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2/15/2019 1:53 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018ch07758

**AMERICAN CIVIL LIBERTIES
UNION OF ILLINOIS,**

Plaintiff,

V.

**CHICAGO POLICE DEPARTMENT,
THE CITY OF CHICAGO,**

Defendant.

No. 18 CH 07758

Hon. Anna Demacopoulos

Please take note that a copy of the attached **DEFENDANTS' REPLY IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of the Circuit Court of Cook County, Illinois on Friday, February 15, 2019.

Dated at Chicago, Illinois, this 15th day of February, 2019.

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

BY: /s/ Tia Mathew
Tia Mathew
Senior Assistant Corporation Counsel

Attorney No. 90909
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CERTIFICATE OF SERVICE

I, Tia Mathew, an attorney, certify that I caused a copy of the foregoing notice of filing and attached **DEFENDANTS' REPLY IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT** to be served upon the party listed above on this 15th day of February 2019, by sending the same to the email address below.

/s/ Tia Mathew

Tia Mathew

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Hearing Date: No hearing scheduled
Courtroom Number: No hearing scheduled
Location: No hearing scheduled

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**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

**DEFENDANTS' REPLY IN SUPPORT OF THEIR CROSS-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 Reply in Support of their Cross-Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005.

I. Summary Judgment For Defendants Is Proper Because The Redactions Made To The Invoices Were In Accordance With FOIA Exemptions.

CPD has produced to Plaintiff non-exempt records in accordance with its FOIA obligations. While Plaintiff mischaracterizes the company name/tool as one that is used to "spy on Chicagoans," CPD has explained in great detail that the tools are used as a technique, measure, and plan to combat crime and protect the safety of those living in the City, and how this information fits squarely within the exemptions provided in the FOIA statute. Therefore, summary judgment should be granted for Defendants. The basic rule of statutory construction when interpreting a statute is that, when an enactment is clear, exceptions, limitations or conditions that the legislature did not express should not be read into the law. *See Kraft Inc. v.*

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Edgar, 138 Ill. 2d 178, 189 (1990). Plaintiff inserts limitations or conditions into sections of the FOIA statute at issue in the instant matter, which are not provided by the legislature.

A. FOIA Does Not Require Disclosure Of The Requested Records.

Plaintiff cites to Section 2.5 of FOIA to support its position that the invoices must be disclosed *without* redaction. However, the plain language of Section 2.5 does not limit the use of FOIA exemptions to the records relating to the use of public funds. Section 2.5 states, “[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.” 5 ILCS 140/2.5. Within this section, there is no limitation regarding the use of FOIA exemptions. If the legislature wanted to insert this limitation, it would have done so. As stated in *Estate of Howell v. Howell*, “...when the General Assembly wishes to dictate a certain result, it knows how to do so and it has done so expressly.” 2015 IL App (1st) 133247 at ¶ 30. Moreover, it is absurd to think that a public body could not use FOIA exemptions, such as the exemption found in Section 7(1)(b) regarding “private information” to redact exempt information, including a personal tax number, personal home address, or even a social security number from the record just because the document relates to the use of public funds. Finally, one of the sections referenced by Plaintiff, 5 ILCS 140/2.10, does not identify Section 7 or the FOIA exemptions, but instead *requires* that the public body redact certain items. Nevertheless, presumably FOIA-exempt information may be redacted from payrolls, such as unique identifiers or personal email addresses. Also, while section 2.15 identifies arrest information that must be produced, it does not reference all the exemptions in FOIA. Again, it would be illogical to presume that social security numbers and dates of birth could not be redacted in accordance with FOIA exemptions.

B. Section 7(1)(v) Exempts The Redacted Information From The Invoices.

The one redaction made to an invoice was properly redacted by CPD pursuant to Section 7(1)(v) of FOIA. Prior to Plaintiff's filing its Response, CPD was not aware that the information referred to in Plaintiff's Ex. 5 had been inadvertently produced in the past. *See* Pl. Resp. Ex. 5. Because of this, CPD is no longer claiming the exemption over the company name/tool (Pathar/Dunami).¹ CPD is only asserting the exemption over one redaction made to an invoice that contains the name of the company/tool that CPD currently uses and that to its knowledge has not been publicly disclosed. This company name/tool is exempt pursuant to Section 7(1)(v), which exempts the following:

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). The affidavit of Aaron Cunningham explains how disclosure of the name of the company would reveal the use of the specific tool/technique that is used as a security measure or plan to identify possible attacks or terrorism and identify criminals. Specifically, Aaron Cunningham attests that the tool/technique is used by CPD to "obtain salient information to be used by detectives and investigators in their criminal investigations, counterterrorism attempts, and efforts to maintain public safety." Defendants' Cross MSJ, Ex. A, ¶ 5. In addition, "[i]nvestigatory bodies within CPD use the information acquired to detect crime, combat major violent crime, and prevent future crime and terrorism." *Id.* at ¶ 6. Moreover, Aaron

¹ CPD is working diligently to produce the invoices with (Pathar/Dunami) unredacted.

