



August 7, 2019

VIA E-MAIL

Mr. David Nemeroff
Nemeroff Law Offices, Ltd.
Email: david@nem-law.com

RE: 19-FOIA-194 Info re Amtrak Accident on 2019-07-14

Dear Mr. Nemeroff:

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 July 16, 2019, we received your request for: **1)** all videotapes/recordings made from the Amtrak train (or any other source) that collided with [REDACTED] on the above referenced time and date from 11:00 a.m. until 3:00 p.m., including but not limited to any and all video/recordings that show the train’s path, the railroad crossing at Lehigh and Lincoln Ave., the warning gates/lights at that intersection and all footage taken by the train’s cameras or any other cameras as it approached the railroad crossing at Lehigh and Lincoln Ave. in Morton Grove, IL from at least 5,000 feet before the accident with [REDACTED] through the time of the accident and thereafter until 3 p.m.; **2)** all videotapes/recordings/photos in Metra’s possession concerning the investigation of the above referenced accident; **3)** all data concerning whether or not the warning gate/lights at the above referenced railroad crossing were working at the time of this collision (WGN News reported that Metra gave a statement indicating such data existed); **4)** preservation and retention of all data, statements, documents, videotape, audiotape, train recorder devices, black box devices, that in any reflect on the speed of the Amtrak train, the braking of the Amtrak train and other movement of the Amtrak train on July 14, 2019 between 11:00 a.m. and 3:00 p.m.; **5)** the preservation of all post-accident investigation materials, including reports, measurements, photographs, video and audio; **6)** the preservation of all data as it related to the activation of the warning gate and/or lights at the railroad crossing at Lehigh and Lincoln Ave in Morton Grove, IL, all information about the maintenance history of said warning gate/lights, all repair history for said crossing, all documents which reflect a freight train that was crossing said intersection at or near the time of the accident with [REDACTED] and all records, recordings, statements and other evidence that in any way touch upon this accident and the warning gates/lights at this railroad crossing; and **7)** the preservation of all potential evidence in a potential wrongful death lawsuit my client will be filing (“**Request**”). Your Request is granted in part and denied in part.

On July 30, 2019, your originally scheduled due date, we reached out to you via email and telephone to express that we would be unable to provide you with a Response as we were still in the process of locating and gathering responsive documents, and to request until August 9, 2019, to provide you with a Response to your Request. We left you a voicemail message in this regard. You did not reply to our email; you did not return our telephone call. On July 31, 2019, we reached out to you again via

telephone. We spoke with your paralegal who advised us to send you an email regarding our request for additional time to respond. On that same date, we sent you an email asking you to allow us until August 9, 2019 to issue a Response to your Request. To date, you still have not responded to our phone calls or emails.

II. Responsive Documents

In response to item number 2 of your Request, Metra's Police Department is providing you with photos taken at the scene of the accident. With regard to item number 3 of your Request, Metra's Signal department is providing you with a Log Analysis performed by one of its Signal Technicians, seven (7) graphs plotting the train's movements up to and including the accident, two (2) Notepad documents detailing data relative to the railroad crossing, a pre-incident test form, a post-incident test form, and a signal summary report ("**Responsive Documents**").

We have been unable to locate any videotapes/recordings made from the Amtrak train (or any other source) that collided with [REDACTED] on the above referenced time and date from 11:00 a.m. until 3:00 p.m., including but not limited to video/recordings that show the train's path, the railroad crossing at Lehigh and Lincoln Ave., the warning gates/lights at that intersection or footage taken by the train's cameras or any other cameras as it approached the railroad crossing at Lehigh and Lincoln Ave. in Morton Grove, IL from at least 5,000 feet before the accident with [REDACTED] through the time of the accident and thereafter until 3 p.m. This incident involved an Amtrak train. If you wish to reach out to Amtrak regarding this information, you may submit a FOIA Request to them directly via email at foiarequests@amtrak.com.

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 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." "Personal license plate numbers" are specifically mentioned within the definition of "private information" found in Section 2(c-5) of FOIA.
2. The name of third-party mentioned in the Responsive Documents is redacted because it is 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.

IV. 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 I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Angela K. Ollie
Freedom of Information Officer
FOIA@metrarr.com
FOIA Hotline #312-663-3642

Attachments