

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN KRAFT,)
EDGAR COUNTY WATCHDOGS,)
)
Plaintiffs,)
)
v.)
)
CHICAGO POLICE DEPARTMENT,)
)
Defendant.)

10388681

2020CH05792

COMPLAINT

NOW COME Plaintiffs JOHN KRAFT and EDGAR COUNTY WATCHDOGS (“ECW”) and bring this suit to overturn Defendant CHICAGO POLICE DEPARTMENT’s (“CPD”) willful violation of the Illinois Freedom of Information Act. CPD failed to comply with Plaintiffs’ FOIA requests for various records regarding the officer-involved shooting of Latrell Allen, which occurred in the afternoon of August 9, 2020, in the Englewood neighborhood. In support of the Complaint, Plaintiffs state as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.
2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of

government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2.

PARTIES

4. Plaintiffs EDGAR COUNTY WATCHDOGS and JOHN KRAFT are the FOIA requesters in this case. Plaintiffs are members of the news media and a non-profit organization comprised of investigative reporters whose purpose is to foster accountability, truth, and transparency in our local governing bodies.

5. Defendant CHICAGO POLICE DEPARTMENT (“CPD”) is a public body located in Cook County, Illinois.

BACKGROUND

6. On August 9, 2020 at or around 2:30PM, CPD officers shot a young Black man, Latrell Allen, in the Englewood neighborhood.

7. Soon after the incident, information regarding the nature of the shooting circulated on social media.

8. CPD and COPA shortly thereafter announced to the public the alleged circumstances and reason for the shooting.

9. According to CPD, the police shooting began because Mr. Allen “discharged a firearm at the officers which resulted in two CPD officers returning fire, striking the subject.” COPA, *COPA Provides Update on Non-Fatal Officer-Involved Shooting in Englewood* (August

10, 2020), <https://www.chicagocopa.org/press/copa-provides-update-on-non-fatal-officer-involved-shooting-in-englewood>.

10. Later that day, COPA issued another press release and stated that the officers did not have body-worn cameras. COPA, *COPA Requests Assistance from Residents Regarding Non-Fatal Officer Involved Shooting in Englewood* (August 10, 2020), <https://www.chicagocopa.org/press/copa-requests-assistance-from-residents-regarding-non-fatal-officer-involved-shooting-in-englewood>.

11. On August 10, 2020, an eyewitness at the scene, Tenisha Caldwell, came forward and claimed that Latrell did not have a gun on him. Dave Savini, *Mother of Man Shot by Police in Englewood Before Downtown Unrest Says He Had No Gun, Was Trying to Run Away*, CBS Chicago (August 10, 2020), <https://chicago.cbslocal.com/2020/08/10/mother-of-man-shot-by-police-in-englewood-before-downtown-unrest-says-he-had-no-gun-was-trying-to-run-away>.

12. Latrice Allen, Mr. Allen's mother, stated Mr. Allen told her at the hospital that he did not shoot the officers and was "just running." *Id.*

13. Over the next couple of days, in response to the shooting, protests ensued throughout Chicago.

14. The City of Chicago has a history of selectively releasing records in furtherance of the police's version of events, most notably regarding the shootings of Laquan McDonald in 2014 and Harith Augustus in 2018.

15. Further, on multiple occasions, including in the Laquan McDonald case, CPD has been unable to prove, by clear and convincing evidence, as the law requires, that release of videos or other records of an officer involved shooting will interfere with any ongoing investigation by COPA or anyone else.

16. Immediately after one or more previous officer involved shootings, CPD has provided information to the public about what it contends happened, including, for example, whether a gun was allegedly recovered from or near the person shot, without awaiting the results of a COPA investigation.

17. CPD engages in a pattern, policy, and practice of selectively disclosing information, photos, and videos of officer involved shootings that is based in whole or in part on whether the information supports CPD's statements of what occurred.

