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By: JH

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

Susanne W. McGee
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

CHRISTOPHER HANSEN,)	
)	
Plaintiff,)	
)	
v.)	No.: 2022CH000015
)	
CITY OF URBANA,)	
URBANA POLICE DEPARTMENT,)	
)	
Defendants.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND FOR FOIA SECTION 11(e) INDEX**

NOW COMES the Defendant, CITY OF URBANA, ILLINOIS (improperly also named herein as “Urbana Police Department”), by Heyl, Royster, Voelker & Allen, its attorneys, and for its Response to the Plaintiff’s Motion for Partial Summary Judgment and for FOIA Section 11(e) Index, states as follows:

I. Introduction

Plaintiff Christopher Hansen has four (4) challenges to specific portions of the City of Urbana’s response to his FOIA request. Three challenges focus on redactions the City made to certain records, and one challenge is to the City’s decision to withhold a certain set of records from production. The City maintains it properly redacted the records in question, as discussed in greater detail below. However (and after review), the City’s decision to withhold the police reports for a specific incident was a good-faith error. The City is happy to disclose those specific records once appropriate redactions have been made. But summary judgment is not warranted on Plaintiff’s other challenges to the City’s FOIA response.

To facilitate this Court's review, the City is happy to provide this Court with a Section 11(e) index or unredacted copies of the City's FOIA response for *in camera* review. As a practical matter (and given the limited scope of Plaintiff's litigation), Defendant respectfully requests that such a disclosure to this Court be limited to the redactions/records that are at issue in this litigation, as compared to all 318 pages of the City's FOIA response.

Finally, the City does not understand the instant Motion to implicate whether the Defendant willfully violated FOIA, etc. Plaintiff's Partial Motion for Summary Judgment only concerns two questions: (1) whether the documents Plaintiff requested and claims to have been redacted or withheld were, in fact, redacted or withheld; and (2) whether the redactions or withholding at issue violated FOIA. Defendant's Response will echo the scope of Plaintiff's Motion.

II. Exhibit List

Exhibit 1	Affidavit of Anthony Weck <i>Exhibit A</i> 2022-F-86 Request <i>Exhibit B</i> 2022-F-86 Response Letter <i>Exhibit C</i> 2022-F-86 Response (Production)
Exhibit 2	Affidavit of R. Surles <i>Exhibit A</i> UPD Policy 300 ("Use of Force") <i>Exhibit B</i> UPD Policy 301 ("Use of Force Review Board")
Exhibit 3	2020 PAC 61436
Exhibit 4	2022-F-073 Response (Part 1)
Exhibit 5	2022-F-073 Response (Part 2)
Exhibit 6	2022-F-073 Response (Part 3)
Exhibit 7	2022-F-073 Response (Part 4)

III. Additional Material Facts

A. Background of FOIA Request

On January 29, 2022, Plaintiff Christopher Hansen submitted a FOIA request to the City of Urbana. (Def. Ans. At ¶15); (Ex. 4, p.4) (FOIA request). This FOIA request was labeled 2022-F-073 by the City, and entailed a request for the police reports for seventeen cases investigated by the Urbana Police Department (“UPD”). (Ex. 4, p.4). City FOIA specialist Anthony Weck compiled the documents for the City and made the necessary redactions. (Ex. 1, Aff. of A. Weck, ¶15). The City responded to this Request in waves, with the first response being issued on February 7 and the final response being issued on March 1, 2022. (*Id.* at ¶14). *See also* (Ex. 4, 5, 6 & 7) (FOIA Responses). The response totaled 318 pages and included redactions. (Ex. 1, ¶14).

On March 10, 2022, Plaintiff wrote to Mr. Weck, and asked him to “please indicate which [FOIA] exemptions have been used for which redactions, and list any items which you have exempted entirely”. (Cmplt., Ex. 7). On March 25, 2022, Plaintiff wrote another email to the City’s FOIA specialists (Ross McNeil and Anthony Weck), noting that “supervisor names/signatures” had been redacted from the UPD reports and asking them to “provide records, or a version of the records already provided, sufficient to show the names of the supervisors on these police reports”. (Cmplt., Ex. 8). Plaintiff filed the instant lawsuit on April 14, 2022.

B. Scope of Dispute

On page 2 of his Motion for Partial Summary Judgment, Plaintiff clarified that only the following aspects of the City’s response are at issue:

1. The redactions used for the “Petitions for Involuntary/Judicial Admission” associated with UPD report nos. U19-3483 and U19-4104. These records are in Exhibit 5 at Bates nos. 23–25 and 43–45, respectively.

2. That the UPD denied Plaintiff "Page 21 of U20-0128" in some capacity. *For report, see* (Ex. 7, Bates nos. 5–37).
3. That the handwritten names of the supervising officers who signed the requested reports were redacted without Plaintiff being given the names of these supervisors in some other capacity/manner. *For example of type of signature at issue, see, e.g.,* (Ex. 4, Bates no. 8).
4. That UPD withheld reports for U20-3048. Instead, the City gave Plaintiff the 1-page "ARMS Case Listing" summary for the incident in question. (Ex. 7, Bates no. 54).

The City does not believe summary judgment is warranted on Issues 1, 2, and 3, for the reasons discussed below. With regards to Issue 4, the City's review revealed the reports for U20-3048 were withheld due to a good-faith mistake. Accordingly, the City will not discuss U20-3048 further in this Response. However, the City does not believe Plaintiff's other challenges warrant summary judgment. The facts for each contested issue will be discussed in turn.

C. Challenge #1: Redactions on the "Petitions for Involuntary/Judicial Admission"

Plaintiff requested all police reports for UPD case nos. U19-3483 and U19-4104. (Ex. 4, p.4) (FOIA Request). These reports each included a filled-out Petition for Involuntary/Judicial Admission ("Petition" or "Petitions"). (Ex. 5, Bates nos. 23–25, 43–45) (Petitions). Defendant redacted these Petitions save for the title at the top of the document. *See (id.)*; (Ex. 1, Aff. of A. Weck, ¶16).

The Petitions are documents used to involuntarily commit an individual for mental health services. *See, e.g.,* 405 ILCS 5/3-601 ("Involuntary Admission Petition"). A blank copy of the "Petitions" in question is publicly available.¹ A blank Petition has spaces for attesting whether the person in question poses a threat to themselves; for the person filling out the Petition to "[s]tate

¹ See ILL. DEP'T OF HUMAN SERVICES, *Petition for Involuntary/Judicial Admission*, available at <https://www.dhs.state.il.us/onenetlibrary/12/documents/Forms/IL462-2005.pdf> (last accessed July 21, 2022).

in detail the signs and symptoms of mental illness displayed by the Respondent”; for identifying witnesses and their contact information; and for stating what medical or mental health facility the committed person was currently located at. *Id.* In other words, the Petitions in question would include medical/mental health information about a non-party. The City never received consent from the persons listed in the redacted Petitions. (Ex. 1, Aff. of A. Weck, ¶17).

D. Challenge #2: “Page 21 of U20-128.”

Preliminarily, Defendant assumes Plaintiff intended to refer to U20-1218. Plaintiff’s Motion and Complaint both take issue with the City denying Plaintiff “Page 21 of U20-0128 (Ex. 6)”. (Cmplt., ¶10, 3d bullet point); (Mtn. for Ptl. Summ. Jdmnt., p.2). Plaintiff’s FOIA request did not seek any policy reports for U20-0128. (Ex. 4, p.4) (FOIA Request). Defendant assumes Plaintiff was referring to U20-1218, which was attached as Exhibit 6 to Plaintiff’s Complaint.

