



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 1, 2022

Via electronic mail
Mr. Christopher Hansen
[REDACTED]

Via electronic mail
Ms. Kirsten Ruby
Senior Associate Director and Chief Records Officer
Office for University Relations
University of Illinois System
506 South Wright Street
Urbana, Illinois 61801
FOIA-OUR@mx.uillinois.edu

RE: FOIA Request for Review – 2022 PAC 70484; University File No. 22-197

Dear Mr. Hansen and Ms. Ruby:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the University of Illinois (University) did not meet its burden of demonstrating by clear and convincing evidence that the records responsive to Mr. Christopher Hansen's February 21, 2022, FOIA request are exempt from disclosure.

On that date, Mr. Hansen submitted a FOIA request to the University seeking records "indicat[ing] the locations of any automatic license plate readers (ALPRs)" and for every ALPR camera, "the 3 images taken after 12:00pm on February 21st, 2022, and the 3 images taken after 10:00pm on the same day."¹ The request also sought any available maps or GPS coordinates for the ALPRs, as well as any records indicating current, past, or future planned

¹E-mail from Christopher Hansen to [University of Illinois FOIA] (February 21, 2022).

Mr. Christopher Hansen
Ms. Kirsten Ruby
September 1, 2022
Page 2

locations of ALPRs. On March 8, 2022, the University denied the request pursuant to sections 7(1)(d)(v) and 7(1)(v) of FOIA.²

On March 11, 2022, this office received Mr. Hansen's Request for Review contesting the denial. He contended that the ALPR cameras are visible to the public. On March 22, 2022, this office forwarded a copy of the Request for Review to the University and asked it to provide copies of the withheld records, together with a detailed explanation of the factual and legal basis for the applicability of the asserted exemptions. On March 31, 2022, this office received the requested response and on April 4, 2022, and April 5, 2022, received representative samples of the records. On April 1, 2022, this office forwarded a copy of the University's response to Mr. Hansen; he did not submit a reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2020); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(v) of FOIA

Section 7(1)(v) of FOIA exempts from disclosure:

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

²5 ILCS 140/7(1)(d)(v), (1)(v) (West 2021 Supp.), as amended by Public Acts 102-694, effective January 7, 2022, revised February 3, 2022.

Mr. Christopher Hansen
Ms. Kirsten Ruby
September 1, 2022
Page 3

personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

The Public Access Bureau has previously determined that section 7(1)(v) is largely intended to exempt records involved in homeland security and emergency preparations rather than routine duties carried out by an agency. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 21-005, issued June 2, 2021, at 7; Ill. Att'y Gen. PAC Req. Rev. Ltr. 48212, issued November 2, 2017, at 7. The legislative history behind section 7(1)(v) shows that the provision was aimed at records involved in counterterrorism plans. Representative James H. Meyer, one of the House sponsors of the bill, stated during the House concurrence on the Senate amendment that the bill "exempts documents prepared for emergency and security procedures from being disclosed from homeland security where that would be compromised." Remarks of Rep. Meyer, May 31, 2003, House Debate on House Bill No. 954, at 107.

In its response to this office, the University acknowledged that the ALPR cameras are visible to the public, but it argued that "an individual would not know the location of every single camera and the entirety of what information those cameras can capture."³ According to the University, the cameras are used by its police department "to detect, observe, and investigate incidents of crime and misconduct within the University community."⁴ The University contended that release of information concerning the cameras' locations and capabilities would cause harm by hindering the police department's ability to identify, respond to, and prevent crimes: "Knowing the precise locations of the A[LP]Rs and what information those cameras capture would allow individuals engaged in criminal conduct to purposefully avoid certain locations, thus diminishing UIPD's ability to detect and investigate crimes."⁵ It further argued that its ALPR camera system was comparable to the surveillance camera system at issue in *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, ___ N.E.3d ___ (2021).

In *Chicago Sun-Times*, the Illinois Appellate Court concluded that the Chicago Transit Authority (CTA) met its burden of demonstrating that surveillance footage of a train

³Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois System, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (March 31, 2022), at 2.

⁴Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois System, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (March 31, 2022), at 2.

⁵Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois System, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (March 31, 2022), at 3.

Mr. Christopher Hansen
Ms. Kirsten Ruby
September 1, 2022
Page 4

platform fell within the scope of the 7(1)(v) exemption. *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶51, ___ N.E.3d ___. The CTA explained that surveillance cameras were installed at its rail stations after the September 11, 2001, terrorist attacks with funds from a U.S. Department of Homeland Security program designed to protect the public and critical infrastructure. *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶48, ___ N.E.3d ___. In concluding that the footage was exempt from disclosure, the court cited an affidavit in which a homeland security expert averred that the requested platform footage "revealed the quality, resolution, field of view, and blind spots of the CTA's surveillance cameras, and that information could enable individuals to evade these security devices when targeting passengers, planning attacks, or evading capture by law enforcement." *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶49, ___ N.E.3d ___.