AUGUST 11, 2020, FOIA REQUEST

18. On August 11, 2020, Plaintiffs submitted a FOIA request to CPD for a "[c]opy of all audio, video, reports, emails, texts, and other records regarding or referencing the police involved shooting, resulting in injury, on August 9, 2020 in or near Englewood." Exhibit A.

19. On August 12, 2020, CPD acknowledged receipt of the request and assigned reference number P596336-081220 to the matter. Exhibit B.

20. On August 12, 2020, CPD sought a five-business day extension. Exhibit C.

21. On August 26, 2020, CPD produced the redacted arrest report and case report of the incident, but denied the remainder of the request. Exhibit D.

22. Plaintiffs are not challenging CPD's production of the arrest report and case report.

23. CPD stated that "search results for body-worn camera videos capturing the actual officer-involved shooting incident returned negative," as the officers assigned to the new unit "were not yet equipped with body-worn cameras"; therefore, CPD does not possess the body-worn camera footage of the officer-involved shooting. Exhibit D.

24. Regarding the remaining video footage, such as in-car camera and body-worn camera footages that capture the aftermath of the shooting, CPD claimed that there are approximately 71 hours of footage. *Id.*

25. Regarding the emails, CPD claimed that the requester needs to provide (1) the email address or employee name, (2) keywords, and (3) timeframe in order to conduct a search. *Id.*

26. Finally, regarding text messages, CPD claimed that it does not possess such text messages and that these records must be “obtained from the wireless service provider via a subpoena.” *Id.*

27. CPD claimed that “any request for text messages must be formulated as a request for a search of that employee’s emails, and any text messages that meet the search parameter of a requested email search will be produced in that matter.” *Id.*

28. CPD concluded that complying with the remainder of the request for video footage and emails is unduly burdensome pursuant to Section 3(g) of FOIA.

29. CPD then asserted that “to the extent you narrow your FOIA request, it was determined that the release of any body-worn camera video and in-camera video records at this time must be denied pursuant to 7(1)(d)(i), (ii), and (vii).”

30. Section 3(g) states:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and ***the burden on the public body outweighs the public interest in the information.*** Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the

public body. Such a response shall be treated as a denial of the request for information.

5 ILCS 140/3(g) (emphasis added).

31. CPD has entirely ignored the public interest in release of these records even though the exemption only applies if the burden outweighs that public interest.

32. There is a significant public interest in obtaining the full extent of these records.

33. After claiming that complying with the request is unduly burdensome, CPD also stated that there is an ongoing CPD investigation regarding the officer-involved shooting, and “all requested records pertaining to this case are exempt” pursuant to Sections 7(1)(d)(i), (ii), and (vii) of FOIA. Exhibit D.

34. In violation of Section 9(a) of FOIA, CPD has not provided a “detailed factual basis for the application of any exemption claimed.” 5 ILCS 140/9(a).

35. Sections 7(1)(d)(i), (ii), and (vii) states:

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;
- (ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;
- (vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

5 ILCS 140/7(1)(d)(i), (ii), and (vii) (emphasis added).

36. CPD has not shown how the disclosure of the requested records would “interfere with pending or actually and reasonably contemplated law enforcement proceedings,” “interfere with active administrative enforcement proceedings,” and “obstruct an ongoing criminal investigation” by the CPD. 5 ILCS 140/7(1)(d)(i), (ii), and (vii).

37. CPD provided only a generic claim indicating that the entirety of the requested records, even if narrowed to more manageable proportions, “must be denied” pursuant to Sections 7(1)(d)(i), (ii), and (vii) without demonstrating how the disclosure of the records *would* interfere with a pending investigation, an active administrative enforcement proceedings, and an ongoing criminal investigation.