In responding to Plaintiff’s FOIA request, Defendant did not omit/withhold/exclude any police reports for U20-1218. (Ex. 1, Aff. of A. Weck, ¶14).

Although Defendant is not certain what Plaintiff is referring to when he challenges “Page 21” of U20-1218, Defendant’s best guess is that Plaintiff is referring to a redaction on the 21st page of the police reports in the FOIA response he received for U20-1218. *See* (Ex. 7, Bates no. 25). The page in question is the final page of Sergeant Matthew McKinney’s supervisor-level investigation into the force deployed by the UPD in U20-1218. (Ex. 1, Aff. of A. Weck, ¶15); (Ex. 7, Bates no. 22). On that page, Defendant redacted half of Sergeant McKinney’s final sentence in his report. (Ex. 1, Aff. of A. Weck, ¶15); (Ex. 2, Aff. of R. Surles, ¶¶ 5–7, 11–12). Only the portion of the sentence where Sergeant McKinney offers his opinion about the use of force was redacted. (Ex. 2, Aff. of R. Surles, at ¶12); (Ex. 1, Aff. of A. Weck, ¶15).

Sergeant McKinney's supervisor-level use of force investigation (and his associated conclusion) is the first level of review in the UPD's multilevel system for reviewing uses of force. (Ex. 2, Aff. of R. Surles, ¶¶ 7–10); *see also* (Ex. A & B to Ex. 2) (UPD Policies). Sergeant McKinney's report and analysis would then be considered by the UPD's Use of Force Review Board as part of the Board's own analysis into the incident in question. *Id.* The Board would then conduct its own analysis and determine whether a given use of force violated UPD policy or otherwise warranted being brought to the Chief of Police's attention. (*Id.* at ¶¶ 9–10). The final level in the review is the Chief of Police him- or herself, who ultimately has the final authority to make findings of fact and determine the UPD's disciplinary response to a particular use of force. (*Id.* at ¶¶ 9–10). In other words, Sgt. McKinney's opinions/conclusions in U20-1218 were subject to review, reassessment, and adoption or rejection, in whole or in part, by the Chief of Police. (*Id.* at ¶10).

Sgt. McKinney's supervisor-level investigation was authored on March 16, 2020. (Ex. 7, p.22); (Ex. 2, ¶13). The Use of Force Board only reviews the use of force in a given incident after the supervisor-level investigation has been completed. (*Id.* at ¶14). Sergeant McKinney's investigatory report for U20-1218 (and the U20-1218 incident generally) would have been considered by the Board at its next meeting after McKinney authored his report. (*Id.* at ¶14). The Board ultimately concluded the use of force in U20-1218 (and investigated by McKinney) did not violate UPD policy or otherwise warrant being brought to the Chief of Police's attention. (*Id.* at 14).

Neither the Mayor of Urbana nor any UPD Chief of Police ever publicly discussed or cited to Sergeant McKinney's supervisor-level investigation into the force used in U20-1218. (Ex. 2, Aff. of R. Surles, ¶15); (Ex. 1, Aff. of A. Weck, ¶15).

E. Challenge #3: Supervisor Signatures/Identities

When the City responded to Plaintiff's FOIA requests, the City redacted the handwritten signatures of all UPD supervisors who approved each police report. (Ex. 1, Aff. of A. Weck, ¶19). *See generally* (Ex. 4, 5, 6 & 7) (FOIA Responses). On March 25, 2022, Plaintiff emailed the City's FOIA specialists (Ross McNeil and Anthony Weck), noting that "supervisor names/signatures" had been redacted from the UPD reports and asking them to "provide records, or a version of the records already provided, sufficient to show the names of the supervisors on these police reports". (Cmplt., Ex. 8).

Generally speaking, UPD police reports do not have a space on them where the name and title of the supervisor in question is typed up. (Ex. 1, ¶19). *But see, e.g.*, (Ex. 7, Bates nos. 22–25) (listing the supervisor's name in the lower left corner in typeface for each page of the report, because the supervisor was the report's author). However, supervisors initial the bottom of every page of the police report he or she approves. (Ex. 1, ¶19). *See, e.g.*, Ex. 5, Bates no.29). There is also a "Date and Badge" space/box next to the supervisor's signature for the supervisor to write his or her badge number. *See, e.g.*, (Ex. 1, ¶19). *See, e.g.*, (Ex. 5, Bates no. 30) (listing "434" as the supervisor's badge number). The aforementioned initials and "Date and Badge" box were not redacted. *See generally* (Ex. 4, 5, 6 &7) (FOIA Responses).

The City does not maintain a record (aside from the redacted police reports themselves) identifying by name which supervisor signed a given UPD report. (Ex. 1, Aff. of A. Weck, ¶111).

As part of the City's Response to a different FOIA request from Plaintiff, on February 9, 2022 the City disclosed to Plaintiff a record containing, among other things, the name and badge number of each UPD employee. (Ex. 1, Aff. of A. Weck, ¶112 and exhibits referenced therein).

IV. Argument

In relevant part, Plaintiff's Motion boils down to challenging the City's decision to:

- (A) redact two Petitions for Involuntary Admission, which are a mental health "record" excluded from FOIA under Section 7(1)(a);
- (B) redact Sergeant McKinney's half-sentence preliminary conclusion in his investigation into a UPD officer's use of force, as McKinney's investigation was preliminary opinion exempt from FOIA under Section 7(1)(f); and
- (C) redact handwritten signatures of the supervisors who signed off on the disclosed UPD reports without providing Plaintiff with a separate document naming who the supervisor in question was, even though such a document does not exist and Plaintiff otherwise possesses information enabling him to identify the supervisors in question.

Each will be discussed in turn.

A. Petitions for Involuntary Admission

Plaintiff seeks the unredacted Petitions for Involuntary/Judicial Admission ("Petition") the UPD filed for certain individuals in UPD incident numbers U19-3483 and U19-04104. Defendant provided the Petitions themselves but redacted all of their contents save for the each Petition's title. (Ex. 5, Bates nos. 23-25, 43-45). Defendant properly redacted the Petitions, as they are mental health "records" under Illinois law, and therefore excluded; and, failing that, they contain private information and constitute a clearly unwarranted violation of the patient's privacy.

- 1. Exception 7(1)(a): The Petitions are confidential mental health "records" under Illinois law, and therefore exempt from FOIA.**

Section 7(1)(a) of the FOIA states 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(a)(1). Here, the redacted Petitions for Involuntary Admission are confidential “records” under Illinois’ Mental Health and Developmental Disabilities Confidentiality Act (“MHDDCA”), and thus constitute “information specifically prohibited from disclosure by * * * State law.”

First, Defendant redacted a Petition for Involuntary/Judicial Admission filled out by a UPD officer for a third party (i.e., not Mr. Hansen).² This petition is authorized under Chapter III of Illinois’ Mental Health and Developmental Disabilities Code (“Mental Health Code”). *See, e.g.*, 405 ILCS 5/3-601 (“Involuntary Admission Petition”). The purpose of such a petition is to have a mentally ill individual involuntarily committed to receive mental health services and treatment so they do not pose a danger to themselves or others. *Id.* These petitions are filed with the Court and trigger a judicial proceeding to determine whether involuntary commitment is warranted. *See, e.g.*, 405 ILCS 5/3-800 – 5/3-820; 405 ILCS 5/4-600 – 5/4-617.