The Public Access Bureau has previously concluded that the City of DeKalb improperly denied a request for the locations of license plate recognition (LPR) cameras pursuant to section 7(1)(v) because the city failed to demonstrate that the cameras were used for a homeland security purpose or role within the scope of that exemption. Ill. Att'y Gen. PAC Req. Rev. Ltr. 71393, issued June 27, 2022. In that matter, the city also cited *Chicago Sun-Times* and provided an affidavit from its police chief "averring that the LPR cameras track the language of the exemption as security measures[.]" Ill. Att'y Gen. PAC Req. Rev. Ltr. 71393, at 5. Although the cameras served a security function, this office determined that the city failed to provide facts to "establish the element of the LPR camera locations being designed to address potential *attacks* upon the City's population or systems, facilities, or installations. Rather, the City demonstrated that the LPR camera placements are designed to identify vehicles that are involved in commonplace, smaller-scale criminal activity, such as theft." Ill. Att'y Gen. PAC Req. Rev. Ltr. 71393, at 5.

Based on this office's review of the University's response and a sampling of the responsive records, the University did not provide facts sufficient to demonstrate that the ALPR cameras constitute a "security measure[] . . . designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations[.]" 5 ILCS 140/7(1)(v). As discussed above, in *Chicago Sun-Times*, the CTA explained how its surveillance camera system was installed with federal funds intended specifically for counter-terrorism efforts and supported its claim of the 7(1)(v) exemption with an affidavit detailing the design and uses of its camera system. The University's assertion that release of the records would hinder its police department's ability to identify and investigate "incidents of crime and misconduct" falls short of the detailed explanation that the *Chicago Sun-Times* court found was sufficient to show the applicability of the 7(1)(v) exemption to the CTA's platform footage. In particular, it is not apparent to this office how the ALPR cameras are used in homeland security or emergency preparations. The ALPR cameras instead appear akin to the LPR cameras utilized by the City of DeKalb to identify vehicles that are engaged in smaller-scale criminal activity. Accordingly, the

Mr. Christopher Hansen
Ms. Kirsten Ruby
September 1, 2022
Page 5

University has not demonstrated by clear and convincing evidence that the responsive records fall within the scope of section 7(1)(v).

Section 7(1)(d)(v) of FOIA

Section 7(1)(d)(v) of FOIA exempts from disclosure:

Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

* * *

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request[.]

In *Miller v. United States Dep't of Justice*, 562 F. Supp. 2d 82, 83-84 (D.D.C. 2008), a Federal District court held that forms used by the FBI to develop psychological profiles of criminals were properly withheld under an exemption in Federal FOIA corresponding to section 7(1)(d)(v) based on the agency's explanation of how suspects could use the information to circumvent the effective use of techniques for developing profiles.⁶ However, "vague and conclusory" assertions that give "no explanation of how the information, if released, could risk circumvention of the law, no explanation of what laws would purportedly be circumvented, and little detail regarding what law enforcement purpose is involved" are inadequate to "justify withholding records under the FOIA." *American Civil Liberties Union of Southern California v. United States Citizenship & Immigration Services*, 133 F. Supp. 3d 234, 243-44 (D.D.C. 2015); see also *In American Civil Liberties Union of N. California v. Dep't of Justice*, 880 F.3d 473, 492 (9th Cir. 2018) (upholding a portion of a lower court ruling that a manual concerning law enforcement officials' use of location tracking technology, such as Stingray, was not exempt from disclosure under Exemption 7(e) of the Federal FOIA because the records provided basic

⁶Illinois courts have recognized that because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. *Margolis v. Director, Ill. Dep't of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

Mr. Christopher Hansen
Ms. Kirsten Ruby
September 1, 2022
Page 6

technical information about the surveillance methods rather than detailed, technical analyses of those investigatory techniques).

The University argued that the records also fall within the scope of section 7(1)(d)(v) for the same reasons described above. It maintained that disclosure of the records would cause harm to the University by "diminishing UIPD's ability to detect and investigate crimes."⁷

The University's generalized claim that release of the records would cause harm to it by allowing individuals engaged in criminal activity to evade detection is insufficient to show the applicability of the 7(1)(d)(v) exemption. To meet its burden, the University must demonstrate how the records at issue reveal "unique or specialized investigative techniques other than those generally used and known" and how disclosure of those particular techniques would cause injury or loss to it. The University did not provide specific facts or any examples to illustrate how the records show unique techniques or other specialized information about the police department's methods for investigating crimes. Indeed, the use of license-plate reading cameras to identify the owners of vehicles involved in traffic offenses is a basic investigatory technique already known to the public. Accordingly, the University has not sustained its burden of showing that the records are exempt from disclosure pursuant to section 7(1)(d)(v).

In accordance with the conclusions expressed in this determination, this office requests that the University provide Mr. Hansen with copies of the responsive records.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

70484 f 71dv improper 71v improper univ

⁷Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois System, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (March 31, 2022), at 3.