

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

AMERICAN CIVIL LIBERTIES  
UNION OF ILLINOIS,

Plaintiff,

v.

CHICAGO POLICE DEPARTMENT,  
CITY OF CHICAGO

Defendants.

No. 18 CH 07758

Hon. Anna Demacopoulos

**PLAINTIFF’S REPLY TO DEFENDANTS’ AMENDED AFFIRMATIVE DEFENSES**

Plaintiff American Civil Liberties of Illinois, through its undersigned attorneys, hereby replies to the Amended Affirmative Defenses of Defendants Chicago Police Department and City of Chicago. Unless otherwise stated below, Plaintiff denies the allegations in the Amended Affirmative Defenses.

**REPLIES TO AMENDED AFFIRMATIVE DEFENSES**

**First Affirmative Defense- Non-exempt Records Have Been Produced.**

[1.] On August 17, 2018, Defendant produced non-exempt records in its possession in response to Plaintiff’s FOIA request seeking the following records:

*The ACLU of Illinois requests the following records:*

1. *All contracts related to the purchase, acquisition, installation, maintenance, or use of social media monitoring software.*
2. *All invoices related to social media monitoring software.*
3. *All manuals, guides, training materials, or other instructional records related to social media monitoring software.*
4. *All policies governing access, use, or training related to social media monitoring software.*
5. *All directives governing access, use, or training related to social media monitoring software.*
6. *All Open Source receipts (or other reports of usage) related to the use of social media monitoring software by the CPD Crime Prevention and Information Center since October 2, 2017.*

CPD has produced responsive contracts, invoices, policies, and directives, and Open Source Records, and explained that in response to item 3, CPD asked individuals in its Crime Prevention Information Center (CPIC) whether they had guides or training materials related to social media monitoring software. While they did receive training, individuals in CPIC did not locate any records responsive to this portion of this request.

**ANSWER: Plaintiff admits that the FOIA request included the enumerated categories of records. Plaintiff admits that, after the Complaint was filed in this action, Defendants produced some contracts, invoices, policies, directives, and Open Source Records responsive to the FOIA request. Plaintiff denies that such production was timely. Plaintiff denies that such production included all responsive information, and denies that the withheld information (e.g., redacted information) was exempt from disclosure.**

**Plaintiff admits that, at the time Defendants produced records to Plaintiff, Defendants represented the following to Plaintiff: that CPD asked individuals in its Crime Prevention Information Center whether they had guides or training materials related to social media monitoring software and that such individuals stated that, while they did receive training, they did not locate any records responsive to this portion of this request. Plaintiff lacks sufficient knowledge to form a belief as to the truth or falsity of such representations, and therefore neither admits nor denies the allegations asserting such representations in the First Affirmative Defense, but demands strict proof thereof. Plaintiff denies the remaining allegations in the First Affirmative Defense.**

**Second Affirmative Defense-Certain Records are Exempt Under Section 7(1)(b) of FOIA.**

[2.] Signatures, Internal Record (“IR”) numbers, Instagram addresses, and twitter account information were redacted pursuant to Section 7(1)(b) of FOIA. Section 7(1)(b) exempts from disclosure, “[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.” 5 ILCS 140/7(1)(b). “Private information” is defined in section 2(c-5) as “unique identifiers, including a person’s social security number, driver’s license

number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.” 5 ILCS 140/2(c-5). Therefore, signatures and IR numbers Instagram addresses, and twitter account information were properly redacted.

**ANSWER: Plaintiff admits that, after the Complaint was filed in this action, Defendants produced redacted materials in response to the FOIA request. Plaintiff denies that such production was timely. Plaintiff denies that the allegations in the Second Affirmative Defense fully and accurately describe the proper scope of the 5 ILCS 140/7(1)(b) exemption. Plaintiff denies that any information requested by Plaintiff’s FOIA request is exempt under Section 7(1)(b). Plaintiff lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations regarding the type of information that was redacted by Defendants, and therefore neither admits nor denies those allegations, but demands strict proof thereof. Plaintiff denies the remaining allegations in the Second Affirmative Defense**

**Third Affirmative Defense- Certain Records are Exempt Under Section 7(1)(d)(v) of FOIA.**

[3.] CPD properly redacted a specialized investigative tool. Section 7(1)(d)(v) exempts records that would, “[d]isclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request.” Release of that redaction would reveal a unique and specialized technique/tool used by CPD, where disclosure would render it ineffective and harm CPD’s ability to use an effective crime fighting tool and therefore is exempt pursuant to Section 7(1)(d)(v). If CPD releases the name of this tool, then an entity or person could aim to discredit the tool and cause social media platforms to block the program’s access to social media accounts, which would render the tool useless. Specifically social media platforms have the capability to deny software access to their Application Programming Interface. If social media platforms become aware that certain programs are using their platform in a way that could be perceived to direct users and profits away from their product, they could block their Application Programming Interface from the specific software company, which is what occurred for the tool Geofeedia. Public disclosure of the tool Geofeedia has rendered the tool ineffective. Geofeedia used location data to extrapolate social media postings attached to locations and CPD could focus on a specific location and see all postings in that



location and identify possible witnesses and offenders. When it was publicly disclosed that the social medial tool Geofeedia was used by police departments, including CPD, Twitter, Facebook and Instagram were encouraged to cut off or limit Geofeedia's access to public user posts; and in fact, according to articles publicly available, Instagram did cut off Geofeedia's access to public user posts, and Facebook has cut its access to a topic based feed of public user posts. <https://www.aclunc.org/blog/facebook-instagram-and-twitter-provided-data-access-surveillance-product-mareted-target>. Similar to what happened with Geofeedia, if access to the Application Programming Interface is blocked, this tool would be rendered useless and harm CPD's ability to use the tool for legitimate crime fighting and counterterrorism purposes.

