



Lori E. Lightfoot
Mayor

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

Charlie Beck
Interim Superintendent of Police

March 11, 2020

Via Email:

Tracy Siska
Chicago Justice Project
tsiska@chicagojustice.org

RE: NOTICE OF RESPONSE TO FOIA REQUEST
FOIA FILE NO.: P565914

Dear Tracy Siska:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request, received February 18, 2020 for the following:

"In accordance with Definitions and Instructions below and the Illinois Freedom of Information Act, 5 ILCS 140, I request that your office provide the following public records:

1. *All video and audio recordings of any kind of Sgt. Khalil Muhammad's Aug. 13, 2017 off-duty shooting of unarmed teenager Ricardo "Ricky" Hayes in the Morgan Park neighborhood of Chicago (the "Incident") –Board Case # 19 PB 2956. Without limiting the scope of this FOIA request in any way, the response to this request should include at a minimum all of the following:*
 - a. *Electronic recordings from cell phones*
 - b. *Electronic recordings from nearby security cameras collected by Police as evidence or otherwise*
 - c. *Bodycam footage from Muhammad.*
 - d. *Surveillance video showing Muhammad driving past Hayes without stopping.*
 - e. *Video of the Incident reviewed by any members of the Board.*
 - f. *Video of the Incident reviewed by any hearing officers employed by the Board.*

2. *All documents regarding the "Incident". Without limiting the scope of this FOIA request in any way, the response to this request should include at a minimum all of the following:*

a. *Police reports regarding the Incident.*

b. *Statements regarding the Incident.*

c. *Evidence reviewed or considered by members of the Board regarding the Incident.*

d. *Evidence reviewed or considered by any hearing officers employed by the Board regarding the Incident.*

e. *Evidence in the Record of Proceedings before the Board.*

f. *The "stipulation" filed by the City with the Board in October, 2019, including all 11 exhibits to same.*

g. *Any documents or motions filed by the City with the Board regarding the Incident.*

h. *Any charges filed by the City with the Board regarding the Incident.*

i. *Any final decisions handed down by the Board regarding the Incident.*

3. *All documents regarding the "Plea Agreement".*

4. *All documents regarding the Board's decision not to fire Muhammad.*

5. *All documents regarding the Board's decision that Muhammad's use of deadly force was unjustified.*

6. *The transcript and/or any notes or recordings (or documents reflecting) Muhammad's statement(s) about the Incident. Without limiting the scope of this FOIA request in any way, the response to this request should include at a minimum all of the following:*

a. *Muhammad's statement(s) to the Police.*

b. *Muhammad's statement(s) to COPA.*

7. *COPA's summary and findings about the Incident.*

8. *All documents (including electronic documents and communications) referring, regarding or relating to Hayes, the Incident, the Plea Agreement,*

negotiation of the Plea Agreement, COPAs decision or analysis of the Incident, and/or the Board's decision or analysis of the Incident, including drafts thereof.

9. Communications, including but limited to electronic communications and summaries of same (email, text, instant messaging of any kind, voicemail, etc.) to or from the Police Board or any member of the Police Board regarding the Incident, the Plea Agreement, the Board's decision not to fire Muhammad, and/or the Board's decision that Muhammad's use of deadly force was unjustified. Without limiting the scope of this FOIA request in any way, the response to this request should include at a minimum all of the following:

a. electronic communications to or from COPA regarding the topics included above;

b. electronic communications to or from the Mayor's Office or anyone from the Mayor's Office or offices regarding the topics included above;

c. electronic communications to or from the CPD regarding the topics included above;

d. electronic communications to or from amongst Police Board members regarding the topics included above; and/or

e. communications of any kind to or from anyone related to the bad publicity the Board's decision received after it was made public.

10. All policies, procedures, regulations, guidelines, rules, protocols, legislation, ordinances, or laws (official or unofficial, binding or non-binding) that guide, authorize, explain or detail the Board's practices related to whether and when to accept a settlement agreement between the City of Chicago or any of its departments and police officers who are currently or reasonably believe they will be subject to review by the Board in current or future proceedings."

