



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

August 4, 2020

*Via electronic mail*  
Mr. Christopher Hansen  
corruptcu@gmail.com

*Via electronic mail*  
Ms. Betsy Smith  
Freedom of Information Officer  
METCAD  
1905 East Main Street  
Urbana, Illinois 61801  
foiometcad@champaignil.gov

RE: FOIA Request for Review – 2020 PAC 62969

Dear Mr. Hansen and Ms. Smith:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons that follow, the Public Access Bureau has determined that City of Champaign (City) improperly withheld records responsive to Mr. Christopher Hansen's April 21, 2020, FOIA request.

On April 21, 2020, Mr. Hansen submitted a FOIA request to the City's METCAD 9-1-1 Communications Center seeking copies of documents and recordings relating to the arrest of a named person on April 10, 2020. On April 24, 2020, METCAD denied Mr. Hansen's request, stating that the records were exempt from disclosure under section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). On May 11, 2020, Mr. Hansen submitted the above-referenced Request for Review disputing that denial.

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On May 19, 2020, this office sent a copy of the Request for Review to METCAD and asked it to provide unredacted copies of the withheld records for this office's confidential review, and a detailed written explanation of the applicability of the section 7(1)(d)(i) exemption. On May 28, 2020, this office received the records and METCAD's response. Mr. Hansen did not reply to that response.

### 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 2018); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2018).

#### Section 7(1)(d)(i) of FOIA

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

(d) 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:

(i) Interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[.]

"The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." *Baudin v. Department of Crystal Lake*, 192 Ill. App. 3d 530, 536 (2d Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *Day v. Department of Chicago*, 388 Ill. App. 3d, 74-77 (1st Dist. 2009); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 17-001, issued March 14, 2017 (binding opinion concluding that the mere commencement of an investigation or prosecution does not constitute clear and convincing evidence that any records are exempt from disclosure). Rather, a public body must demonstrate *how* disclosure of records would interfere with or obstruct a criminal prosecution or investigation in order to properly withhold records pursuant to section 7(1)(d)(i) of FOIA.

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In response to this office, Ms. Betsy Smith of METCAD stated that she consulted with the Urbana Police Department and the Champaign County State's Attorney's Office (State's Attorney's Office). Ms. Smith stated that the State's Attorney's Office advised her on April 23, 2020, that the investigation into the matter for which Mr. Hansen requested records was ongoing, and that the criminal case was still in the discovery stages. In a supporting e-mail provided by METCAD, the chief criminal deputy of the State's Attorney's Office recommended that METCAD deny the request because the State's Attorney's Office was still receiving and processing additional reports regarding the incident.

METCAD's response to this office merely establishes that the records Mr. Hansen requested concern a pending law enforcement investigation. METCAD has not provided clear and convincing evidence from which this office could conclude that disclosure of the specific records would interfere with that investigation. This office also has reviewed a recording of the April 27, 2020, meeting of the Urbana City Council, in which the audio of the initial 9-1-1 recording and clips of the police radio discussion surrounding the incident were played after the mayor stated Urbana received clearance from the State's Attorney's Office to release body camera footage and audio despite the pending criminal case. Although METCAD responded to Mr. Hansen three days prior to the public disclosure of these materials, it has not adequately demonstrated how the circumstances surrounding the investigation changed in the time between its response to Mr. Hansen and the April 27, 2020, meeting. Accordingly, this office concludes that the City did not sustain its burden of showing, by clear and convincing evidence, that the audio recordings and reports sought by Mr. Hansen are exempt from disclosure under section 7(1)(d)(i) of FOIA.

For the reasons stated above, this office requests that the City disclose the requested audio recordings and reports to Mr. Hansen. However, under section 7(1)(d)(iv) of FOIA<sup>1</sup> (5 ILCS 140/7(1)(d)(iv) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019), the City may redact from the records names and any other information that would unavoidably identify witnesses who were not arrested.

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<sup>1</sup>Section 7(1)(d)(iv) of FOIA exempts from disclosure information that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]"

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me by mail at the Chicago address listed on the first page of this letter, by phone at (312) 814-4461, or by e-mail at [jsternecky@atg.state.il.us](mailto:jsternecky@atg.state.il.us). This letter serves to close this file.

Very truly yours,



JANE STERNECKY  
Assistant Attorney General  
Public Access Bureau

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