

Return Date: No return date scheduled  
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Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

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1/3/2019 12:46 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018ch07758

FILED DATE: 1/3/2019 12:46 PM 2018ch07758

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

<b>AMERICAN CIVIL LIBERTIES</b>	)	
<b>UNION OF ILLINOIS,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 18 CH 07758</b>
	)	
<b>v.</b>	)	<b>Hon. Anna Demacopoulos</b>
	)	
<b>CHICAGO POLICE DEPARTMENT,</b>	)	
<b>THE CITY OF CHICAGO,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF FILING**

Please take note that a copy of the attached **DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of the Circuit Court of Cook County, Illinois on Thursday, January 3, 2019.

Dated at Chicago, Illinois, this 3<sup>rd</sup> day of January, 2019.

Respectfully submitted,  
Edward N. Siskel, Corporation Counsel of  
The City of Chicago

BY: /s/ Tia Mathew  
Tia Mathew  
Senior Counsel

Attorney No. 90909  
NATALIA DELGADO, City Prosecutor  
AMBER ACHILLES RITTER, Chief Assistant Corporation Counsel  
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Legal Information, Investigations, and Prosecutions Division  
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312-744-1052

**CERTIFICATE OF SERVICE**

I, Tia Mathew, an attorney, certify that I caused a copy of the foregoing notice of filing and attached **DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be served upon the party listed above on this 3<sup>rd</sup> day of January 2019, by sending the same to the email address below.

/s/ Tia Mathew \_\_\_\_\_

Tia Mathew  
Senior Counsel

**SERVICE LIST**

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	)	<b>No. 18 CH 07758</b>
<b>Plaintiff,</b>	)	
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<b>v.</b>	)	<b>Hon. Anna Demacopoulos</b>
	)	
<b>CHICAGO POLICE DEPARTMENT,</b>	)	
<b>CITY OF CHICAGO,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendants, City of Chicago Police Department ("CPD") and the City of Chicago ("City"), by their attorney, Edward N. Siskel, Corporation Counsel of the City of Chicago, submit the following as their Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment, pursuant to 735 ILCS 5/2-1005.

**FACTS**

1. Plaintiff's complaint is based on an alleged violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq. ("FOIA"), in connection with a FOIA request submitted to CPD by Plaintiff.
2. The FOIA request submitted by Plaintiff on January 2, 2018, sought the following:
  - 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.*

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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.*

3. After the instant lawsuit was filed, CPD worked diligently to provide responsive non-exempt records to Plaintiff. Specifically, on August 17, 2018, CPD provided responsive contracts in response to item 1 of the FOIA request. In response to item 2 of the FOIA request, CPD attached responsive invoices. In response to items 4 and 5, CPD provided responsive policies and directives. In response to item 6, CPD provided responsive Open Source records. Finally, in response to item 3, CPIC did not locate any records responsive to this portion of the request. The redactions made within the records were pursuant to the exemptions found in Section 7(1)(b), 7(1)(c), 7(1)(d)(v), and 7(1)(v) of FOIA and were explained in the letter dated August 17, 2018. *See Exhibit 1, Pl. Motion.* As of today's date, all responsive, non-exempt records have been produced.

#### STANDARD OF REVIEW

“Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Outboard Marine Corp v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (Ill. 1992). However, unlike other civil actions, a decision to grant or deny summary judgment in a FOIA suit does not necessarily hinge on the existence of a genuine issue of material fact. *Hemenway v. Hughes*, 601 F. Supp. 1002, 1004 (D.D.C. 1985). Summary judgment is proper in a FOIA action when the public body demonstrates that it has fully discharged its obligations under the Act. *Miller v. United States Dept. of State*, 779 F.2d 1378, 1382 (8th Cir. 1985).

## ARGUMENT

### **I. Summary Judgment Should Be Granted For Defendants Because CPD Satisfied Its FOIA Obligations After The Instant Lawsuit Was Filed.**

Plaintiff is correct that CPD did not timely respond to Plaintiff's FOIA request.

Nevertheless, after the instant lawsuit was filed, CPD worked meticulously to provide a response and redacted the records in accordance with exemptions provided in FOIA. After receiving this response, Plaintiff contested the redactions made to the records. However, rather than explain why a specific exemption is inapplicable, Plaintiff makes the generic claim that because the records relate to public expenditures, it is entitled to unredacted records. However, this position is contrary to the plain language of the FOIA.

