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

EDGAR COUNTY WATCHDOGS,)
)
Plaintiff,)
)
v.)
)
CHICAGO POLICE DEPARTMENT,)
)
Defendant.)

2022CH02477

COMPLAINT

NOW COMES Plaintiff EDGAR COUNTY WATCHDOGS (“ECW”), by the undersigned attorneys, Loevy & Loevy, and brings this suit to overturn Defendant CHICAGO POLICE DEPARTMENT’s (“CPD”) willful violation of the Illinois Freedom of Information Act. CPD failed to comply with Plaintiff’s FOIA request for various records regarding a fatal officer-involved shooting of a 14-year-old teenager, Rios Pedro Jr, which occurred on July 4, 2014. 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

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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. Plaintiff EDGAR COUNTY WATCHDOGS (“ECW”) is the FOIA requester in this case. ECW is 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 July 4, 2014, CPD officers shot Rios Pedro Jr., a 14-year-old boy, in the back. After being shot, Rios attempted to run away, but CPD’s vehicle struck him, and he died.

7. CPD claimed that they tried to stop Rios because they thought he looked suspicious “like he was holding something under his shirt.” Fran Spielman, *\$1.2M Settlement to Family of 14-year-old Shot in the Back by Chicago Police in 2014*, Chicago Sun-Times (Dec. 10, 2021), <https://chicago.suntimes.com/news/2021/12/10/22828215/settlement-chicago-police-pedro-rios-jr-fatality>.

8. Since the shooting and throughout the civil litigation initiated by Rios Pedro Jr.’s family, one of the officers who ran after Rios has maintained “he fired after Rios pointed the gun at the officer multiple times.” *Id.*

FEBRUARY 19, 2022 FOIA REQUEST

9. On February 19, 2022, ECW submitted a FOIA request to CPD for “[c]opy of all videos of Rios Pedro Jr. on July 4, 2014 that were collected as evidence” and “[c]opy of the settlement agreement between Rios Pedro, Administrator of the Estate of Rios Pedro Jr. and the City of Chicago” in case number 15-cv-03119. Ex. 1.

10. CPD assigned reference number P727312 to the matter.

11. On March 1, 2022, CPD denied the request in its entirety by claiming that portions of the records responsive to Part 1 of the request are exempt under Section 7.5(bb) of FOIA. CPD further claimed that the request for the remaining records, including videos obtained from an investigation into a fatal officer-involved shooting and the settlement agreement, must be “directed to the department or agency that maintains the records.” Ex. 2.

12. Section 7.5(bb) exempts “[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987.” 5 ILCS 140/7.5 (bb).

13. In *NBC Subsidiary (WMAQ-TV) LLC v. Chicago Police Department*, 2019 IL App (1st) 181426, the Court ruled that “FOIA’s disclosure exemption for information prohibited from disclosure by state law did not apply to a request for records related to the investigation of police officers who fatally shot a minor because those police investigation records did not ‘relate to a minor who has been investigated’ within the meaning of the confidentiality provisions of the Act.”

14. The requested records are not exempt under FOIA.

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

**COUNT I – FEBRUARY 19, 2022 FOIA REQUEST,
FAILURE TO PRODUCE RECORDS**

- 16. The above paragraphs are incorporated by reference.
- 17. CPD is a public body under FOIA.
- 18. The records sought in the FOIA request are non-exempt public records of CPD.
- 19. CPD violated FOIA by failing to produce the requested records.

**COUNT II – FEBRUARY 19, 2022 FOIA REQUEST,
FAILURE TO PERFORM AN ADEQUATE SEARCH**

- 20. The above paragraphs are incorporated by reference.
- 21. CPD is a public body under FOIA.
- 22. CPD bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

- 23. CPD has failed to come forward with sufficient evidence to carry this burden.
- 24. CPD has violated FOIA by failing to adequately search for responsive records.

**COUNT III – FEBRUARY 19, 2022 FOIA REQUEST,
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

- 25. The above paragraphs are incorporated by reference.
- 26. CPD is a public body under FOIA.
- 27. The records sought in the FOIA request are non-exempt public records of CPD.
- 28. CPD has been a party of multiple lawsuits, including before the Appellate Court, which have held that the Juvenile Court Act of 1987 does not exempt records related to the investigation of police officers who fatally shot a minor because those police investigation records did not ‘relate to a minor who has been investigated’ within the meaning of the confidentiality provisions of the Act.

29. CPD knows that the Juvenile Court Act of 1987 does not apply to records related to the investigation of police officers who fatally shot a minor.

30. Because there was no good-faith basis for CPD to assert that the records are exempt under Section 7.5(bb), CPD willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

WHEREFORE, ECW asks 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 ECW reasonable attorneys' fees and costs; and
- vii. award such other relief the Court considers appropriate.

