



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 25, 2011

Officer Christopher Bove #8230
Assistant FOIA Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

PUBLIC ACCESS OPINION No. 11-002
(Request for Review 2010 PAC 11568)

FREEDOM OF INFORMATION ACT:
Disclosure of Number of Police Officers Assigned to Districts

Dear Officer Bove:

This binding opinion is issued pursuant to Section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f), added by Public Act 96-542, effective January 1, 2010).

Background

On October 25, 2010, Joseph Mahr, a reporter with the *Chicago Tribune (Tribune)* submitted a FOIA request to the Department which sought records that contain the current sum of the number of sworn officers assigned to each district. On November 1, 2010, the Department denied this FOIA request, citing the Section 7(1)(v) (5 ILCS 140/7(1)(v)) exemption. On December 28, 2010, this Office received the *Tribune's* Request for Review. On January 7, 2011, we notified the Department that we would require additional information in order to determine whether the Department's response complied with FOIA. Since that time, we have received a written response from the Department (including a partially redacted affidavit of Deputy Superintendent Ernest T. Brown, dated January 25, 2011) as well as additional correspondence from the *Tribune*, all of which we have considered in making a determination regarding this matter.

Section 1.2 of FOIA (5 ILCS 140/1.2) provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection and copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." Therefore, in the context of a Request for Review, the

issue is whether the public body has proved by clear and convincing evidence that the information it has withheld is exempt from disclosure under Section 7 of FOIA. As set forth more fully below, we find that the Department has *not* met its burden of demonstrating that the records responsive to Mr. Mahr's FOIA Request are exempt under FOIA.

The Department asserts that the requested records are exempt under Section 7(1)(v) of FOIA, which exempts from inspection and copying the following:

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.

In its initial response to Mr. Mahr's FOIA request, the Department asserted:

The information that you are requesting pertains to the mobilization and deployment of Chicago Police Department personnel. . . . It can be reasonably expected that the information that you have requested could be used to undermine the effectiveness of the City's security measures or the safety of the personnel who implement them. This would then constitute a clear and present danger to the health and safety of the community.

In its Request for Review, the *Tribune* states that "[d]isclosing how many of the CPD's approximately 13,000 sworn officers are assigned to each of 25 districts cannot possibly limit the effectiveness of security measures." Moreover, it states that the Department misconstrues Section 7(1)(v) which, "[b]y its terms, . . . is limited to situations where destruction or contamination of facilities would cause a clear and present danger to public health."

In response to our request for additional information, the Department also argues that, because the *Tribune* seeks "details pertaining to the mobilization or deployment of personnel", the requested records are exempt *per se* under Section 7(1)(v). It argues further that, even if the requested records are not deemed exempt *per se*, those records fall within what the Department characterizes as "the first portion of the definition" in Section 7(1)(v). Deputy Superintendent Brown's affidavit, submitted with this response, avers in part that:

Although the number of sworn police officers is a generally static number for each of the 25 districts, the CPD Command Staff make decisions on deployment of resources, i.e., additional sworn police officers, that may be detailed or assigned to target a certain district and/or beat of a district in response to a large event, a series of violent incidents or other such threat to the public within that area.

In reply, the *Tribune* states that the Department's response effectively "attempts to read the second sentence of [Section] 7(1)(v) as if it were not qualified by the first sentence" and that the proper reading of Section 7(1)(v) dictates that "[t]he second sentence does not even enter the analysis if, as is the situation here, the criteria set forth in the first sentence are not met." It also notes that it "does not seek the analysis behind staffing decisions—simply the number of sworn officers per district."

Analysis

As noted above, Section 7(1)(v) 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 personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

By its terms, this exemption applies to particular types of "vulnerability assessments, security measures, and response policies or plans", namely those 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" and only in circumstances where "disclosure could reasonably be expected to jeopardize the effectiveness of [these] measures or the safety of the personnel who implement them or the public" protected by these measures. This exemption is applicable to assessments, measures, policies and plans designed to address those potential attacks targeted at the destruction or contamination of a community's population or infrastructure. Contrary to the Department's contention, the second sentence of this exemption does not modify the nature of the information made exempt under the first sentence. Thus, the second sentence does not generally exempt "details pertaining to the mobilization or deployment of personnel or equipment". Rather, it only exempts such information to the extent disclosure "would constitute a clear and present danger to the health or safety of the community", and "only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the [particular types of measures identified in the first sentence of the definition] or the safety of the personnel who implement them or the public."

Findings and Conclusions

After full review and giving due consideration to the positions of the parties, the Attorney General finds that:

- 1) *The Chicago Tribune's* Request for Review was timely filed and otherwise complies with the requirements of Section 9.5(a) of the Freedom of Information Act (5 ILCS 140/9.5(a)). Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the requested records.
- 2) The Chicago Police Department possesses records responsive to the *Tribune's* request but has asserted that the records constitute "vulnerability assessments, security measures, [or] response policies or plans" that are exempt from disclosure pursuant to Section 7(1)(v) of the Freedom of Information Act.
- 3) The Department has failed to sustain its burden of demonstrating that the records in question constitute "vulnerability assessments, security measures, [or] response policies or plans" as described in the first sentence of Section 7(1)(v). Further, the Department has failed to demonstrate how the disclosure of records containing the current sum of the number of sworn officers assigned to each district could "reasonably be expected to jeopardize the effectiveness of [any security] measures or the safety of the personnel who implement them or the public."
- 4) Accordingly, records of the Chicago Police Department containing the current sum of the number of sworn officers assigned to each district are not exempt from disclosure under Section 7(1)(v) of the Freedom of Information Act.

Therefore, it is the opinion of the Attorney General that the Chicago Police Department has violated FOIA by improperly denying *The Chicago Tribune's* request for records containing the current sum of the number of sworn officers assigned to each police district. The Department is required to provide copies of the requested records to Mr. Mahr pursuant to his October 25, 2010 request. Under Section 9.5(f) of FOIA, the Department must either immediately comply with this binding opinion or initiate administrative review under Section 11.5 of FOIA.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 4/3-101 *et seq.* An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of the decision naming the Attorney General of Illinois and Mr. Joseph Mahr as defendants. *See* 5 ILCS 140/11.5.

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Senior Assistant Attorney General
Chief, Public Access and Opinions
Division

cc: Mr. Joseph Mahr
Chicago Tribune
Via e-mail to:
jmahr@tribune.com

Mr. Brendan Healey
Senior Counsel/Media & Promotions
Chicago Tribune
Via e-mail to:
bhealey@tribune.com

11568 rfr f pb ex improper pd