



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 29, 2019

PUBLIC ACCESS OPINION 19-005
(Request for Review 2019 PAC 56867)

FREEDOM OF INFORMATION ACT:
Disclosure of Police Department's
Extradition Calendar

Mr. Derek B. Webb
6033 North Sheridan Road
Chicago, Illinois 60660

Ms. Dana O'Malley
Assistant General Counsel
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653-1020

Dear Mr. Webb and Ms. O'Malley:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that the Chicago Police Department (CPD) violated the requirements of FOIA by improperly denying Mr. Derek B. Webb's January 28, 2019, FOIA request for a copy of one of the CPD's extradition calendars.

BACKGROUND

On that date, Mr. Webb submitted a FOIA request to CPD seeking a copy of the

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"2019 Extradition Calendar Unit 166 – January 2019."^{1,2} On February 11, 2019, CPD denied the request pursuant to section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), stating that "[e]xtradition monthly calendars contain recommendations regarding assignments and are not an official CPD document. As such they are being withheld from production as predecisional or draft material[.]"³ On February 15, 2019, Mr. Webb submitted a Request for Review to the Public Access Counselor contesting CPD's denial of the calendar.⁴

On February 20, 2019, the Public Access Bureau sent CPD a copy of the Request for Review. The Public Access Bureau also sent CPD a letter requesting a copy of the withheld calendar for this office's confidential review, together with a detailed explanation of the legal and factual bases for the assertion that the calendar is exempt from disclosure under section 7(1)(f) of FOIA.⁵

On March 8, 2019, the Public Access Bureau received a written answer from CPD that was attached to an e-mail that carried a notation indicating that the e-mail and any attachments to it were confidential.⁶ On March 11, 2019, CPD furnished the Public Access Bureau with a copy of the withheld calendar, which was submitted to the Public Access Bureau

¹Freedom of Information Request Form from Derek B. Webb to Chicago Police Department (undated).

²Unit 166 refers to a part of the CPD's Field Services Section. Among the duties of Unit 166 is processing all phases of the extradition process to and from the State of Illinois involving CPD. Personnel of Unit 166's Extradition Section are often required to attend court and relate information regarding prisoners to the judge. Report of the Inspector General's Office: Review of Opportunities for Civilianization in the Chicago Police Department, Office of the Inspector General, City of Chicago, at 26-29 (January 2013), <https://news.wttw.com/sites/default/files/IG%20Report%20on%20Opportunities%20for%20Civilianization%20in%20CPD.pdf>

³Letter from A. Marlan, Freedom of Information Act Officer, Chicago Police Department, Office of Legal Affairs, Unit 114, to Derek Webb (February 11, 2019), at [1].

⁴E-mail from Derek B. Webb to Public Access [Bureau, Office of the Attorney General] (February 15, 2019).

⁵Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Charise Valente, General Counsel, Chicago Police Department (February 20, 2019).

⁶Letter from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs – Unit 114, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 8, 2019).

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for its confidential review.⁷ On March 12, 2019, an Assistant Attorney General in the Public Access Bureau asked the attorney who provided CPD's written answer whether any portions of CPD's March 8, 2019, answer were not confidential and could be provided to Mr. Webb.⁸ On March 12, 2019, CPD provided the Public Access Bureau with a redacted copy of its written answer suitable for sending to Mr. Webb.⁹ On March 14, 2019, the Public Access Bureau forwarded to Mr. Webb the redacted copy of CPD's written answer¹⁰ and notified him of his opportunity to reply.¹¹ Mr. Webb did not reply.

Pursuant to section 9.5(f) of FOIA, on April 15, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to May 29, 2019.¹²

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). "All records in the custody or possession of a public body are presumed to be open to inspection or 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." 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Act 100-732, effective August 3, 2018) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

⁷E-mail from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs, to Assistant Attorney General Hartman (March 11, 2019).

⁸E-mail from Matthew S. Hartman, Assistant Attorney General, Public Access Bureau, to [Vaughn] Ganiyu (March 12, 2019).

⁹E-mail from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs, to Assistant Attorney General Hartman (March 12, 2019).

¹⁰Section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2016)) provides, in pertinent part: "The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."

¹¹Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Derek B. Webb (March 14, 2019).

¹²Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Derek B. Webb and Dana O'Malley, Assistant General Counsel, Chicago Police Department (April 15, 2019).

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Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda 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." The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). Based on the deliberative process exemption in Federal FOIA,¹³ section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248.¹⁴

Section 7(1)(f) does not exempt from disclosure purely factual material unless it is inextricably intertwined with predecisional and deliberative communications. *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶36, 980 N.E.2d 733, 743 (2012). Rather, the scope of section 7(1)(f) only "protects the opinions that public officials form while creating government policy[]" and materials that "**reflect the give and take of the deliberative process.**" (Emphasis added.) *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 747-48 (2014), *overruled on other grounds by Perry v. Dep't of Financial and Professional Regulation*, 2018 IL 122349, 106 N.E.3d 1016 (2018) (quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010)). A public body that asserts the deliberative process exemption "has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980).

The extradition monthly calendar is a work schedule for employees in the extradition section of CPD, as opposed to a calendar with a schedule of the extradition of detainees. In the non-confidential portion of its answer to this office, CPD stated that the requested calendar is "created by the police officers working within the extradition section during second watch for the purpose of aiding them in notifying the sergeant of their schedule."¹⁵ CPD asserted that the calendar is predecisional because it "is constantly updated and entries are

¹³Exemption 5 of Federal FOIA (5 U.S.C. § 552(b)(5) (2018) applies to "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency[.]"