Dated: March 21, 2022

RESPECTFULLY SUBMITTED,
/s/ Merrick Wayne

Attorneys for Plaintiff,
EDGAR COUNTY WATCHDOGS

Matthew Topic
Josh Loevy
Merrick Wayne
Shelley Geiszler
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312-243-5900
foia@loevy.com
Atty. No. 41295

FW: FOIA Request1 message

From: Kirk Allen
Sent: Saturday, February 19, 2022 10:22 AM
To: foia@chicagopolice.org; ClerkFOIA@cityofchicago.org; CPDfoia@chicagopolice.org
Subject: FOIA Request

In accordance with the Freedom of Information Act of Illinois, I am requesting the following public records.

1. Copy of all videos of Rios Pedro Jr. on July 4th, 2014 that were collected as evidence.
2. Copy of the settlement agreement between Riso Pedro, Administrator of the Estate of Riso Pedor Jr. Deceased and City of Chicago, a Municipal Corporation, Nicholas Redelsperger, court number 15 CV 03119

I 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 or commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).

I request expedited processing on the basis of urgency to inform the citizens and taxpayers of Illinois about their government's activities. If any element of this request is denied in whole or in part, I ask that you justify all withholdings individually by reference to specific exemptions of the Act. Please provide all responsive information to me electronically.

I request a rolling production of records, such that the public body furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the below address. If you have any questions please do not hesitate to contact me. Rolling production is not to be perceived as an agreement to extend the time frame for compliance under FOIA.

If you are not the FOIA officer responsible for any part of this request you are required by law to forward it to the appropriate FOIA officer.

The purpose of the request is to access and disseminate information regarding the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

As outlined in FOIA, documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and

indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the 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 personal or commercial benefit.

I am requesting the records be provided in electronic format if that is the method in which they are stored. If they are in paper form and the copier can convert them to electronic format I would appreciate receiving them electronically.

Thanks,

Kirk Allen

Edgar County Watchdogs

PO Box 593

Kansas, IL 61933



Lori E. Lightfoot
Mayor

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

David O. Brown
Superintendent of Police

March 1, 2022

Mr. Kirk Allen
kirk@illinoisleaks.com

RE: NOTICE OF RESPONSE TO FOIA REQUEST
REQUEST RECEIPT DATE: February 19, 2022
FOIA FILE NO.: P727312

Dear Mr. Allen:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq.*, request for the following:

- "1. Copy of all videos of Rios Pedro Jr. on July 4th, 2014 that were collected as evidence.*
- 2. Copy of the settlement agreement between Riso Pedro, Administrator of the Estate of Riso Pedor Jr. Deceased and City of Chicago, a Municipal Corporation, Nicholas Redelsperger, court number 15 CV 03119."*

Your request was reviewed by the undersigned. A search was conducted based on the parameters provided. Please be advised that to the extent that responsive records exist and are considered juvenile law enforcement records, such records for part 1 of your request are denied pursuant 5 ILCS 140/7.5(bb) which specifically exempts from inspection and copying "[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987." 705 ILCS 405/1 et seq. ("JCA"). The Illinois Juvenile Court Act of 1987 strictly restricts the disclosure of law enforcement records that pertain to a juvenile's arrest, charge, or investigation. Such information must be withheld in full pursuant to 705 ILCS 405/5-905(5); 705 ILCS 405/1-7(c). Specifically, pursuant to Sec. 1-7(c): "[t]he records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public." 705 ILCS 405/1-7(C). Therefore, because these are records pertaining to the investigation of a juvenile, this information for part 1 is exempt under 5 ILCS 140/7.5(bb) of the Freedom of Information Act.

To the extent that the records for part 1 of your request relate to a police involved shooting investigation, and for part 2, a legal document, please note that each City department is a "public body" under Section 2 of FOIA, 5 ILCS 140/2(a). See Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App 3d 778, 784, 709, N.E.2d 1281, 1286 (1st Dist. 1999). (Clearly, each of the individual departments are subsidiary bodies of the City and are "public bodies" as defined by the FOIA.) Please visit the City's website @ https://www.cityofchicago.org/city/en/narr/foia/foia_contacts.html for a list of City FOIA Departments and the records each maintains. A FOIA request must be directed to the department or agency that maintains the records you are seeking (Civilian Office of Police Accountability (COPA), City of Chicago Department of Law).

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You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, by telephone at (877)299-3642, fax at (217)782-1396, or email at publicaccess@atg.state.il.us. You also have the right to seek judicial review by filing a lawsuit in Cook County Circuit Court.

Sincerely,

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