Second, Petitions for Involuntary/Judicial Admission are confidential “records” under the Illinois Mental Health and Developmental Disabilities Confidentiality Act (“MHDDCA”). The MHDDCA states that “[a]ll records and communications shall be confidential and shall not be disclosed except as provided in this Act,” and, unless the Act expressly states otherwise, such records and communications “made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the

² Note that the form itself is standardized and available at the Department of Human Services’ website. *See* ILL. DEP’T OF HUMAN SERVICES, *Petition for Involuntary/Judicial Admission*, available at <https://www.dhs.state.il.us/onenetlibrary/12/documents/Forms/IL462-2005.pdf> (last accessed July 21, 2022).

records and communications are made or created in the course of a therapeutic relationship.”
740 ILCS 110/3(a) (emphasis added). To that end, “records” are defined under the MHDDCA to include:

[A]ll records maintained by a court that have been created in connection with, in preparation for, or as a result of the filing of any petition or certificate under * * * Chapter III or Chapter IV * * * of the Mental Health and Developmental Disabilities Code and includes the petitions, certificates, dispositional reports, treatment plans, and reports of diagnostic evaluations and of hearings under Article VIII of Chapter III or under Article V of Chapter IV of that Code.

740 ILCS 110/2 (“Record”).

Recall the Petitions at issue here were necessarily made pursuant to Chapter III or IV of the Mental Health Code — after all, those are the only Chapters the form itself permits.³ Moreover, as the “petition” which would initiate judicial proceedings, they would be the type of records “maintained by a court” and would have necessarily been “created in connection with [or] preparation for” a Chapter III or Chapter IV proceeding under the Mental Health Code. 740 ILCS 110/2.

Third, there is no applicable exception to the MHDDCA’s prohibition against disclosing the “records” at issue. Preliminarily, none of the involuntarily committed individuals ever gave their consent to have their records released. (Ex. 1, ¶17). The MHDDCA has exceptions permitting non-consensual disclosures, but FOIA is not one of them. *See, e.g.*, 740 ILCS 110/10, –110/11 (articulating civil proceedings and statutory circumstances where “records” can be non-consensually disclosed; not listing FOIA). Moreover, FOIA itself does expressly state the

³ See ILL. DEP’T OF HUMAN SERVICES, *Petition for Involuntary/Judicial Admission*, available at <https://www.dhs.state.il.us/onenetlibrary/12/documents/Forms/IL462-2005.pdf> (last accessed July 21, 2022) (listing only sections under Chapter III or IV of the Code to be the “reason” the Petition was filed).

MHDDCA does not apply. Instead, FOIA exempts from disclosure “[i]nformation specifically prohibited from disclosure by federal or State law[.]” 5 ILCS 140/7(1)(a). The MHDDCA is just such a law, and therefore (as the more specific statute) controls over FOIA’s general right of access to public records. *See, e.g., Lucas v. Prisoner Review Bd.*, 2013 IL App (2d) 110698, ¶¶ 22 (concluding inmate could not use Illinois’ FOIA to access his progress reports submitted to the Prisoner Review Board, as more-specific Illinois correctional regulations prohibited disclosure of such information).

Accordingly, the City properly redacted the Petitions for Involuntary Admission, as these are confidential “records” under Illinois law. *See* 5 ILCS 140/7(1)(a). Summary judgment should be denied.

2. Exception 7(b): The Petitions contain “private” information not otherwise permitted to be disclosed.

Section 140/7(1)(b) of FOIA exempts “[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). Preliminarily, counsel has identified no court order or non-FOIA state/federal law that would compel disclosure of the Petitions for Involuntary Admission. The issue is therefore whether the Petitions contain “private information” as defined by FOIA.

Under FOIA, “ ‘Private information’ means unique identifiers, including a person’s * * * medical records [and] home or personal telephone numbers[.]” 5 ILCS 140/2(c-5). The use of the phrase “includes” shows this definition is not exhaustive. *See Mancini Law Group, P.C. v. Schaumburg Police Department*, 2021 IL 126675, ¶¶ 31, 36 (discussing *Lieber v. Bd. Trustees of S. Illinois Uni.*, 176 Ill. 2d 401 (1997), and how 2010 amendments to the FOIA including a specific

definition and exemption for “private information” indicated that “the legislature decided to break with *Lieber* on this basis and afford protection to a broader category of information that was not previously deemed to be exempt”).

Here, a blank Petition form⁴ shows the type of “private information” the Petition could contain. The form has spaces for attesting whether the person in question poses a threat to themselves; for the person filling out the Petition to state “[s]tate in detail the signs and symptoms of mental illness displayed by the Respondent”; for identifying witnesses and their contact information; and for stating what medical or mental health facility the committed person was currently located at. *Id.* Thus, the information described is akin to a “medical record” — after all, the Petition constitutes a “record” under the MHDDCA, as discussed in the previous section — and not subject to disclosure, in addition to containing multiple “unique identifiers” for witnesses that should be redacted. Summary judgment is not warranted on these points.

3. Exception 7(1)(c): The Petitions constitute a “clearly unwarranted invasion of personal privacy”

Section 140/7(1)(c) of FOIA states as follows:

Personal 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 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 personal privacy.

⁴ See ILL. DEP’T OF HUMAN SERVICES, *Petition for Involuntary/Judicial Admission*, available at <https://www.dhs.state.il.us/onetlibrary/12/documents/Forms/IL462-2005.pdf> (last accessed July 21, 2022) (listing only sections under Chapter III or IV of the Code to be the “reason” the Petition was filed).

Here, the persons subject to the Petitions never consented to have their information disclosed. (Ex. 1, ¶17). Defendant also presumes there is no dispute that disclosing a private third-party's Petition for Involuntary Admission for mental health services would constitute a "disclosure of information that is highly personal or objectionable to a reasonable person". 5 ICLS 140/7(1)(c). Thus, the issues are whether (1) the committed person's right to privacy outweighs the public's interest in obtaining the information, and (2) whether the Petition is somehow excluded from this exception because it "bears on the public duties of public employees and officials." *Id.*

To the first issue: the involuntarily-committed person's privacy interest trumps the public's interest in knowing he or she has been involuntarily committed.

When analyzing this prong Courts consider (1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶44 (listing factors).

For the first factor: Defendant does not know the Plaintiff's interest in knowing whether the individuals were involuntarily committed for mental health services, and therefore cannot speak to that factor at this time.

For the second factor (public interest): Defendant assumes the public has an interest in making sure that a public officer does not abuse his or her ability to seek involuntary mental health services for a given individual.

However, the latter two factors — the degree of privacy interest and the potential for alternative sources of information — strongly cut in favor of non-disclosure.

To start, the General Assembly clearly articulated its desire for Petitions for Involuntary Admissions to be kept confidential under the MHDDCA. See Part III.A(1), *supra* (discussing MHDDCA). This supports the commonsense idea that an individual would not want the public to access the Petition seeking to involuntarily commit them for mental health services. As *persuasive authority*, see, e.g., *Merrite v. Templeton*, 2015 IL App (3d) 140014-U, ¶¶ 17–19 (unpublished) (noting “strong public policy that favors protecting the privacy rights of individuals with respect to their medical information,” and upholding exclusion of medical records from FOIA request asking for medical records related to an alleged injury a correctional claimed to have suffered from the plaintiff-detainee).

Furthermore, one of the incidents — U19-4104 — did not result in any arrests. (Ex. 5, Bates no. 51) (“No law enforcement action has been taken at the time of this report.”) Thus, the patient in question does not have whatever reduced privacy interests may accompany one’s arrest.