Per your written conversation with the undersigned via email March 4, 2020, you agreed to extend the time frame to respond to March 11, 2020. Your request was reviewed by the undersigned in collaboration with the Department's Bureau of Detectives, Bureau of Internal Affairs, Bureau of Technical Services Information Services Division, and Field Services Section. A search of CPD records was conducted utilizing the provided search parameters. It was determined that your request is granted in part and denied in part. CPD is providing you with the responsive investigative file, in-car camera video, and third-party videos inventoried as evidence.

Please be advised that certain information has been redacted from the enclosed responsive records pursuant to 5 ILCS 140/7(1)(b), 5 ILCS 140/7(1)(c), and 5 ILCS 140/7(1)(d). 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, personal addresses, personal telephone numbers, personal license plate numbers, signatures, officer firearm serial numbers, and employee user codes/numbers are exempt and were properly redacted pursuant to Section 7(1)(b).

In addition, dates of birth and third party names and identifying information of persons such as relatives and neighbors were also redacted as these individuals have a strong interest in keeping their identity private, which outweighs any public interest in this information; 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.*

Names and identifying information of persons who provided information to law enforcement personnel have also been redacted pursuant to 5 ILCS 140/7(1)(d)(iv), which protects information that would:

- (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies

In regard to your request for body-worn camera videos, please be advised that the responding Districts did not utilize body-worn cameras back in August 2017; therefore, CPD does not possess any responsive records to your request for body-worn camera video as it is stated.

In regard to your request for Chicago Police Board records, it was determined that CPD is not the keeper of records you are seeking. In addition, upon consultation with the Department's Bureau of Internal Affairs, it was determined that CPD is not the keeper of records of any COPA records pertaining to this incident including Complaint Register (CR) #1086285. Please note that each City Department is a separate "public body" under Section 2 of FOIA, 5 ILCS 140/2(a). See *Duncan Publishing Inv v. City of Chicago*, 304 Ill. App.3d 778, 784, 709 N.E. 2d 1281, 1282 (1st Dist 1999). A FOIA request must be directed to the Department that maintains the records you're seeking.

Please visit the City of Chicago's website for a list of City FOIA Departments and the records each maintains: https://www.cityofchicago.org/city/en/narr/foia/foia_contacts.html.

Please note that while CPD is not the keeper of records, records such as 911 calls, OEMC transmissions, officer battery reports, and tactical response reports are publicly posted on the City's Civilian Office of Police Accountability (COPA) website. You may access these records by going to COPA's website and searching "1086285" in its Case portal.

In regard to item #9 of your request, it was determined that this request is denied as it is too vague and broad. 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 communications categorically as your request is seeking. Moreover, CPD does not have any automated mechanism by which to track or query for the communications of individuals categorically based on their City Department such as COPA, Mayor's Office, and the Chicago Police Board. 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, CPD 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 item #10 of your request, it was determined that this request is denied as it is too broad and CPD has no way to determine policies, procedures, regulations, guidelines, rules, protocols, legislation, ordinances, and/or laws that the Chicago Police Board used to explain or detail their decision making in the aforementioned case. 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). Without direction from you as to which specific records you seek, such an endeavor would pose an undue burden on the operations of this department. As the Illinois Attorney General's Public Access Counselor has noted (see 2017 PAC 47756, issued June 20, 2017), Illinois courts have held, "[a] request to inspect or copy must reasonably identify a public record[.]" *Chicago Tribune Co. v. Dept. of Financial and Professional Regulation*, 2014 IL App (4th) 130427, par. 33. A FOIA request "reasonably describes records if 'the agency is able to determine precisely what records are being requested.'" *Kowalczyk v. Dept. of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996) (quoting *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982)). Moreover, please be advised that CPD General Orders, Special Orders, and Directives are already publicly available online on CPD's Department Directives System (DDS). You may access the aforementioned system on CPD's website.

At this time, portions of your multipart FOIA request are 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.

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