#### **A. All "Public Records" Are Subject to FOIA Exemptions.**

Plaintiff cites to Section 2.5 of FOIA to support its position that the records must be disclosed without redaction. While Section 2.5 provides that records related to the obligation of public funds are public records, they are still subject to exemptions. Fundamentally, FOIA governs the government's production of "public records." The crux of the statute is "[e]ach public body shall make available to any person for inspection or copying all public records except as otherwise provided in Sections 7 and 7.5 of this Act." 5 ILCS 140/3(a). In other words, there are two steps to determining whether a record must be produced under FOIA: (1) is the record a "public record," and if so (2) is it subject to any of the exemptions provided in Section 7 and 7.5?

The statute provides a general definition of "public records" in Section 2(c), but it also specifies in other sections certain classes of records that must automatically be considered "public records." These include records relating to the obligation, receipt, and use of public

funds (Section 2.5); certified payroll records (Section 2.10); and settlement agreements (Section 2.20). The legislature saw fit to clarify that such records must always be considered “public records,” regardless of whether they meet all the qualifications provided in the statute’s general definition of “public record.” (*See* Section 2(c).) However, a public body’s determination of whether it must produce such a record does not end there. As provided in Section 3(a), quoted above, the body must then determine whether any of the exemptions of Section 7 and 7.5 apply. In other words, classification as a “public record” is merely Step One, and all public records are then subject to Step Two — the application of exemptions.

Plaintiff fundamentally misinterprets the plain language of the statute by asserting that because the statute automatically characterizes records regarding the obligation, receipt, or use of public funds as public records that they are not subject to exemption claims. That is illogical, and there is no authority for it in the statute.

Further, by virtue of identifying the invoices associated with social media monitoring software, CPD has identified how public funds are being used. The limited redactions made to the invoices are pursuant to exemptions provided in FOIA as explained below. Moreover, the information redacted from the preliminary open source records are also in accordance with exemptions provided for in the FOIA.

**B. The Redactions Made To The Records Are In Accordance With FOIA.**

Defendants recognize that the purpose of FOIA is to open governmental records to the light of public scrutiny and that FOIA exemptions must be read narrowly. However, the exemptions the legislature expressly provided for in FOIA are not to be ignored. *See Carrigan v. Harkrader*, 146 Ill. App. 3d 535, 538 (3d Dist. 1986) (when deciding a FOIA case, “we must honor the plain language of one of the many exemptions carved by the legislature”). Thus, the

United States Supreme Court, after noting that exemptions under the federal FOIA must be narrowly construed, has made clear that “statutory exemptions are intended to have meaningful reach and application.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citations omitted).<sup>1</sup> Plaintiff’s assertion that this exemption cannot apply simply because of FOIA’s “narrow construction rule” is absurd, and fails to acknowledge that FOIA case law specifically allows for records to be withheld if they fall within a FOIA exemption. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 767 (“[A]ny documents that fit within one of the specifically enumerated statutory exemptions are absolutely exempt from disclosure.”).

**i. Section 7(1)(d)(v) Of FOIA Exempts The Redacted Information From The Invoices.**

The company names that would reveal tools/techniques used by CPD were properly redacted pursuant to Section 7(1)(d)(v) of FOIA. Section 7(1)(d)(v) exempts from disclosure:

Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would: disclose 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.

5 ILCS 140/7(1)(d)(v). The invoices at issue were created for law enforcement to determine and pay companies for software provided to CPD for its use. In addition, the company names redacted within these invoices are synonymous with the tools/techniques they provide as explained by Police Office Aaron Cunningham who is assigned to the Deployment Operations Center and is familiar with the tools/techniques at issue here. See ¶5, Affidavit of Aaron

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<sup>1</sup> Because the Legislature patterned the Illinois FOIA after the Federal FOIA, case law interpreting the Federal statute may be used in Illinois to interpret our own FOIA. *Roulette v. Department of Central Management Services*, 141 Ill. App. 3d 394, 400 (1st Dist. 1986).

Cunningham attached as Exhibit (“Ex.”) A. Therefore, disclosure of the company names would reveal the specialized investigative analysis tools/techniques used by CPD or that could be used by CPD in the future to obtain relevant information to be used by detectives and investigators in their criminal investigations, counterterrorism attempts, and efforts to maintain public safety.<sup>2</sup> *Id.* at ¶ 5. Specifically, investigatory bodies within CPD use the information acquired to detect crime, combat major violent crime, and prevent future crime and terrorism. *Id.* at ¶ 6. In fact, Aaron Cunningham attests that he has used one of these specific techniques to support investigations which has led to the identification of criminals and enhances public safety. *Id.* at ¶7.