Moreover, the information contained in the Petition is more readily available in a less-protected format: both the publicly available blank Petition form, and the police officer’s report describing the incident giving rise to the Petition for Involuntary Admission. To the extent Plaintiff wishes to know what the generic/standard content is on the form, the publicly available blank form provides this detail. As for the details of the incident itself: Here, for U19-3483 and U19-04104, Defendant provided the police reports in question (with identifying information appropriately redacted), giving Plaintiff access to the information leading up to the Involuntary Petition and informing the officer’s decision. *For U19-3483*, see (Ex. 5, Bates nos. 15–22, 31–33)

(describing committed-person's conduct, and writing the Petition for Involuntary Admission); *for U19-04104, see* (Ex. 5, Bates nos. 39–42, 48–55) (same). Plaintiff therefore already has access to sufficient information to satisfy the public's interest in evaluating the involuntary commitments in question, obviating the need to provide the privileged Petition for Involuntary Admission in unredacted form. *See* (Ex. 5, Bates nos. 23–25, 43–45).

Accordingly, the committed person's privacy interests trumps the Plaintiff's and public's interests in accessing unredacted Petitions for Involuntary Admission. The next issue is whether the Petitions somehow "bear[] on the public duties" of the UPD officers in question, so as to be excluded from Section 7(1)(c).

To the second issue: the Petitions for Involuntary Admission do not "bear[] on the public duties of public employees and officials" — meaning the Petitions are not categorically excluded from the Section 7(1)(c) FOIA exception. To start, a document does not "bear" on a public duty and therefore lose any ability to violate privacy under FOIA simply because the record (here, a Petition) was written by a police officer while carrying out his or her job duties. If this was the case, then no document authorized by a police officer in the course of his or her duties could ever constitute an unwarranted invasion of privacy under Section 7(1)(c), as every aspect of the document would speak to the duties carried out by the reporting officer. It seems clear the law does not support such a blanket rule.⁵ By analogy, a county medical examiner's autopsy photos

⁵ *See, e.g.,* Ill. Attn'y Gen'l Pub. Acc. Opn. 16-009, at p. 15–16, 28 (Nov. 7, 2016) (concluding that disclosing crime victim's statements to police detailing "how [the victim] was allegedly lured into an extortion scheme, how the extortion was carried out, and how [the victim] responded" would "constitute a clearly unwarranted invasion of personal privacy"; separately concluding victim and suspect names in a police report would violate privacy and therefore were exempt under Section 7(1)(c)); Ill. Attn'y Gen'l Pub. Acc. Opn., 2013 PAC 25627, at p. 4–5 (non-binding) (Using Section 7(1)(c) to approve withholding "incident report" arising from an incident involving a juvenile where no arrests were made or crimes were alleged);

would presumably relate in some manner to the examiner's "public duty" to perform autopsies. See 55 ILCS 5/3-3014, 5/3-3015. Nonetheless, graphic autopsy photos have been deemed to constitute an unwarranted privacy invasion and to be justifiably withheld under Section 7(1)(c). See Ill. Attn'y Gen. Pub. Acc. Opn. 10-003, at p.7-11 (Oct. 22, 2010) (Cook County Medical Examiner).

Whether a document "bears on the public duties" of a public employee depends on the subject matter of the information sought, as compared to that information's ultimate accuracy. *Gekas v. Williamson*, 393 Ill. app. 3d 573, 585 (4th Dist. 2009). Thus, the case law shows information is relevant to/"bears on" a public employee's public duties when, for example, the information expressly spells out what the employee's duties are (such as an employment contract), or is an official investigation into whether a duty was not carried out faithfully (such as a citizen complaint or a settlement dismissing a lawsuit alleging wrongful conduct).⁶ But Plaintiff's desired Petitions for Involuntary Admission do not fit within this rubric. Instead, the

⁶ See, e.g., *Gekas v. Williamson*, 393 Ill. app. 3d 573, 585 (4th Dist. 2009) (citizen complaints against Sheriff's deputy related to "public duties," even if the complaints were deemed to be unfounded); *Stern v. Wheaton-Warrenville Community Unit Sch. Dist. 200*, 233 Ill. 2d 396, at 412 (2009) (concluding a superintendent's employment contract bore on the superintendent's public duties, and therefore was not exempted from disclosure under Section 7(c)(1)); *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶¶ 27-28 (concluding personal information of minor arrestee/criminal suspect could properly be redacted from a particular complaint against a law enforcement officer); Public Access Counselor opinion no. 15-044, p.5 (June 17, 2015) (settlement agreement spoke to "public duties"; "[I]t is significant that the settlement agreement is predicated upon the dismissal of a lawsuit alleging that the Plaintiffs' civil rights were violated by a pretextual discharge from the City's Police Department. Because the allegations leading to the settlement agreement related directly to the Plaintiff's public duties as an employee of the City, under the plain language of section 7(1)(c) disclosure of this information 'shall not be considered an invasion of personal privacy.');" Ill. Attn'y Gen'l Pub. Acc. Counselor Op. no. 16-006 (Aug. 9, 2016), at p.9 ("Any emails exchanged by CPD employees concerning the shooting death of Mr. McDonald presumably pertain to those employees' public duties" and therefore Section 7(1)(c) does not apply); 2013 PAC 25627 (non-binding) (concluding FOIA request for Village's internal review of a Village firefighter's violent outburst at work that lead to the firefighter's termination spoke to the firefighter's public duties). Cf. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶40-41 (information speaking to a public employee's compensation for accrued vacation and sick time and documents about the employee's status do not bear on the employee's "public duties.")

Petitions are documents that UPD officers happened to prepare while carrying out their job, not unlike autopsy photos created by a county medical examiner. If the latter can be withheld under Section 7(1)(c) despite directly speaking to the examiner's competence at his or her public duties, then so too should a Petition for Involuntary Admission.

Accordingly, Section 7(1)(c) permits the Defendant to redact the Petitions for Involuntary Admission at issue. Summary judgment is not warranted.

B. "Page 21" of U20-1218

Plaintiff's Complaint states he is challenging "the denial of the following information and/or records: * * * Page 21 of U20-[1218]". (Cmplt, ¶10, third bullet point). Defendant is unsure what Plaintiff is specifically referring to. There is no "page 21" in U20-1218. Instead, the report comprises various smaller reports (each roughly 4 to 6 pages in length) and a few photographs. (Ex. 7, Bates nos. 5-37); (Ex. 1, Aff. of A. Weck, ¶14). Defendant will speculate as to what Plaintiff's contention is as best it can at the current stage. Defendant would respectfully ask for leave to respond to Plaintiff's contention once he more clearly articulates it.

Given the above, Defendant can offer the following at this time:

First: To the extent Plaintiff's argument is that he was *denied* "page 21" in the sense that this/any page was excluded from Defendant's FOIA response for U20-1218, then Plaintiff's argument is incorrect. Defendant did not exclude any pages from U20-1218. (Ex. 1, Aff. of A. Weck, ¶14).

Second: To the extent Plaintiff is challenging the redactions on "page 21" of the PDF response the City provided him (*see* Ex. 7, Bates no. 25), neither of these challenges warrant summary judgment. One redaction was for UPD Sergeant Matthew McKinney's opinion at the

end of his investigation into an alleged incident of excessive force. The other redaction is of Sergeant McKinney's signature. The latter will be discussed elsewhere in this Response.⁷

Preliminarily (and assuming Defendant is correct), Plaintiff seems to be referencing the final page of UPD Sergeant Matthew McKinney's investigation into an alleged use of excessive force by another UPD officer. (Ex. 7, Bates nos. 21–25). Defendant redacted the last half of the final sentence of the report, where McKinney offer's his opinion on witness credibility and whether excessive force was used. (Ex. 7, Bates nos. 25); (Ex. 2, Aff. of R. Surles, ¶12). Defendant redacted this information under the "deliberative process" exemption found in Section 7(1)(f) of Illinois' FOIA. 5 ILCS 140/7(1)(f).

