



March 4, 2020

Tracy Siska
Chicago Justice Project
Via email at tsiska@chicagojustice.org

Dear Mr. Siska,

City of Chicago
Lori E. Lightfoot, Mayor

Department of Law
Mark A. Flessner
Corporation Counsel

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On behalf of the City of Chicago Department of Law, I am responding to your Freedom of Information Act ("FOIA") request which was dated February 18, 2020 and received in our office on the same day. The Law Department took a 5-day extension to your request on February 25, 2020. You requested:

Requesting 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, COPA's 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.*

Please find the attached records responsive to your request. Additionally, many of the records responsive to your request are available on COPA's case portal at <https://www.chicagocopa.org/data-cases/case-portal/>.

We have redacted and withheld certain material pursuant to Section 7(1)(b) of FOIA. That section exempts "private 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). Section 2(c-5) defines "private information" as:

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.

5 ILCS 140/2(c-5). The material we have redacted and withheld under this section is employee numbers and health records. Because these items are specifically exempted under Section 7(1)(b), they have been properly redacted and withheld.

We have also withheld records covered under a protective order in the Police Board case. Under 5 ILCS 140/7(1)(a), a public body may withhold "information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Illinois Supreme Court recently held that it is proper under the Illinois FOIA for a public body to withhold records that are subject to a judicial protective order. *In Re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 66 (citing *GTE Sylvania Inc. v. Consumer Union of the United States, Inc.*, 445 U.S. 375(1980)). Therefore, the Law Department has properly withheld these records.

We have redacted certain material pursuant to Section 7(1)(c) of FOIA. That section exempts:

[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. '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 of 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 personal privacy.

Dates of birth are personal information that is exempt under 5 ILCS 140/7(1)(c). The Public Access Bureau has determined that disclosure of a person's date of birth constitutes an unwarranted invasion of personal privacy, and that a person's "right to privacy outweighs any legitimate public interest in disclosure of his or her date of birth." 2012 PAC 19290 (Ill. Att'y Gen. PAC Req. Rev. Ltr., issued November 2, 2012, at 3), citing 2011 PAC 15360 (Ill. Att'y Gen. PAC Pre-Auth. Ltr., issued July 15, 2011). Therefore, the Law Department has properly redacted dates of birth.

However, the remainder of your request is unduly burdensome under Section 3(g) of FOIA. 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."

First, in order to effectively run an email search, the Law Department needs the following search parameters: (1) the e-mail 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. Without search parameters, the Law Department would need to review all department emails to determine whether any are responsive to your request. Such an undertaking would pose an immense burden on the department.

Second, there are other records from this Police Board matter besides the stipulation and exhibits that we are providing right now. These other records are numerous and add to the burden the request places on the Law Department's time and resources. However, in addition the email search as discussed below, the Law Department can assist you in drafting a FOIA request that is not unduly burdensome and provides reasonable access to these records.

It is necessary that your FOIA request be narrowed and clarified. If you would like assistance in narrowing your request, please contact me, and I will assist you. I can assist you with drafting an email search or with other elements of your request. Otherwise, for the reasons provided above, the Law Department is unable to respond to your FOIA request as currently drafted.

If you agree to narrow your request, you must submit a revised written request to my attention. The Law Department will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen calendar days of the date of this letter, your current request will be denied.

In the event that we do not receive a narrowed request and your current FOIA request is therefore denied, 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, (877) 299-3642. You also have the right to seek judicial review of your denial by filing a lawsuit in Cook County Circuit Court.

Sincerely,

Tom Skelton

FOIA Officer – Department of Law