



September 6, 2016

VIA U.S. MAIL

Ms. Heather Davis, Legal Assistant
Law Office of Steven A. Sigmond
345 N. Canal Street, Suite 1208
Chicago, IL 60606

RE: 16-FOIA-211 Add'l Records - [REDACTED] 6/28/2016

Dear Ms. Davis:

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

I. Background

On August 22, 2016, we received your request for records pertaining to the fatality involving [REDACTED] who was struck by inbound Metra Electric District (“MED”) train no. 712 on June 28, 2016, at approximately 8:30 a.m. Specifically, you requested the records below provided to you on CD or DVD:

- Any and all audio or video recordings, photographs, digital images or video obtained via any on-board or other surveillance from cameras mounted on MED train no. 712, or in the vicinity of where the accident took place;
- Any downloads or recordings of engineer electronic control module, black box or any other device which registers the speed, braking, stopping and/or horn sounding of the train in the above-referenced matter; and
- Any and all incident reports, records, notes, drawings, diagrams, medical reports, emergency service records and reports, and any communications from dispatch that relate to this incident; and
- The identification of witnesses, witness statements and / or interviews or any other investigative materials which pertain to this incident

(“Request”).

II. Responsive Documents

In response to your Request, Metra is providing you a DVD containing the following records:

- Twenty-eight (28) audio time stamped recordings beginning at 08_30_10 and ending at 09_00_30, two (2) video recordings from MED train no. 712, and ten (10) photographs taken at the accident scene, which were previously provided to you;
- Data download retrieved from MED train no. 712; and
- Assorted inspection reports for MED train no. 712, and police report #MP-16-00022973 with diagram, which were previously provided to you

(“**Responsive Documents**”).

Please note that the videos include graphic content that may be disturbing to watch.

After performing a diligent search of Metra’s records, we have been unable to locate any records responsive to your Request for, “any communications from dispatch that relate to this incident.” Metra’s Police Department advises that in April 2016, MPD outsourced its 9-1-1 call dispatching to the Cook County Sheriff’s office. As such, you may submit your request for these records to:

Cook County Sheriff’s Office
Attn: Freedom of Information Officer
Richard J. Daley Center
50 West Washington, Rm. 704
Chicago, IL 60602
Email: ccso.foiaofficer@cookcountyil.gov

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 Thomas Stuebner has determined that the following portions of the Responsive Document are exempt from disclosure under certain provisions of FOIA:

1. The driver’s license number, employee identification numbers, passwords, personal telephone numbers, and home address of the parties mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Driver’s license number,” “employee identification numbers,” “passwords,” “personal telephone numbers” and “home addresses” 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 mentioned in the Responsive Document are being 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 data 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, driver’s license number, and any physical description of the party mentioned in the Responsive Document 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

That portion of your Request for additional records, including the identification of witnesses, witness statements and/or interviews or any other investigative materials which pertain to this incident, is being denied under Section 7(1)(d)(i) of FOIA, which states in part:

[r]ecords in the possession of any public body created in the course of . . . any law enforcement . . . 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 Metra Police Department has advised that this incident is an ongoing investigation, and as such any additional records regarding this matter are not available for release at this time.

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.

Ms. Heather Davis / Law Office of Steven A. Sigmond
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If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. E. Haton".

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

Enclosure