Section 7(1)(f) of the Illinois FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memorandum, and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f). For this exception, documents are exempted whether or not they are a finished, final document. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247–48 (1st Dist. 2003). Rather, the emphasis is on whether a document is both "*predecisional* in the sense that it is actually antecedent to the adoption of an agency policy, and *deliberative* in the sense that it is actually related to the process by which policies are formulated." *Chicago Tribune Co. v. Cook County Assessor's Office*, 2018 IL App (1st) 170455, at ¶28 (emphasis added). Purely factual information is

⁷ For now, Defendant notes that that Sergeant McKinney is the sole signing party of the report in question, and the report itself clearly identifies him as its author by listing his name in the lower left corner of every page. (Ex. 7, Bates nos. 21-25).

not covered by Section 7(1)(f)'s exemption unless that data is inextricably intertwined with predecisional and deliberative discussions. *Id.* at ¶31.

For example, in a previous FOIA dispute between the parties, the Attorney General's Public Access Counselor concluded that Defendant did not violate FOIA when it redacted the opinions expressed by a UPD lieutenant in the lieutenant's investigative report of citizen complaints filed against the UPD. (Exhibit 3, p.1, 3-5) (non-binding opinion). There, the UPD lieutenant's investigation into the citizen complaints at issue was done to help the final decisionmaker, the UPD Chief of Police, determine what action should be taken on the citizen complaint. *Id.* The Chief made his decision after the lieutenant's preliminary report was issued, and the Chief's final decision noted that he (the Chief) reviewed the lieutenant's report while making his decision. *Id.* Given this (and the fact the lieutenant's report was never public cited by the Chief of Police) the Public Access Counselor concluded Defendant could properly redact the lieutenant's preliminary findings/opinions without violating FOIA. *Id.*

So too here.

To start, the redacted material is a predecisional document used in the deliberative process. In this case, Sergeant McKinney's investigation was the first step in the UPD's multilevel review process for uses of force. (Ex. 2, Aff. of R. Surles, ¶¶ 5-7). McKinney's investigation was prompted, at least in part, by an arrestee's complaint about excessive force. (Ex. 7, Bates no. 21); (Ex. 2, at ¶6). For his investigation, McKinney interviewed the complainant, analyzed body camera footage, and reviewed the UPD reports associated with the incident in question. (Ex. 7, Bates nos. 21-25). In the final sentence of the report, McKinney offered his opinion regarding veracity

of the complaint of excessive force — this was the material Defendant redacted. (*Id.* at Bates no. 25) (redacted); (Ex. 2, Aff. of R. Surles, ¶12).

Crucially, McKinney's reported findings and opinions were not the "final" word on the matter. (Ex. 2, ¶¶ 9–10). Rather, McKinney's report would be analyzed and considered by the UPD's Use of Force Review Board and, ultimately, the Chief of Police, with the latter having the ultimate final say about any factual findings and actions to be taken regarding the complaint McKinney was investigating. Moreover, at the time McKinney wrote his report, no decision had yet been made about whether the force used in U20-1218 violated policy. (Ex. 2, ¶14). Rather, Sergeant McKinney's report is the type of information the subsequent steps in the review process could (and did) consider in their subsequent evaluation. (Ex. 2, ¶¶ 9–10). In other words, McKinney's findings were both *predecisional* and *deliberative*, just like the UPD investigation into the citizen complaints that the Public Access Counselor previously concluded did not violate FOIA. Sergeant McKinney's preliminary conclusion could therefore be redacted. *See, e.g., Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶¶ 37–38 (concluding law enforcement agency could properly redact predecisional findings contained in internal investigation of complaint against a law enforcement officer).

Finally, the Section 7(1)(f) exemption is not defeated, as the redacted material was never "publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f); (Ex. 2, ¶15); (Ex. 1, ¶15). Thus, this is far from a case where, for example, a Mayor publicly defended a policy decision by referencing a predecisional study the Mayor based his decision on. *E.g., Dumke v. City of Chicago*, 2013 IL App (1st) 121668 (concluding "deliberative process" exception to FOIA

did not apply when Mayor “publicly cited” a predecisional report as part of a public defense of the Major’s policy decision).

In summary: Defendant remains unsure of what, precisely, Plaintiff is challenging with regards to “page 21” of U20-1218. Based on what Defendant can surmise, however, Defendant’s redactions were proper. Summary judgment is not warranted.

C. Supervisors Signatures/Names

In its FOIA Response, the City redacted the handwritten signature of each supervisor who “signed off” on each disclosed UPD report. In his Motion, Plaintiff clarified that “he does not challenge the withholding of the supervisors’ signatures,” but rather is seeking the identity of the supervisors who signed the reports in question. (Plf’s Mtn. for Partial Summ. Judgment, p.2). The issue therefore is whether FOIA obligates Defendant to provide a document naming who a redacted signature belongs to when such a document does not already exist. FOIA has no such obligation. Summary judgment should be denied.

To start: Redacting a handwritten signature is acceptable under FOIA. 5 ILCS 140/7(1)(b); *see, e.g.*, (Ex. 3, p.2–3) (PAC non-binding decision; citing sources; concluding Urbana could redact signatures as “unique identifiers”). *But see* PAC Opinion 16-009, at p.11 (noting names are not, themselves, “unique identifiers”). FOIA also does not require a responding party to create records which do not already exist or to otherwise answer questions posed by a FOIA requester. *See Chicago Tribune Co. v. Dep’t of Financial and Proff’l Reg.*, 2014 IL App (4th) 130427, at ¶¶ 34, 36–37 (reversing summary judgment for FOIA plaintiff who requested “the number of initial claims in the Department received for a set of 22 physicians,” and was advised that the Defendant did not maintain such a record; the Department did not have to create a new record

it did not otherwise maintain, and had no obligation to answer plaintiff's "general inquiry question" concerning the number of initial claims as this would have required creating a new record).

As seen in the reports attached in Exhibits 4 through 7, the documents at issue do not have a typed "name/title" column spelling out which supervisor is signing each report. *See, e.g.*, (Ex. 7, Bates no. 25). Redacting the handwritten signature necessarily means redacting the name of the individual who signed the report in question (to the extent the signature is legible in the first place). Thus, Defendant cannot satisfy Plaintiff's request for "records, or a version of the records already provided, sufficient to show the names of the supervisors on these police reports". (Cmplt., Ex. 8).

To the extent Plaintiff's request can be construed as a request for Defendant to offer an alternative record naming the supervisors who signed each report, Defendant does not happen to maintain a record other than the appropriately-redacted reports themselves. (Ex. 1, ¶111). Because FOIA does not obligate Defendant to generate a new record beyond what Defendant ordinarily maintains, *Chicago Tribune Co., supra*, Defendant did not violate FOIA by "failing" to provide a non-existent record.

Moreover, Defendant was not obligated to simply tell Plaintiff the names of the supervisors in a separate document. This, again, would be generating a document the Defendant does not normally maintain. Furthermore, a FOIA defendant does not need to respond to general inquiries — which Plaintiff's request ultimately boils down to (i.e., "who were the supervisors that signed the reports?"). *Chicago Tribune Co. v. Dep't of Financial and Proff'l Reg.*, 2014 IL App (4th) 130427, at ¶¶ 34, 36–37.

Finally, it should be noted that Plaintiff was, indeed, given information sufficient to identify the supervisors who signed each report. Every UPD report has the supervisor's handwritten initials in the "body" of the report. *See, e.g.*, (Exhibit 7, at 21–25). Moreover, according to counsel's count, there are 87 spaces in the FOIA response where a supervisor's signature was needed. *See* (Ex. 4–7). For 50 of those spaces, the supervisor's badge number is listed. These initials and badge numbers are relevant because Plaintiff was given (per a different, concurrent FOIA request) a list of each UPD officer's name and his or her associated badge number. (Ex. 1, ¶12 & Ex. A, B, & C thereto). Thus, Plaintiff was provided information that would allow him to identify the supervisors in question: he could cross-check their badge numbers initials with another record the Defendant provided Plaintiff.