Moreover, CPD is aware that release of a company name can diminish the tool/technique if individuals or entities protest CPD’s use of the tool and cause social media platforms to block the programs’ access to social media accounts. *Id.* at ¶¶ 8-9. As an example, in the past, CPD used a tool/technique provided by Geofeedia to extrapolate social media postings attached to locations, so that CPD could focus on a specific location and see all postings in that location and identify possible witnesses and offenders. *Id.* at ¶9. After it was publicly disclosed that Geofeedia was used by CPD, Geofeedia elected not to provide access or support for use by CPD for its investigations. *Id.* Similar to what happened with Geofeedia, if the redacted company names were disclosed and the public is aware of the tools/techniques used by CPD and request entities to block their access to CPD, these techniques would be rendered useless and harm CPD’s ability to use the tool for legitimate crime fighting and counterterrorism purposes. *Id.* at

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<sup>2</sup> CPD redacted three company names: one that it currently uses and others that it may use in the future. While two of the companies and the tools/techniques are not used at present, CPD considers them as options it may decide to use in the future, and believes disclosure of the names could eliminate these tools/techniques as options for CPD. *Id.* at ¶ 12.



¶10. Moreover, the tools/techniques in this area are limited. *Id.* at ¶¶ 11-12. Therefore, if the tools/techniques are disclosed, one of CPD's effective crime fighting options could be eliminated. *Id.*

**ii. Section 7(1)(v) of FOIA Exempts The Redacted Information From The Invoices.**

Likewise, the company names that would reveal tools/techniques used by CPD or could be used by CPD were properly redacted pursuant to Section 7(1)(v) of FOIA. Section 7(1)(v) of FOIA exempts from disclosure:

Vulnerability 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.

5 ILCS 140/7(1)(v). CPD's use or future use of the tool/technique is part of CPD's plan to identify and detect criminal and future crime. *Id.* at ¶6. As explained above, the tool/technique is used to support investigations which has led to the identification of criminals and enhances public safety. *Id.* at ¶7. Moreover, the effectiveness of this tool would be jeopardized if the company name was disclosed and the public requests that the companies block CPD's full use of the tool/technique, similar to what occurred with CPD's use of Geofeedia. *Id.* at ¶¶ 8-9.

Because CPD has used the tool to combat terrorism and investigate crime, 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.

**iii. Private Information Is Exempt Pursuant To Section 7(1)(b) Of FOIA.**

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). Because signatures, IR numbers, Instagram addresses, and twitter account information are all unique identifiers, they were properly redacted pursuant to Section 7(1)(b).

**iv. Identifying Information Of Individuals in the Open Source Records Were Redacted Pursuant To Section 7(1)(c) Of FOIA.**

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). In order to determine whether disclosure is an unwarranted invasion of personal privacy, the following must

be considered: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of alternative means of obtaining the requested information. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶44.

In the instant case, it is unknown whether the Plaintiff has an alternative means of obtaining the records at issue here. However, Plaintiff's interest and the public's interest in *another* individual's identifying information are minimal. Whereas, the individuals identified have a strong interest in keeping their personal identifying information private, Plaintiff has failed to express why they need the identifying information of those found in the law enforcement records. Most of the redactions made to the records were identifying information of victims. However, CPD also redacted identifying information of suspects and individuals incidentally named in the records. 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. In addition, there is no identified public interest in knowing the identity of the individuals in these reports. Therefore, CPD properly redacted this information pursuant to Section 7(1)(c) of FOIA.

Because the Legislature patterned the Illinois FOIA after the Federal FOIA, case law interpreting the Federal statute may provide guidance in interpreting Illinois FOIA. *Roulette v. Department of Central Management Services*, 141 Ill. App. 3d 394, 400 (1st Dist. 1998). In *Fischer v. U.S. Department of Justice*, 596 F.Supp.2d 34, 47 (D.C. 2009), the D.C. District Court considered whether the FBI properly invoked Exemption 7(C) to protect the names and identifying information of third parties merely mentioned, and the identities of and information provided by Cooperative Witnesses. Federal FOIA Exemption 7(C) protects from disclosure

“records or information compiled for law enforcement purposes” to the extent that disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C); *Id.* at 46. While the plaintiff claimed a public interest in proving his innocence, the plaintiff did not provide any evidence that the FBI engaged in illegal activity or identify a public interest in disclosure. Therefore, the Court found that the privacy interest in withholding identifying information outweighs the public interest in disclosure and found that the FBI was justified in refusing to address plaintiff’s request for third-party information. *Id.* at 47. The Court also recognized the D.C. District has consistently held that Exemption 7(C) protects the privacy interest of all persons mentioned in law enforcement records, including investigators, suspects, witnesses, and informants. *Id.* Similarly, in the instant case, the privacy interests of those named in the police reports outweigh any public interest in this information.