¹⁴Because 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).

¹⁵Letter from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs – Unit 114, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 8, 2019), at [3].

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frequently changed or corrected based on the evolving schedules of the officers on second watch, who work within the extradition section."¹⁶ CPD explained that "police officers [in the] section understand that notations on the calendar are subject to change and that all changes may not necessarily be reflected on the calendar."¹⁷ CPD asserted that the unofficial calendar, which is "relied upon" by the officers that created it, is deliberative because it "forms the basis for the final decision [by the sergeant.]"¹⁸ Because the portion of CPD's answer containing the description of that decision was submitted under a claim of confidentiality, this office is prohibited from identifying that description other than to note that CPD provided further detail concerning the applicability of section 7(1)(f) to the withheld calendar. *See* 5 ILCS 140/9.5(d) (West 2016).

This office has reviewed the withheld calendar furnished by CPD for January 2019. The calendar entries consist of a listing of the officers in the extradition section and their corresponding work schedule and duties for a particular calendar day. Even though the calendar may be subject to revision because of changing circumstances and is used by a sergeant to make final decisions, CPD has not explained how the calendar provides insight into the "give-and-take of the deliberative process" or how disclosure of the information would inhibit candid communications concerning the formulation of any policy. Further, the calendar entries do not reveal the officers' thoughts or opinions about the schedule, or the sergeant's thoughts or opinions concerning which officers should be scheduled on particular days or which officers should be designated to handle particular duties. Instead, the calendar contains purely factual information. *Property of the People, Inc., v. Office of Management and Budget*, 330 F. Supp. 3d 373, 383 (D.D.C. 2018) (factual information in calendar entries not exempt under the Federal deliberative process exemption because its release "would expose no suggestions, no recommendations, no proposals, and no other aspect of the agency communications, and it is not apparent how disclosure of this information might in any way discourage candid discussion within the agency."). In addition, Mr. Webb's FOIA request for the January 2019 calendar was received by CPD on January 28, 2019, therefore by the time a response was required on February 3, 2019, it does not appear likely that additional updating or correcting of the January calendar would occur.

¹⁶Letter from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs, Unit 114, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 8, 2019), at [3].

¹⁷Letter from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs – Unit 114, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 8, 2019), [at] 3.

¹⁸Letter from Vaughn C. Ganiyu, Associate Staff Attorney, Chicago Police Department, Office of Legal Affairs – Unit 114, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 8, 2019), at [3].

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This office's review of the calendar at issue confirmed that the entries are strictly factual and do not reveal the thoughts or opinions of CPD personnel or provide insight into CPD's decision-making process concerning policy within the extradition section. Accordingly, this office concludes that CPD has not sustained its burden of demonstrating by clear and convincing evidence that the extradition calendar is exempt from disclosure pursuant to section 7(1)(f) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On January 28, 2019, the CPD received Mr. Derek B. Webb's FOIA request seeking a copy of the extradition calendar for Unit 166 for January 2019. On February 11, 2019, CPD denied Mr. Webb's request for the calendar citing as its basis section 7(1)(f) of FOIA.
- 2) On February 15, 2019, the Public Access Bureau received a Request for Review from Mr. Webb contesting CPD's denial of the disclosure of the requested calendar. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)).
- 3) On February 20, 2019, the Public Access Bureau sent a copy of the Request for Review to CPD and asked it to provide a copy of the withheld calendar for this office's confidential review. This office also asked CPD to provide a detailed explanation of the factual and legal bases for the assertion that the calendar is exempt from disclosure pursuant to section 7(1)(f) of FOIA.
- 4) On March 8, 2019, CPD provided a written answer. On March 11, 2019, this office received a copy of the withheld calendar for its confidential review. In a March 12, 2019, e-mail, the CPD clarified that only certain portions of its March 8, 2019, answer were asserted to be confidential and provided a redacted copy of its written answer. The CPD also presented its argument that the calendar was exempt from disclosure under section 7(1)(f) of FOIA because it was both predecisional and deliberative.
- 5) On March 14, 2019, the Public Access Bureau forwarded a non-confidential version of CPD's written answer to Mr. Webb and notified him of the opportunity to reply; he did not reply.
- 6) On April 15, 2019, this office extended the time within which to issue a binding opinion by 30 business days, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

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7) Section 7(1)(f) exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]" Section 7(1)(f) does not exempt from disclosure purely factual information unless it is inextricably intertwined with predecisional and deliberative communications and would provide insight into the substance of those communications if disclosed.

8) The withheld calendar consists of a listing of the officers in the extradition section of CPD and their corresponding work schedule and duties for a particular calendar day during the month of January 2019. CPD asserted that the calendar was predecisional because it was subject to change and deliberative because it formed the basis for a decision by the sergeant within the extradition section. However, the entries on the calendar are purely factual, and CPD has not demonstrated how disclosure of the entries on the calendar would provide insight into the give and take of the deliberative process between the officers and the sergeant in the extradition section. Under these circumstances, the calendar is not exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Therefore, it is the opinion of the Attorney General that CPD's denial of the extradition monthly calendar responsive to Mr. Webb's Freedom of Information Act request violated the requirements of FOIA. Accordingly, CPD is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Webb a copy of the responsive calendar.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). 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 this decision naming the Attorney General of Illinois and Mr. Derek B. Webb as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

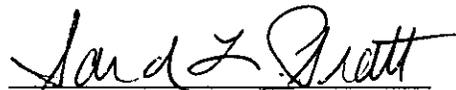
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 19-005) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on May 29, 2019.



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Public Access Counselor

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