V. Conclusion

For the reasons stated above, Defendant respectfully requests:

- A. For summary judgment to be denied with regards to the City's redactions to the identified police reports and Petitions for Involuntary Admission; and, in the alternative, for summary judgment to be entered in Defendant's favor on these points.
- B. For leave of court to address any contentions made by Plaintiff which were not clear on the face of Plaintiff's Motion for Partial Summary Judgment or Plaintiff's Complaint;
- C. For leave of Court to file either a Section 11(e) index or to file under seal a unredacted copy of the City's FOIA response that is limited to the specific portions of the City's FOIA response that Plaintiff is challenging;

D. Such further relief as this Court deems warranted and just.

Respectfully submitted,

CITY OF URBANA, ILLINOIS, Defendant

BY: /s/ Keith E. Fruehling

Keith E. Fruehling

HEYL, ROYSTER, VOELKER & ALLEN, P.C.

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SECONDARY E-MAIL #2: tparker@heyloyster.com

CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on July 29, 2022, I electronically filed and transmitted the foregoing Response to the Plaintiff's Motion for Partial Summary Judgment and for FOIA Section 11(e) Index with the Clerk of the Court for the Sixth Judicial Circuit, Champaign County, Illinois, by using the Odyssey eFileL system.

I further certify that on July 29, 2022, the individuals named below have been served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by those individuals.

Matthew Topic, Esq.
Josh Loevy, Esq.
Merrick Wayne, Esq.
Shelley Geiszler, Esq.
Loevy & Loevy
311 N. Aberdeen, 3rd Floor
Chicago, IL 60607
Email: foia@loevy.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109], I certify that the statements set forth in this **Certificate of Filing and Proof of Service** are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Tammy Parker
Heyl, Royster, Voelker & Allen, PC

41370387_1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

CHRISTOPHER HANSEN,)
)
 Plaintiff,)
)
 v.) No.: 2022CH000015
)
 CITY OF URBANA,)
 URBANA POLICE DEPARTMENT,)
)
 Defendants.)

AFFIDAVIT

Anthony Weck, being first duly sworn, avers as follows:

1. I am a person over 18 years old and under no legal disability.
2. The facts contained within this Affidavit are true and correct to the best of my knowledge and I can competently testify to the same if called as a witness in court.
3. I am a Freedom of Information Act ("FOIA") specialist for the City of Urbana. Since 2010 I have been specifically assigned to handle FOIA requests relating to the City of Urbana's Police Department ("UPD") and am usually the only FOIA specialist who compiles/redacts UPD records for FOIA purposes.
4. I am familiar with FOIA request 2022-F-073, which is the request by Mr. Hansen to the City of Urbana that is at issue in this lawsuit. *See, e.g.*, (Ex. 4, Bates no. 4) (FOIA Request). This Request was made on January 29, 2022. The City responded to this Request in waves, with the first response being issued on February 7, 2022 (Ex. 4); the second response on February 14, 2022 (Ex. 5); the third response on February 21, 2022 (Ex. 6); and the fourth and final response on March 1, 2022 (Ex. 7). The responses entailed 318 total pages of documentation, with redactions.

5. I was the individual who compiled and applied redactions to the documents the City provided in response to Plaintiff's FOIA request at issue. The City's complete and redacted responses are attached to this Response as Exhibits 4, 5, 6 and 7.

6. Plaintiff's FOIA request was for a series of specific Urbana Police Reports. The UPD maintains these reports (and any associated supplemental reports) on an electronic database and in hard-copy form that I have access to. Given the specificity of the FOIA request in question, I was able to look up each requested report and pull it from the UPD's electronic storage and/or hard-copy storage system. This was the amount of search necessary to search for the requested records in this instance.

7. For the FOIA request at issue in this lawsuit, I exchanged emails with my coworkers, Ross McNeil and Amy Koker. Those emails are attached to the City's Response as Exhibit 3. In that exhibit, I personally received the emails where my name is listed in the "to" or "cc" column, and personally wrote the emails where my name is in the "from" column.

8. It was my decision to make the various redactions in the FOIA request at issue. To that end, I did not redact any information out of malice or desire to violate FOIA. For the specific redactions apparently at issue in this lawsuit, my logic was as follows:

9. **Signatures of supervising officers:** The UPD reports that Mr. Hansen requested have a space for a UPD supervisor to sign/date the report in question. *See, e.g.,* (Ex. 4, at Bates no. 8). I redacted these signatures because I have been trained (and therefore my understanding is) that FOIA permits handwritten signatures to be redacted as "private information"/"unique identifiers." It should be noted that the UPD reports in question do not have a "space" that has a typed-up version of the name and title of the individual whose signature was redacted. (*Id.*).

However, the UPD reports in question have the supervisor write his/her initials on the bottom of the report's pages as part of "approving" a report (*e.g.*, Ex. 4, Bates no. 7), and the supervisor also usually includes their badge numbers alongside their signature. (*E.g.*, Ex. 4, Bates no. 8) (listing "434" as supervisor's badge number in the "Date and Badge:" box).

10. At some point in March of 2022, I recall Mr. Hansen emailing Ross McNeil and myself, asking us to give Mr. Hansen a record so he could identify who the supervisors that signed each report were.

11. The City has no record (beyond the redacted reports themselves) which identify by name which supervisor signed a given UPD report. My understanding is that FOIA does not require the City to generate a document in response to a FOIA request which does not already exist. The non-existence of such a document is partially based on my experience working in the City as a FOIA officer, and having never come across such a document before. Nonetheless, to confirm that there is no other document that logs the supervisor who signs off on a given UPD police report, I checked the ARMS database,¹ the LEADS database,² and the UPD's drives on the City-wide document server — none of my searches revealed a document that logs which supervisors are signing off on a given UPD incident report beyond the reports themselves. Finally, my colleague, Amy Koker, also advised that she was not aware of any document capturing which supervisor signed off on a given UPD report.

¹ The Area-Wide Report Management System ("ARMS") is a shared law enforcement database used by the City of Urbana, the City of Champaign, the Board of Trustees of the University of Illinois, and the Champaign County Sheriff's Office, and listed various information about individuals and their contacts with law enforcement.

² The Law Enforcement Agencies Data System ("LEADS") is a statewide, shared law enforcement database system that (among other things) may list various information about individuals and their contacts with law enforcement.

12. However, it should be noted that Mr. Hansen had sufficient information to identify the supervisors as he desired, due to information I knew he received from another, contemporaneous FOIA request. Mr. Hansen sent a FOIA request on Feb. 2, 2022 (read: before he received a response to the FOIA request at issue) asking for, among other things “[r]ecords sufficient to show the names, positions/ranks, [and] badge numbers,” for “each person working for the Urbana Police Department (including non-sworn personnel).” (Ex. A to this Exhibit). I prepared the documentation to be disclosed for that FOIA request, as it concerned the UPD. On February 9, 2022, the City disclosed to Mr. Hansen a record containing, among other things, the name and badge number for each UPD employee. (Ex. B & C to this Exhibit) (note: UPD emails are redacted from this exhibit out of a surplus of caution, but were not redacted in the original FOIA response). Accordingly, by the time Mr. Hansen reached out about the subject FOIA/supervisor signatures in March of 2022, I knew the City had recently provided Mr. Hansen information he could use to identify the signing supervisors for the reports in question.