38. As of the date of this filing, CPD failed to comply with FOIA and has produced no records responsive to the request.

**COUNT I – AUGUST 11, 2020, FOIA REQUEST,
FAILURE TO PRODUCE RECORDS**

39. The above paragraphs are incorporated by reference.

40. CPD is a public body under FOIA.

41. The records sought in the FOIA request are non-exempt public records of CPD.

42. CPD violated FOIA by failing to produce the requested records.

**COUNT II – AUGUST 11, 2020, FOIA REQUEST,
FAILURE TO PERFORM AN ADEQUATE SEARCH**

43. The above paragraphs are incorporated by reference.

44. CPD is a public body under FOIA.

45. CPD bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

46. CPD has failed to come forward with sufficient evidence to carry this burden.

47. CPD has violated FOIA by failing to adequately search for responsive records.

**COUNT III – AUGUST 11, 2020, FOIA REQUEST,
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

48. The above paragraphs are incorporated by reference.

49. CPD is a public body under FOIA.

50. The records sought in the FOIA request are non-exempt public records of CPD.

51. CPD willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

WHEREFORE, Plaintiffs ask that the Court:

- i. declare that CPD has violated FOIA;
- ii. order CPD to conduct an adequate search for the requested records;
- iii. order CPD to produce the requested records;
- iv. enjoin CPD from withholding non-exempt public records under FOIA;
- v. order CPD to pay civil penalties;
- vi. award Plaintiffs reasonable attorneys' fees and costs; and
- vii. award such other relief the Court considers appropriate.

Dated: September 9, 2020

RESPECTFULLY SUBMITTED,
/s/ Joshua Hart Burday

Attorneys for Plaintiffs,
JOHN KRAFT,
EDGAR COUNTY WATCHDOGS

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311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295

From: John Kraft
Sent: Tuesday, August 11, 2020 5:33 PM
To: 'foia@chicagopolice.org' <foia@chicagopolice.org>
Subject: FOIA Request (Chicago Police Department) - 8-11-2020

On behalf of the Edgar County Watchdogs, Inc., and in accordance with the Freedom of Information Act I am requesting the following.

If you are not the FOIA officer, please forward to the FOIA officer as required by statute.

Electronic copies requested.

This is not a commercial request.

1. **Copy of all audio, video, reports, emails, texts, and other records regarding or referencing the police involved shooting, resulting in injury, on August 9, 2020, in or near Englewood. I**

Exhibit A

believe the suspect/victim name to be Latrell Allen.

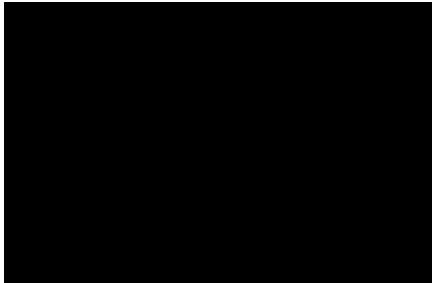
This article is the shooting I am referencing: <https://chicago.suntimes.com/crime/2020/8/11/21363544/latrell-allen-chicago-police-shooting-looting-bail-charges>

This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of the local and state governments in Illinois and will be used to inform citizens of the actions of their public officials, of their rights and responsibilities, of news and current or passing events, and for articles of opinion or features of interest to the public. The principal purpose of this request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the principal purpose of gaining a personal or commercial benefit

I, and the organizations I represent, qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees). Additionally, I, and the organizations I represent, qualify as "news media" under the Illinois Vehicle Code, Section 1-148.5.

Thanks,

John Kraft



Subject: Non-Commercial FOIA Request :: P596336-081220



Chicago Public Safety <chicagops@mycusthelp.net>
to John Kraft

Wed, Aug 12, 4:04 AM (9 days ago)

Dear John :

Thank you for your interest in information from the Chicago Police Department. Your FOIA request has been received and is being processed. Your FOIA Center reference number for tracking purposes is: **P596336-081220**

You have requested the following records: ***This is not a commercial request. 1.Copy of all audio, video, reports, emails, texts, and other records regarding or referencing the police involved shooting, resulting in injury, on August 9, 2020, in or near Englewood. I believe the suspect/victim name to be Latrell Allen.***

Chicago Police Department (CPD) responds to all public records requests in accordance with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq. If further time is needed to assemble and copy all documents responsive to your FOIA request, we will contact you with a time estimate and a request to extend.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Thank you for using the Chicago FOIA Center.

