



January 24, 2020

VIA E-MAIL

Mr. Sam Stecklow

Invisible Institute

Email: foia@invisibleinstitute.com

RE: 19-FOIA-371 2016 MPD Internal Investigations

Dear Mr. Stecklow:

Metra's FOIA Department ("FOIA Department") is responding to your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("FOIA").

I. Background

On December 12, 2019, the FOIA Department received your original request for, "copies of the following documentation relating to every citizen complaint, internal affairs investigation, HR, and/or EEO complaint and/or investigation regarding all sworn employees of the Metra Police Department that was closed during calendar year 2016:

- Complaint or other initiation report;
- Any lists describing underlying documentation to the investigation;
- Investigatory memos;
- The investigator's case log;
- The investigator's final report and recommendations;
- Hearing transcript;
- Command Channel Review;
- All records showing discipline in each case, if applicable; and
- All records relating to appeals of discipline, if applicable, including but not limited to any written appeals, and any written appellate decisions.

If possible, please provide documentation for each individual case in a separate PDF packet."

("Original Request").

The FOIA Department contacted you on December 17, for clarification as to what you meant by "Command Channel Review". You responded, "[t]hat refers to any records created during a supervisor's review of an internal affairs investigation or disciplinary recommendation prior to its finalization. If this is not something Metra keeps, I understand." Metra does not maintain such records.

The FOIA Department subsequently contacted you to inform you that in order to fulfill your request as written, Metra's various departments would need to undertake several hours to not only search and locate but also review records in their possession that may or may not be responsive to your Request. Your Request, as written, would have caused excessive disruption of Metra's day-to-day operations, including the FOIA Department's ability to fulfill other requests. The FOIA Department determined that

compliance with your Request, as written, would be unduly burdensome. Accordingly, and pursuant to the statute, the FOIA Department requested that you please narrow the scope of your Request to manageable proportions.

On December 27, 2019, you agreed to narrow the timeframe of your request to, "...[c]omplaints/investigations/disciplines closed from January 1, 2016 to June 30, 2016" ("**Narrowed Request**").

The FOIA Department contacted you on January 15 to explain that we were still reviewing documents for accuracy and completeness and would need additional time to complete your Request. We requested and you granted us an extension to January 21, 2020.

On January 21, the FOIA Department contacted you to inform that due to an unexpected absence of the staff member fulfilling your Request, we asked for another extension to January 24, 2020, which you granted.

II. Responsive Documents

In response to your Narrowed Request, the FOIA Department is providing you with the following records for the timeframe of January 1, 2016 to June 30, 2016:

- Complaint or other initiation report; *One (1) external complaint concerning Officer Salamanca;*
- Any lists describing underlying documentation to the investigation; *Employee Personal Record (EPR) for Officers Alonzo, Bielkunski, Howard, Johnson, and Petchow.* Please note that while all employees have an EPR, complaints or discipline records may not always be noted in the EPR, as was the case with Officers Harlston, Salamanca and Wiencek. These incomplete EPRs were not included as Responsive Documents. Additionally, the incomplete EPR's contained notations outside of the time frame of your Request and were deemed non-responsive;
- Investigatory memos; *Officers Alonzo, Bielkunski, Howard, Johnson, and Petchow;*
- The investigator's case log; *After a diligent search of Metra's records we were unable to locate any such records;*
- The investigator's final report and recommendations; *See "Denial" below;*
- Hearing transcript; *After a diligent search of Metra's records we were unable to locate any such records;*
- Command Channel Review; *After a diligent search of Metra's records we were unable to locate any such records;*
- All records showing discipline in each case, if applicable; *Officers Bielkunski, Harlston, Howard, Johnson, Petchow and Wiencek;*
- All records relating to appeals of discipline, if applicable, including but not limited to any written appeals, and any written appellate decisions; *After a diligent search of Metra's records we were unable to locate any such records.*

(**"Responsive Documents"**).

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Aruj Chaudhry has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. The private information contained within the Response Documents is redacted under 7(1)(b) of FOIA. "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 addresses and personal license plate numbers. 5 ILCS 140/2(c-5).
2. The dates of birth of the parties mentioned in the Responsive Documents, are redacted because they are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy...." Section 7(1)(c) goes on to say that, "'Unwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." It has been determined that the aforementioned data falls squarely within that definition and its redaction is appropriate under FOIA.
3. Section 7(1)(a) of FOIA exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 140/7(1)(a). Accordingly, the home address, date of birth, and driver's license number of the parties mentioned in the report are exempt from disclosure per the Driver's Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, which prohibits individuals from knowingly obtaining or disclosing "personal information" from a motor vehicle record.

IV. Denial

Two (2) cases involving internal EEO complaints are withheld in their entirety under Section 7(1)(c) of FOIA which exempts, "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [. . .]" Section 7(1)(c) goes on to say that, "'[u]nwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy." The requested information is highly personal in nature; disclosure of complaints and/or investigation documents containing such personal information would be an unwarranted invasion of privacy and, as stated in 7(1)(c), "[. . .] the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Notwithstanding the personal information exemption, disclosure of complaints and/or internal investigation reports against employee conduct or misconduct is not "information that bears on [their] public duties" and is, therefore, exempt from disclosure as well.

Additionally, Metra's internal EEO Department Complaint Procedure specifically states that, "Metra investigates all complaints of unlawful discrimination/harassment in a discreet and confidential manner. The EEO department instructs involved parties and/or witnesses to keep their participation in investigations confidential." To publicly release the requested records when they are intended to be kept confidential would not only render the company policy inefficacious but also create a "chilling effect" for Metra employees seeking to file grievances. It has been determined by Attorney Aruj Chaudhry that disclosure of the requested information would be in direct conflict with the purpose of Metra's EEO complaint procedures and therefore, withholding the information is appropriate.

Further, the federal Equal Employment Opportunity Commission ("Commission") has addressed the importance of protecting the privacy of those persons who file grievances. As noted in Title 29 CFR § 1611.10 *Disclosure of record to person other than the individual to whom it pertains*:

The Commission shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

The federal regulation also underscores the importance of protecting the privacy of those individuals who file grievances and exempting from disclosure any such record or information to anyone other than the individual to whom it pertains.

One (1) internal memo is withheld in its entirety under Section 7(1)(f) of FOIA, which states records that are, "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated . . . [.]" are exempt from disclosure. 5 ILCS 140/7(1)(f). The above referenced internal memo contains recommendations and opinions and as such, Attorney Aruj Chaudhry has determined its exemption from disclosure is proper under the FOIA. 5 ILCS 140/7(1)(f).

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor ("PAC") of the Illinois Attorney General's Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62701
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

Sincerely,

A handwritten signature in blue ink that reads "K. E. Haton".

Kathleen E. Haton
Freedom of Information Officer
FOIA@metrarr.com
FOIA Hotline #312-663-3642

Attachments