13. **UPD Report U20-1218:** Mr. Hansen’s Complaint states he is challenging “the denial of * * * [p]age 21 of U20-128 [sic].” I assume this refers to U20-1218, which was part of the FOIA request at issue. (Mr. Hansen did not request a “U20-128”).

14. I genuinely do not know what Plaintiff is referring to. If Mr. Hansen’s complaint is that he believes he was denied “page 21” — i.e., that he did not receive a copy of it — then that is incorrect. As the person who prepared the City’s FOIA response, I can confirm that no pages from U20-1218 were excluded from the City’s FOIA response. I re-confirmed this in July of 2022 by comparing the version of U20-1218 that the UPD maintains/stores and the version of U20-1218 that was disclosed to Mr. Hansen per his FOIA request. Otherwise, there is no specific “page

21" of U20-1218; instead, the incident is comprised of smaller reports roughly four to six pages long, and a handful of photographs.

15. If I look at the PDF response Plaintiff was provided for U20-1218 and count to the 21st page, I land on the final page of Sergeant McKinney's four-page use-of-force investigation. (Ex. 7, at Bates no. 25). On that page, I redacted the supervisor's signature and the end of a sentence containing Sergeant McKinney's preliminary opinion about the alleged incident of excessive force he was investigating. The supervisor signatures are discussed elsewhere. As for McKinney's preliminary conclusion, I redacted that pursuant to Section 7(1)(f) of FOIA, which (per my training) permits me to redact records where a pre-decisional "opinion" is expressed unless the record is publicly cited/identified by the head of the City of Urbana. In this instance, I knew that Sergeant McKinney's investigative report is the type of preliminary document relied upon by the Chief of Police when he or she makes the ultimate, final decision regarding the UPD's response to a complaint of excessive force. Moreover, neither the Chief of Police nor the Mayor of Urbana ever publicly discussed the alleged use of force at issue in U20-1218. This is based on my independent recollection of no such statement ever being made. I also double-checked my memory by consulting publicly available online sources for any indication of the complainant in U20-1218 being discussed by the Chief or Mayor in connection with a complaint of excessive force. This search revealed no public statement about the incident in question.

16. **"Petition for Involuntary/Judicial Admission" in UPD Reports U19-3483 and U19-4104:** I redacted these reports in their entirety save for the title of the document itself. I did not redact the title of the document because I wanted Mr. Hansen, as the requesting party, to be

able to determine what the document was and that it existed. (This is compared to simply withholding the document in its entirety).

17. However, I believed the remainder of the Involuntary/Judicial Admission form constituted a record regarding an individual's believed mental health issues, and therefore implicated the privacy interests of a third party in their health information. The specific records in question concerned a UPD Officer seeking emergency inpatient mental health treatment for an individual other than Mr. Hansen, providing a description of why the individual warranted such treatment, the medical facility the individual was currently located at, and identifying witnesses who could testify to the facts speaking to the need for such commitment. My understanding of FOIA is that disclosing a third party's mental health records absent approval from the third party constitutes an unwarranted invasion of the third party's privacy, in addition to potentially being protected by statutes such as the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq.*). I also never received any consent from the individuals being involuntarily admitted in these records to have their records disclosed to Mr. Hansen.

18. Accordingly, I redacted the entirety of the remainder of the Petitions because I sincerely believed that the mental health and medical information contained on the document would constitute an invasion of the involuntarily committed person's privacy, in addition to potentially being subject to additional Illinois and federal statutes protecting mental health and medical records.

Further Affiant sayeth not.

Dated: July 25, 2022

Anthony Weck
/s/ [Signature]
Anthony Weck

Under penalties as provided by law pursuant to 735 ICLS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

Anthony Weck
/s/ [Signature]
Anthony Weck



FOIA Request

Request for Copies or Inspection of Public
Records under the Illinois Freedom of
Information Act (FOIA).

Request Number: 2022-F-086
Date Received: February 02, 2022
Initial Due Date: February 09, 2022
Routed To: UPD
Response to be prepared by: UPD

Submission Type and Date Transmitted:

Email Submission, February 2, 2022 8:59 AM

Requester's Name:

Christopher Hansen

Requester's Address:

Requester's Daytime Phone Number(s):

Requester's Email Address(es):

[REDACTED]

Response Format:

Email Response

Commercial Request:


No

Records Requested:

Records sufficient to show the names, positions/ranks, badge numbers, email addresses, salary, and total benefits of each person working for the Urbana Police Department (including non-sworn personnel). Please provide the information in the same digital format in which they are kept (if they are excel files, please provide excel files, not PDF files). I need them in a spreadsheet format so that I can sort the data.

Exhibit
A

February 09, 2022

Christopher Hansen


Response - FOIA Request 2022-F-086

Dear Requester,

This message is in response to your Freedom of Information Act (FOIA) request dated February 02, 2022. The City of Urbana received your request on February 02, 2022, and designated it as FOIA request number 2022-F-086.

You requested:

Records sufficient to show the names, positions/ranks, badge numbers, email addresses, salary, and total benefits of each person working for the Urbana Police Department (including non-sworn personnel). Please provide the information in the same digital format in which they are kept (if they are excel files, please provide excel files, not PDF files). I need them in a spreadsheet format so that I can sort the data.

The City has reviewed all relevant records and is attaching a .zip file labeled "2022-F-086_records.zip" containing the following responsive records:

FY21 Total Compensation Report Police Department.xlsx
Urbana Police Sworn & Non-Sworn.docx

If you believe any records you are seeking have been wrongfully withheld or redacted, you are entitled to a review of this decision by the Public Access Counselor of the Office of the Illinois Attorney General. To file a "request for review," you may write to the Public Access Bureau at 500 S. Second Street, Springfield, Illinois 62701, or you may phone 877-299-FOIA (877-299-3642). Any person denied access to inspect or copy any public record also may file suit for injunctive or declaratory relief, in accordance with 5 ILCS 140/11.

Sincerely,
Ross McNeil
FOIA Officer

Exhibit
B

Name	Rank	Badge Number	E-Mail Address
Abernathy, Peyton	Officer	309	Redacted .us
Ackerman, Zachary	Officer	367	Redacted .us
Alfonso, Elizabeth (Betsy)	Sergeant	461	Redacted <u>us</u>
Bain, Matthew	Lieutenant	443	Redacted .us
Banks, Jaedon	Officer	307	Redacted .us
Barrie, Phillip	Officer	369	Redacted .us
Bennett, Paige	Officer (CCRT)	352	Redacted .us
Brito, Xavier	Officer	383	Redacted .us
Burnett, Chad	School Resource Officer	355	Redacted .us
Buttry, Chloe	Officer	382	Redacted .us
Cassidy, Joseph	Officer	314	Redacted us
Cervantes, Michael	Lieutenant	422	Redacted .us
Coleman, Richard	Investigator	362	Redacted .us
DeDecker, Collin	Officer	346	Redacted .us
Fink, Bryan	Officer – K9	331	Redacted us
Ford, Robert	Officer	302	Redacted .us
Franquemont, John	Officer	311	Redacted .us
Gardner, Cortez	Sergeant	468	Redacted .us
Grady, Alexandria	Officer	354	Redacted us
Hale, Jeremy	Officer	341	Redacted .us
Hayes, Osric	Officer	366	Redacted .us
Henry, Elizabeth	Officer	360	Redacted .us
Hewkin, Andrew	Sergeant	453	Redacted .us
Hurley, Jared	Sergeant	480	Redacted us
Ingram, Brian	Sergeant	450	Redacted .us
Jeffers, Joshua	Officer	325	Redacted .us
Kerner, James	Officer	329	Redacted .us
Koker, James (Cory)	Lieutenant	445	Redacted us
Links, Sarah	Officer	328	Redacted us
Marcotte, Adam	Investigator	310	Redacted .us
Marquez, Oliver	Officer	379	Redacted .us
McCartney, Darrin	Investigator	348	Redacted us
McClellan, Don	Officer	332	Redacted .us
McCormick, Bradley	Officer	377	Redacted .us
McKinney, Matthew	Sergeant	472	Redacted us
McNaught, Tim	Sergeant – Investigations	437	Redacted .us
Meneely, Anthony	Officer	371	Redacted .us
Merritt, Justin	Officer	381	Redacted .us
Mikalik, Zachery	Sergeant	434	Redacted .us
Mueller, Neil	Officer	305	Redacted .us
Pankow, Corey	Officer	374	Redacted .us
Pipkins, Douglas	Investigator	304	Redacted .us
Quinley, Matthew	Officer	349	Redacted us
Rich, Raymond	Officer	370	Redacted .us
Robinson, Susanne (Michelle)	School Resource Officer	357	Redacted .us
Roesch, David	Sergeant	417	Redacted .us
Ruff, Eric	Officer	347	Redacted .us
Seraphin, Bryant	Chief	475	Redacted .us