To monitor the progress or update this request please log into the [Chicago Public Safety Record System](#).



Lori E. Lightfoot
Mayor

Department of Police • City of Chicago
3510 S. Michigan Avenue • Chicago, Illinois 60653

David O. Brown
Superintendent of Police

08/12/2020

John Kraft

RE: FOIA REQUEST of August 12, 2020, Reference # P596336-081220

Dear John :

The Chicago Police Department is in receipt of your Freedom of Information Act (FOIA) request. On August 12, 2020, the following request was received.

This is not a commercial request. 1.Copy of all audio, video, reports, emails, texts, and other records regarding or referencing the police involved shooting, resulting in injury, on August 9, 2020, in or near Englewood. I believe the suspect/victim name to be Latrell Allen.

FOIA requires each public body to promptly respond to a request for public records, either by complying or denying the request, within 5 business days after the public body has received the request. Under the Freedom of Information Act, a public body may extend the time to respond to a FOIA request by up to 5 business days.

Due to the COVID-19 pandemic and the Governor's issuance of a disaster proclamation, the Chicago Police Department (CPD) is taking preventive measures in attempt to control the spread of the virus. Therefore, the CPD has chosen to allow Department members assigned to the Freedom of Information Act (FOIA) Unit to work remotely and has partially closed its office due to sworn members assigned to administrative duties being deployed to the field for public safety. In addition, as more and more individuals become ill or come into contact with someone infected with COVID-19 and are isolated or quarantined, members of CPD FOIA Unit may be unable to report to work. In such circumstances, CPD may assert exceptions outlined in 5 ILCS 140/3(e), particularly if responding to the request is unduly burdensome in the circumstances, requires review by an unavailable staff member, or requires resources to obtain records located off-site.

Exhibit C

Please keep in mind that FOIA allows CPD and the requester to come to a mutually agreeable response period to comply with a FOIA request. Members of the public and media are asked to keep these considerations in mind and are strongly encouraged to work with public bodies to agree on reasonable and appropriate response times in light of the public health concerns we all face. Given that the length of the pandemic remains unknown and that staffing levels have been reduced, during this statewide emergency declaration, CPD may treat a FOIA request as unduly burdensome, in the event that it is not feasible for CPD to comply with or deny a request for public records within 5 business days after its receipt of the request or the time for response was properly extended under 5 ILCS 140/3(e) because it would unduly burden CPD's operations during the COVID-19 pandemic.

At this time, we are extending the time to respond to your request by an additional 5 business days.

If you have any questions, please contact our office at 312-745-5308 or at the following address:

Chicago Police Department
Attention: Freedom of Information Officer
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653

Sincerely,

New Police Request
Freedom of Information Officer
Chicago Police Department



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

August 26, 2020

Via Email:

John Kraft
Edgar County Watchdogs, Inc.
[REDACTED]

RE: NOTICE OF RESPONSE TO FOIA REQUEST
FOIA FILE NO.: P596336

Dear John Kraft:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request, received August 12, 2020 for the following:

"1. Copy of all audio, video, reports, emails, texts, and other records regarding or referencing the police involved shooting, resulting in injury, on August 9, 2020, in or near Englewood. I believe the suspect/victim name to be Latrell Allen."

As permitted by 5 ILCS 140/3(e), the time was extended in order to conduct a thorough search for these records. Your request was reviewed by the undersigned in collaboration with the Department's Bureau of Detectives, Bureau of Technical Services, Office of Legal Affairs, and in consultation with the City's Civilian Office of Police Accountability (COPA.) A search of CPD records was conducted utilizing the provided search parameters. Please note that search results for body-worn camera videos capturing the actual officer-involved shooting incident returned negative. Officers assigned to this new unit were not yet equipped with body-worn cameras; therefore, CPD does not possess any responsive records to this portion of your request. However, in-car camera video and body-worn camera videos capturing the aftermath of the officer-involved shooting incident were located as tagged under Event #2022209552. It was determined that your request is granted in part and denied in part. CPD is providing you with the responsive Arrest Report and Original Case Incident Report.