#### CONCLUSION

CPD has produced records in accordance with its obligations under FOIA. Minimal redactions were made to the records pursuant to FOIA exemptions. Redactions were made to protect the privacy interests of individuals and their private information pursuant to Sections 7(1)(b) and 7(1)(c) of FOIA. Also, redactions were applied pursuant to Sections 7(1)(d)(v) and 7(1)(v) to prevent release of investigative tools/techniques where disclosure would render the tools ineffective, and prevent CPD from using these tools/techniques to keep our City safe.

WHEREFORE, for the above stated reasons, Defendants respectfully request that this Honorable Court grant their Cross-Motion for Summary Judgment and deny Plaintiff’s Motion for Summary Judgment, or for such other relief as this Court deems just and appropriate.

Respectfully Submitted,

Edward N. Siskel,  
Corporation Counsel of the City of Chicago  
/s/ Tia Mathew

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Senior Counsel

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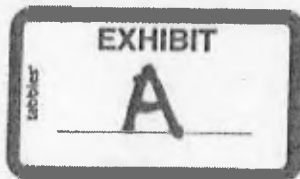
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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AMERICAN CIVIL LIBERTIES	)	
UNION OF ILLINOIS,	)	
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Plaintiff,	)	
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v.	)	Hon. Anna Demacopoulos
	)	
CHICAGO POLICE DEPARTMENT,	)	
CITY OF CHICAGO,	)	
	)	
Defendants.	)	

AFFIDAVIT OF AARON CUNNINGHAM

I, Aaron Cunningham, do solemnly affirm and certify, under the penalties provided under Section 1-109 of the Illinois Code of Civil Procedure, that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. I, Aaron Cunningham, am employed by the City of Chicago Police Department ("CPD") and have been a sworn officer with CPD since June 1998.
2. Since July 2014, I have been assigned to Unit 116-Deployment Operations Center.
3. My duties and responsibilities in Unit 116-Deployment Operations Center include responding to requests for information from intra department and outside agencies. I also provide support and assistance with investigations conducted by CPD and outside agencies.
4. As part of my duties, I was informed that the ACLU submitted a FOIA request for the following:
  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.*
5. Company names are present in the invoices. Based on my knowledge, disclosing the company name reveals the specialized investigative techniques and tools used by CPD to detect crime and prevent future crime and terrorism. Specifically, the company name would reveal the specialized and investigative analysis tool/technique used by CPD or that could be used by CPD in the future to obtain salient information to be used by detectives and investigators in their criminal investigations, counterterrorism attempts, and efforts to maintain public safety.
6. Investigatory bodies within CPD use the information acquired to detect crime, combat major violent crime, and prevent future crime and terrorism.
7. Based on my knowledge and experience, I have used one of these specific techniques to support investigations, which has led to the identification of criminals. Therefore, based on my experience with using the technique/ tool in conjunction with other CPD resources, the technique is able to enhance public safety.
8. 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.
9. I am aware that public disclosure of the tool Geofeedia has rendered the tool ineffective for use by CPD. Prior to public disclosure of the company Geofeedia, the tools and techniques provided by Geofeedia were used by CPD 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. After public disclosure, Geofeedia elected not to provide access or support for use by Chicago Police Department for its investigations.
10. Similar to what happened with Geofeedia, if company names were disclosed and the public is aware of the tools/techniques used by CPD, these techniques would be rendered useless and harm CPD's ability to use the tool for legitimate crime fighting and counterterrorism purposes.
11. At the current time, CPD is using one of the techniques tools that were redacted in the invoices. However, these companies and the tools/techniques they provide are in a concentrated area. Therefore, release of the company/tools that CPD has used and may use in the future could deplete CPD of a valuable tool it may decide to use in the future.

12. Approximately, around 10 other companies provide the tools/techniques that are at issue in this lawsuit. Based on my knowledge and experience, of these tools, CPD finds that only 3 other company/tools and techniques are the preferred tools/techniques based on how they function. Therefore, if the tools/techniques are disclosed, one of CPD's effective crime fighting options could be eliminated.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true

FURTHER AFFIANT SAYETH NOT

By: Aaron Cunningham  
Aaron Cunningham  
Chicago Police Department

Subscribed and sworn to me  
this 2 day of JAN, 2019.