is exempt from disclosure under sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA.

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This office requests that the Department provide Mr. Kraft with a copy of the dashboard camera video footage. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes 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,



S. PIYA MUKHERJEE  
Assistant Attorney General  
Public Access Bureau

Attachment

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