Please be advised that certain information has been redacted from the enclosed responsive records pursuant to 5 ILCS 140/7(1)(b) and 5 ILCS 140/7(1)(c). Details of the redactions are set forth below.

Section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." 5 ILCS 140/7(1)(b). The FOIA, in 5 ILCS 140/2(c-5), defines "private information" as follows:

"'Private information' means unique identifiers, including a person's social

security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person."

Therefore, driver's license numbers, internal record numbers, and employee user codes/numbers are exempt and were properly redacted pursuant to Section 7(1)(b).

In addition, dates of birth were also redacted as the public interest in this information is not great while the privacy interests are significant; therefore, this information is exempt and protected from disclosure pursuant to 5 ILCS 140/7(1)(c) of FOIA. Section 7(1)(c) exempts from inspection and copying the following:

"[P]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy... 'Unwarranted invasion of personal privacy' means the disclosure of information is that highly personal or objectionable to reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." *Id.*

Please be advised that this is an ongoing CPD investigation and it was determined that the other requested records pertaining to this case are exempt pursuant to FOIA under exemption 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011), which allows a public body to withhold records that would interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by the law enforcement or correctional agency that received the FOIA request, and under exemption 7(1)(d)(vii) in which the release of records would obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

While responsive records were identified, disclosing these records would adversely impact an ongoing CPD investigation. In order to ascertain whether your request would interfere with an ongoing investigation, the matter was forwarded to the Department's Bureau of Detectives. The Bureau of Detectives stated that this incident just occurred July 30, 2020 and that the investigation is open and ongoing; the release at this time could possibly jeopardize the progress of the investigation. The Detectives stated that individuals are still being interviewed and the disclosure of these records would directly interfere with CPD's active investigation into this matter. Release would divulge information that would compromise the investigators' ability to determine the veracity of statements made by all involved parties, thereby affecting the integrity and outcome of the investigation and release could affect witness testimony. Compliance with your request for all records regarding RD #JD311144 is unduly burdensome because it requires review and analysis of multiple stakeholders to determine whether individual records could interfere with an ongoing criminal and administrative investigation. Investigations into officer-involved shootings may involve multiple witnesses and pieces of evidence and the importance of each to an ongoing investigation may change during the course of an investigation. For this reason, the staff and/or resources necessary for your FOIA request are unduly burdensome on the daily operations of the Department. Therefore, it was determined that these records must be withheld pursuant to 7(1)(d)(i) and 7(1)(d)(vii).

In addition, please be advised that this is an ongoing COPA investigation and it was determined that the requested records pertaining to this case are exempt pursuant to FOIA under exemption 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011), which allows a public body to withhold records that would interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by the law enforcement or correctional agency that received the FOIA request and (ii), which permits the withholding of documents created in the course of an administrative enforcement proceeding to the extent that disclosure would interfere with "pending or actually and reasonably contemplated law enforcement proceedings conducted by a law enforcement or correctional agency," or "active administrative enforcement proceedings."

In order to ascertain whether your request would interfere with an ongoing investigation, the matter was forwarded to OLA and COPA. OLA stated that the requested records relate to an ongoing investigation that is being conducted by COPA. Per the consultation between OLA and COPA, it was determined that the requested records are exempt from production under 5 ILCS 140/7(1)(d)(i) and (ii). COPA stated that these records relate to an open and ongoing investigation into an officer-involved shooting and that the premature release of these records would interfere with their active investigation. Witnesses are still being contacted to be interviewed and the disclosure of these records would directly interfere with COPA's active investigation into this matter such that their investigation is compromised if witnesses who have yet to meet with COPA are able to review the materials in COPA's possession, including but not limited to the statements of other witnesses, accused, and complainants. *See, e.g., Clark v. City of Chicago*, 10cv1803, 2010 U.S. Dist. Lexis 88124 (N.D. Ill. Aug 25, 2010); *Santiago v. City of Chicago*, 09cv3137, 2010 U.S. Dist. Lexis 29198 (N.D. Ill. Mar. 26, 2010). Release of such records would divulge information that would affect witness testimony, thereby challenging the integrity and jeopardizing the progress of the investigation. Therefore, these records must be withheld pursuant to 7(1)(d)(i) and (ii).