**ANSWER: Plaintiff admits that, after the Complaint was filed in this action, Defendants produced redacted materials in response to the FOIA request. Plaintiff denies that such production was timely. Plaintiff denies that the allegations in the Third Affirmative Defense fully and accurately describe the proper scope of the 5 ILCS 140/7(1)(d)(v) exemption. Plaintiff denies that any information requested by Plaintiff's FOIA request is exempt under Section 7(1)(d)(v). Plaintiff denies the disclosure of the name of the software application would reveal a unique and specialized technique/tool used by CPD, denies that disclosure would render it ineffective, and denies that the disclosure would harm CPD's ability to use an effective crime fighting tool. Plaintiff denies the speculation regarding the alleged consequences of disclosing the name of the software application. Plaintiff denies that the allegations in the Third Affirmative Defense fully and accurately describe the functionality of Geofeedia and the history of its use and discontinuation.**

**Plaintiff lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in the Third Affirmative Defense, and therefore neither admits nor denies those allegations, but demands strict proof thereof.**

**Fourth Affirmative Defense- Certain Records Are Exempt Under Section 7(1)(v) of FOIA.**

[4.] Moreover, this technique/tool/measure is exempt pursuant to Section 7(1)(v). 5 ILCS 140/7(1)(v) provides that "[v]ulnerability 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." Release of the redaction would reveal a unique and specialized technique/tool/measure used by CPD to prevent and respond to attacks upon the City. CPD has used the tool to combat terrorism and investigate crime. As stated above, if the tool name is publicly disclosed, efforts could be used to encourage entities to block how the tool obtains information. If the tool's use is limited or blocked, it would jeopardize the effectiveness of the tool and eliminate one of the measures used by CPD to keep our City safe.

**ANSWER: Plaintiff admits that, after the Complaint was filed in this action, Defendants produced redacted materials in response to the FOIA request. Plaintiff denies that such production was timely. Plaintiff denies that the allegations in the Fourth Affirmative Defense fully and accurately describe the proper scope of the 5 ILCS 140/7(1)(v) exemption. Plaintiff denies that any information requested by Plaintiff's FOIA request is exempt under Section 7(1)(v). Plaintiff denies the disclosure of the name of the software application would reveal a unique and specialized technique/tool/measure used by CPD to prevent and respond to attacks upon the City. Plaintiff denies the speculation regarding the alleged consequences of disclosing the name of the software application.**

**Plaintiff lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in the Fourth Affirmative Defense, and therefore neither admits nor denies those allegations, but demands strict proof thereof.**

#### **Fifth Affirmative Defense- Certain Records Are Exempt Under Section 7(1)(c) of FOIA.**

[5.] Names, IR numbers, Instagram, addresses, icons, screennames, photos, twitter names and account information, snapchat information, school information, employment information, and Facebook numbers and usernames, and other identifying information of individuals found in these reports were properly redacted pursuant to Section 7(1)(c) of FOIA. Section 7(1)(c) exempts,

“[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.” 5 ILCS 140/7(1)(c) Because the redacted information is personal information and individuals would find it objectionable for the public to know that the CPD was reviewing their social media accounts, release would be an invasion of personal privacy. Therefore, CPD properly redacted this information pursuant to Section 7(1)(c).

**ANSWER: Plaintiff admits that, after the Complaint was filed in this action, Defendants produced redacted materials in response to the FOIA request. Plaintiff denies that such production was timely. Plaintiff denies that the allegations in the Fifth Affirmative Defense fully and accurately describe the proper scope of the 5 ILCS 140/7(1)(c) exemption. Plaintiff denies that any information requested by Plaintiff’s FOIA request is exempt under Section 7(1)(c). Plaintiff lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations regarding the type of information that was redacted by Defendants, and therefore neither admits nor denies those allegations, but demands strict proof thereof. Plaintiff denies the remaining allegations in the Fifth Affirmative Defense.**

DATED: October 9, 2018

Respectfully submitted,



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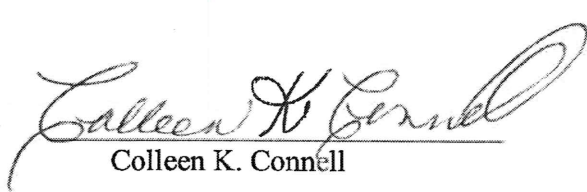
**AFFIDAVIT OF INSUFFICIENT KNOWLEDGE**

I, Colleen K. Connell, on oath deposes and says:

I am Executive Director of the American Civil Liberties Union of Illinois, the party on whose behalf this reply to affirmative defenses was prepared. This reply contains certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the affirmative defenses. These allegations of insufficient knowledge are true and correct.

FURTHER AFFIANT SAYETH NOT.

By:

  
Colleen K. Connell

Subscriber and sworn to me on  
this 9<sup>th</sup> day of October, 2018.

