



June 14, 2019

VIA E-MAIL

Mr. Jon D. Van Gorp
Mayer Brown LLP
Email: JVanGorp@mayerbrown.com

RE: 19-FOIA-145 Records - Pedestrian Incident 5/29/2019

Dear Mr. Van Gorp:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“**FOIA**”).

I. Background

On May 31, 2019, we received your request to obtain any and all information, including, but not limited to records, recording footage, reports, notes, and the like in connection with the pedestrian incident that took place on Wednesday, May 29, 2019, at approximately 7:00 p.m. at the Indian Hill Metra Station (“**Request**”).

We contacted you by email on June 3 to ask if your firm was representing the estate or the family of the deceased and if you would consider narrowing that portion of your Request for “any and all information” to those records maintained by the Metra Police Department. You responded that same day indicating that you were acting in your capacity as a family friend and you agreed to narrow the scope of your Request to only those records maintained by Metra’s police department. Your Request is granted in part and denied in part.

II. Responsive Documents

In response to your Request, Metra’s Police Department is providing you with Metra Police report #MP-19-00025748; two (2) supplemental reports and associated photographs (“**Responsive Documents**”).

The Metra Police Department does not maintain records of outside agencies. As such, records generated by the Cook County Medical Examiner’s Office and the Winnetka Police Department may be requested by contacting:

The Office of the Medical Examiner
2121 W. Harrison
Chicago, IL 60612
Attn: Medical Records
Telephone: 312-666-0500
Facsimile: 312-997-4516

The Village of Winnetka
510 Green Bay Road
Winnetka, IL 60093
Website: <https://www.villageofwinnetka.org/make-a-foia-request/>

The Union Pacific North train that struck [REDACTED] is owned and operated by the Union Pacific Railroad (“UP”). We contacted the UP for any records that may be responsive to your Request. The UP responded that it does not honor FOIA requests, however, you may contact Ida Finnegan in UP’s Risk Management department at 312-777-2023 for further information.

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Keith Pardonnet has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. The employee identification number, passwords or other access codes, medical record, personal telephone number, home address, and personal license plate number of the parties mentioned in the Responsive Documents are redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Employee identification numbers,” “passwords or other access codes,” “medical records,” “personal telephone numbers,” “home addresses,” and “personal license plate numbers” are specifically mentioned within the definition of “private information” found in Section 2(c-5) of FOIA.
2. The dates of birth and physical descriptions of the parties, the name of a third-party as well as the graphic depictions mentioned in the Responsive Documents are redacted because they are exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “‘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.” It has been determined that the aforementioned information falls squarely within that definition and its redaction is appropriate under FOIA.
3. Section 7(1)(a) of FOIA 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(1)(a). Accordingly, the home address, date of birth, physical description, and driver’s license number of the parties mentioned in the Responsive Documents are exempt from disclosure per the Driver’s Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, which prohibits individuals from knowingly obtaining or disclosing “personal information” from a motor vehicle record.

IV. Denial

Certain graphic photographs contained within the Responsive Documents are denied in their entirety for the following reasons: The photographs contain information relating to the death of an individual. In the interest of protecting the personal privacy of the deceased, these documents are denied pursuant to the exemption found in Section 7(1)(c) of the FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “‘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.”

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor (“PAC”) of the Illinois Attorney General’s Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
foia@metrarr.com
FOIA Hotline #312-663-3642

Attachments