In regard to your request for in-car camera video and body-worn camera video capturing the aftermath of the officer-involved shooting incident, given the scope of your request, processing such a request would be unduly burdensome as written. FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Providing all of the video records you are requesting constitutes approximately 71 hours of video, which would require substantial collection, redaction, and review of records. Even assuming that CPD could review and compile the responsive documents based on the aforementioned search, this task represents an unduly burdensome request for action.

Based on past requests, it would be reasonable to expect a trained FOIA officer to take at least three hours to review one hour of responsive video. Therefore, 71 hours of responsive video records would require at least 213 hours to review, which is not inclusive of the time necessary to retrieve the videos, to the exclusion of all other tasks. Moreover, production of the aforementioned videos would only satisfy a portion of your multipart FOIA request as you are also seeking third-party videos inventoried as evidence, email communications, and investigative reports. These facts, paired with the short response time allowed by FOIA, make the task of identifying, collecting, and reviewing potentially responsive records in a timely manner unduly burdensome upon CPD. As a result, CPD has determined that compliance with your request is unduly burdensome and that CPD's burden to process your request outweighs the public's interest.

In regard to your request for emails, it was determined that this request is unduly burdensome as currently written. Section 3(g) of FOIA provides that "requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information." 5 ILCS 140/3(g). Please be advised that CPD does not have any automated mechanism by which to track, query, or limit a search of email communications categorically as your request is seeking. Therefore, this task represents an unduly burdensome action upon this Department.

Your request for email communications is unduly burdensome as currently written. In order to effectively run an email search, the Department's Bureau of Technical Services needs (1) the email address(es) or employee name(s) of the account(s) you wish searched; (2) key words you wish to search for; and (3) the timeframe to be searched.

In regard to your request for text messages, the Department's Information Services Division indicated that CPD does not possess such text messages, and that these records must be obtained from the wireless service provider via a subpoena. As such, CPD retains no responsive records pertaining to this portion of your request. It should be emphasized that FOIA requires public bodies to provide *existing* public records. See 5 ILCS 140/3(a) ("Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act."). FOIA does not require public bodies to create records, or compile information for the purpose of creating a record.

Moreover, in regard to your request for text messages, please note that the City's Digital Policy dictates that employees may not use any text messaging feature on City-issued phones, except in certain circumstances, and in those circumstances, employees must forward the text message to their City email account. Therefore, any request for text messages must be formulated as a request for a search of that employee's emails, and any text messages that meet the search parameters of a requested email search will be produced in that manner.

At this time, your request is unduly burdensome as currently written. Pursuant to Section 3(g) of FOIA, we would like to extend to you an opportunity to modify your request to make it more manageable. CPD encourages you to review your request to ascertain the specific details to your query. Unless and until a new FOIA request is submitted that specifies what records you are seeking, CPD will be unable to provide further records. Once this is determined, a new FOIA request can be submitted to CPD, specifying the records you would like CPD to provide. However, as explained above, it was determined that the release of any records specifically relating to the referenced officer-involved shooting must be denied at this time pursuant to 7(1)(d)(i), (ii), and (vii).

If I can be of further assistance, please contact me at the following address:

Chicago Police Department
Attention: Freedom of Information
Office of Legal Affairs, Unit 114
3510 S. Michigan Avenue
Chicago, IL 60653
foia@chicagopolice.org

You have a right of review by the Illinois Attorney General's Public Access Counselor, who can be contacted at 500 S. Second St., Springfield, IL 62706 or by telephone at 877-299-3642. You may also seek judicial review in the Circuit Court of Cook County under 5 ILCS 140/11.

Sincerely,

A. Marlan
Freedom of Information Act Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653