Smysor, David	Lieutenant	458	Redacted	.us
Sprague, Kenneth	Investigator	319	Redacted	.us
Surles, Richard	Deputy Chief	415	Redacted	.us
Vogt, Angela	Officer	321	Redacted	.us
Weber, Conner	Officer	303	Redacted	.us
Willfong, Brian	Sergeant	408	Redacted	.us
Wright, Colby	Sergeant	412	Redacted	.us
Yeagle, Jonathan	Officer	344	Redacted	.us
Non-sworn personnel				
Carr, Michelle	Evidence Technician	385	Redacted	.us
Cunningham, Lashaunda	Support Services Supervisor	386	Redacted	.us
Curtiss, Lisa	Police Services Representative	396	Redacted	.us
Duitsman, Rad	Police Services Representative	389	Redacted	.us
Hatfield, Ashley	Police Services Representative	398	Redacted	.us
Heldman, Cassandra	Administrative Assistant	393	Redacted	.us
Hendrian, Melissa	Crime Analyst	388	Redacted	.us
Koker, Amy	Administrative Assistant	397	Redacted	.us
Smith, Cheryl	Police Services Representative	384	Redacted	.us
Smith, Jalisa	Police Services Representative	399	Redacted	.us
Weck, Tony	FOIA Specialist	391	Redacted	.us

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

CHRISTOPHER HANSEN,)	
)	
Plaintiff,)	
)	
v.)	No.: 2022CH000015
)	
CITY OF URBANA,)	
URBANA POLICE DEPARTMENT,)	
)	
Defendants.)	

AFFIDAVIT OF RICHARD SURLES

Richard Surles, being first duly sworn, avers as follows:

1. I am a person over 18 years old and under no legal disability.
2. The facts contained within this Affidavit are true and correct to the best of my knowledge and I can competently testify to the same if called as a witness in court.
3. I am the interim Chief of Police for the Urbana Police Department ("UPD") and have been a member of the UPD for roughly 25 years. In that capacity, I am familiar UPD's policies and procedures for internally investigating uses of force by UPD officers.
4. My understanding is that the Plaintiff, Christopher Hansen, does not believe a portion of a FOIA request he sent to the City of Urbana was properly responded to. Although I am not familiar with the specific FOIA request at issue, I am able to testify to the UPD's procedures for investigating the use of force. As the interim Chief of Police, I am also knowledgeable about the results of UPD investigations into the use of force.

Exhibit 2

A. Internal Use-of-Force (UOF) Investigations, Generally

5. The UPD has a multilevel procedure for conducting investigations into the use of force by UPD officers. The UPD's policies are publicly available and detail the steps for internal UOF investigations. A copy of some of the relevant policies is attached to this Affidavit for convenience's sake. See (Ex. A) (Policy 300/"Use of Force"); (Ex. B) (Policy 301/"Use of Force Review Board"). Note that the attached policies were enacted in December of 2019 and would have been in effect at the time that Sergeant McKinney wrote his investigative report that is at issue.

6. The UPD will commence a use-of-force investigation in a number of circumstances. One of those circumstances can be when an arrestee verbally complains about excessive force during his or her arrest. Another is when a UPD officer brings a use of force to their supervisor's attention. (Ex. A, at policy no. 300.8, 300.9, 300.11); (Ex. B, at policy no. 301.4). For U20-1218, apparently both occurred, triggering Sergeant McKinney's investigation. (Ex. 7, Bates no. 22).

7. When a use of force investigation is to be done, a supervisor conducts the initial investigation. (Ex. A, at policy no. 300.9). Here, the investigator for U20-1218 was Sergeant Matthew McKinney.

8. The investigator then conducts interviews, reviews reports, reviews any available audio/visual recording, and generally gathers information that might speak to the appropriateness of the force. Once the investigation is completed, the investigator generates a report documenting the steps of their investigation, the facts discovered during the same, and sometimes also offers his or her opinion regarding the trustworthiness of a witness or the legitimacy of the force deployed.

9. The goal is for the investigator's initial report and recommendation is to aid the UPD's Use of Force Review Board and, ultimately, the Chief of Police (who is the final decision-maker related to issues that involve discipline) in their respective review of uses of force by UPD officers. See (Ex. B, policy 301.4, at p.56) (noting "the Use of Force Review Board will review all incidents involving uses of force," and that "[r]eports involving the use of force are automatically forwarded to the use of force review committee").

10. If the Use of Force Review Board concludes a particular instance of force violated UPD policy or otherwise warrants the Chief of Police's attention, then the Board will make a recommendation regarding the use of force and convey this recommendation to the Chief of Police. The Chief of Police then makes all final factual findings and determinations about the use of force in question and decides the UPD's response to the same. In other words, all opinions offered by the investigator are preliminary in nature and subject to review, reassessment, and adoption or rejection, in whole or in part, by the Police Chief.

B. The Redacted Report (U20-1218)

11. My understanding is that Mr. Hansen is taking issue with the City's redactions to Sergeant Matthew McKinney's use-of-force investigation associated with U20-1218. (Ex. 7, Bates nos. 21-25). Sergeant McKinney's report is the type of investigatory report I described earlier in this affidavit and is the type of record regularly produced by UPD officers proximate to the time the officers learn the information contained in their report.

12. On the final page of Sergeant McKinney's investigation (Ex. 7, Bates no. 25), the City's FOIA specialist redacted the last half of McKinney's final sentence in the report. Having seen an unredacted copy of this report, I can confirm that the redacted text contains Sergeant

McKinney's opinion regarding the veracity of the complaining person's allegations of excessive force and McKinney's speculation as to what the complaining person based his complaints on.

13. Sergeant McKinney's investigatory report/opinions were authored on March 16, 2020.

14. Sergeant McKinney's report would have been considered by the Use of Force Review Board during its next meeting in 2020 — after all, the Board only reviews uses of force after all preliminary internal investigations have been completed. The Board determined U20-1218 did not warrant any recommendations to or further review by the Chief of Police.

15. So far as I know, neither the Mayor nor any UPD Chief of Police ever publicly referred to or publicly cited Officer McKinney's report regarding the use of force alleged in U20-1218.

Further Affiant sayeth not.

Dated: 7/29/2022

/s/ Richard Surles
Richard Surles

Under penalties as provided by law pursuant to 735 ICLS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

/s/ Richard Surles
Richard Surles