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November 15, 2021

Via e-mail

Christopher Hansen  
CheckCU.org

**RE:** FOIA Request to Village of Rantoul

Dear Mr. Hansen:

On November 7, 2021, you submitted a Freedom of Information Act (the Act) request by e-mail to Janet Gray, the Village Clerk for the Village of Rantoul. Your request has been forwarded to me, one of its Attorneys, to provide the response.

The request submitted was: "Any and all images, video, audio, and related files and data generated by the automatic license plate reader located at the intersection of Veterans Parkway and Maple Wood Dr generated during the 130 minute period defined as: October 17 2021 5:20pm to 7:30pm." I have separated the portions of your request as each involves a different response. My responses are below:

1. Images generated by the automatic license plate reader:

Response: This request is DENIED IN PART. The images captured by the license plate reader include partial images of each vehicle as well as including the license plate of the vehicle. Section 2(c-5) of the Act contains the definition of private information, which includes personal license plates. Pursuant to Section 7(1)(b) of the Act, private information is exempt. Upon submitting a request to Flock for responsive records, Flock indicated that the ALPR at this location was not functioning for the majority of the time period of your request. Images which were captured while the ALPR was functioning are provided with this response. However, the license plate number has been redacted in each image.

Additionally, each image has an indication of the location of the ALPR.

Section 7(1)(v) of the Act provides the following exemption: "(v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or

systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public.

Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.”

As with many communities, the Village of Rantoul implemented the use of ALPRs in response to criminal activity in the community which includes shootings and attacks against its citizens. ALPRs are a piece of equipment deployed by law enforcement agencies which are designed, through their technology, to provide security measures to identify and respond to attacks and other criminal activity occurring against citizens within their jurisdiction. The technology is used in law enforcement investigations to detect and apprehend those individuals involved in shootings and attacks against the citizens of the Village and who are likely to commit additional attacks, or other criminal activity. Any records or maps indicating or otherwise showing the deployment and location of ALPR cameras falls within the exemption in Section 7(1)(v) of the Act. Any disclosure of the deployment and location of ALPRs would reasonably be expected to jeopardize their effectiveness, as well as the likely destruction of the equipment itself. Any disclosure, which would make public the locations of the ALPRs, would greatly inhibit the ability of the police department to continue to utilize them in its response to attacks and potential attacks on its citizens, as well as its investigations, where license plate numbers may play a key role in the apprehension of those who commit shootings and attacks against the citizens.

Based upon the above, the portion of each image released pursuant to your request which contains information regarding the location of the ALPR is redacted.

2. Video and Audio captured by the automatic license plate reader.

Response: The Village has no records which are responsive to this portion of your request. Automatic license plate readers do not record video nor do they record audio.

3. Related files and data generated by the automatic license plate reader.

Response: There are no documents that satisfy this portion of your request. In order to respond to this portion of your request a new record would have to be created. The Act does not require a public body to create new records in order to respond to a request. Additionally, this portion of your request does not reasonably identify a public record. Rather, it is a general request for data or information to be gleaned from records which have not been created. Therefore, it is not a proper request under the Act.

Section 1 of the Act provides: “This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law.” Pursuant to this

section, a municipality is not required to create a record which has not been prepared and maintained by the municipality in its normal course of business. See 2012 PAC 20260 and 22242; Chicago Tribune Co. v. Department of Financial and Professional Regulation, 8 N.E.3d 11, 380 Ill.Dec. 80 (4<sup>th</sup> Dist. 2014).

In 2021 PAC 20260 and 22242, the Attorney General dealt with a request for an inventory list. The inventory list was in the possession of an entity separate from the request recipient. The Attorney General determined: “.. inventory lists in the possession of DLA [the third party] which CMS [the request recipient] could access but did not create [or ask to be created] or obtain are not ‘records having been prepared by or for, or having or being used by, received by, in the possession of, or under the control of’ CMS. [citing the section of the Act which contains the definition of public record]. Further, CMS is not required to create new records by obtaining copies of DLA’s inventory lists in order to comply with a FOIA request. *See Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32-33 (4<sup>th</sup> Dist. 1989); *Borom v. Crawford*, 651 F.2d 500, 502 (7<sup>th</sup> Cir. 1981)(a public body is not required to create a record that is not maintained in the normal course of business).” The Village is not required to create a new record by requesting Flock create a record containing information from its system that is not kept in the normal course of either operation of the system or normal course of business for the Village.

The court in Chicago Tribune Co., held the following: a request to inspect or copy must reasonably identify a public record and not general data or information; FOIA is not designed to compel the compilation of data the governmental body does not ordinarily keep; and, a reasonable description requires the requested public record to be reasonably identified as a record, not a general request for data or information to be gleaned generally from documents which have not been created and which the agency does not generally create or require. This last portion of your request falls squarely within the nature of this court’s decision whereby such a request is not a proper FOIA request which would require a response.

You have a right to request review of the partial denial of records as set forth above by the Illinois Public Access Counselor:

Public Access Bureau  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62706  
217-558-0486  
[publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

You may also file suit for injunctive or declaratory relief in the Circuit Court of Champaign County Illinois.

If you have any questions or comments, please feel free to contact me.

Yours very truly,

EVANS, FROEHLICH, BETH & CHAMLEY

BY:       /s/ David B. Wesner        
David B. Wesner  
Attorney for the Village  
dwesner@efbclaw.com

Encl.

Cc: Village Clerk

flock



10/17/2021 19:04:46 CDT

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10/17/2021 19:05:09 CDT

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10/17/2021 19:05:34 CDT