Cunningham attests that he has used the tool/technique to support investigations that has led to the identification of criminals. Defendants' Cross MSJ, Ex. A, ¶ 7. Furthermore, Aaron Cunningham explains how if the company name was disclosed and the public is made aware of the tools/techniques used by CPD, the tool would be rendered useless and harm CPD's ability to use the tool for crime fighting and counterterrorism purposes. *Id.* at ¶ 10. Because CPD has explained how the use of this tool/technique is one of its plans and security measures to protect the safety of the City and how release of the tool would render the tool useless, it appropriately withheld the company name/tool pursuant to Section 7(1)(v). While Plaintiff compares the instant matter to *Day v. City of Chicago*, 388 Ill. App. 3d 70 (1st Dist. 2009), that case is inapposite. Unlike in *Day*, the affidavit of Aaron Cunningham is specific and references his own experience with how the tool enhances public safety. Defendants' Cross MSJ, Ex. A ¶ 7. Moreover, at issue in *Day* was CPD's use of an exemption that exempts records that would impede "an ongoing investigation," when Arnold Day had already been convicted.

While Plaintiff claims that CPD has not addressed how the tool/technique is a security measure or plan, CPD has explained comprehensively that this tool is a plan used by CPD to combat terrorism. It is Plaintiff who deconstructs Section 7(1)(v) and inserts limitations to the exemption that are not provided by the legislature. Plaintiff erroneously claims that 7(1)(v) concerns "certain special-purpose documents that memorialize the government's assessment of its communities' vulnerability to terrorism-type attacks and the procedures it will take to prevent or respond to such attacks." Pls. Resp. 11-12. However, Section 7(1)(v) does not confine the applicability of the exemption to "special-purpose" documents that reveal the government's assessments of its vulnerabilities. This restriction is inserted by Plaintiff and is unsupported by analyzing the plain language found in Section 7(1)(v). Moreover, the exemption does not

identify one *type* of record that would fall within the exemption as suggested by Plaintiff. Instead, the exemption in Section 7(1)(v) applies to portions of records that would reveal vulnerability assessments, security measures, response policies, or plans that are designed to identify, prevent, or respond to attacks upon a community's population and disclosure would jeopardize the measure. As explained above, release of the redacted company name/tool would jeopardize a tool used as a plan and measure to combat crime, and therefore, redaction is appropriate pursuant to Section 7(1)(v). See *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").

Moreover, Plaintiff's restricted interpretation of Section 7(1)(v) is unsupported by a Chancery Court decision regarding a public body's use of Section 7(1)(v). In *Patrick McDonough v. City of Chicago Department of Water Management*, 16 CH 00681, the FOIA requester sought BADGE READER LISTINGS and or KRONOS Reports for all employees and contractors entering and leaving the Jardine Water Purification Plant in August 2015. Because the records dealt with the safety of the water facility, Judge Cohen held that these records were properly withheld pursuant to Section 7(1)(v). Clearly, these records were not "special-purpose" documents or the government's assessment of its vulnerabilities. Instead, the court recognized that release of records revealing entering and exit times of all employees and vendors could jeopardize the provision of safe water to the resident of Illinois, and therefore, the Department of Water Management's use of 7(1)(v) was proper. See *McDonough v. City of Chicago Department of Water Management*, 16, CH 00681 entered on July 19, 2016 attached as Ex. A. Similarly, because the tool/technique at issue is used by CPD to attain information to detect crime and prevent future terrorism, rendering the tool useless has an effect on public safety.

C. Section 7(1)(d)(v) Exempts The Redacted Information From The Invoices.

In addition, the one redaction made to an invoice was properly redacted by CPD 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 pay companies for software provided to CPD for its use. Moreover, the portion of the invoice that was redacted reveals a law enforcement purpose. Plaintiff ignores the information provided by Aaron Cunningham when it makes baseless, conclusory statements that CPD has not established that the tool/technique is specialized, that is not 'generally used and known' and that disclosure would harm CPD. As stated above, CPD is no longer asserting the exemption for the company/tool (Pathar/Dunami) that was disclosed to another requester. Instead, it is withholding the company name/tool that would disclose a 'specialized investigative technique and tool,' that is not generally known and that relates to the detection and investigation of crime and where release would harm CPD. Defendants' Cross MSJ, Ex. A, ¶¶ 5-6, 10-11. Therefore, the one redaction made to the invoice was appropriate pursuant to Section 7(1)(d)(v).

Plaintiff's argument that these company names and tools are generally known undercuts his need for the records to be produced in an unredacted manner. While it provides several articles, affidavits, and even lists vendors and products that are generally known, such as Pathar, Dunami, TransVoyant, Databricks, Dataminr, and GeoFeedia, Plaintiff does not list the

company name or tool that CPD continues to claim is exempt. Pl. Resp. 9. Moreover, for the company name/tool at issue, CPD has assessed that release of the company name/ tool would likely have the same impact as release of Geofeedia, where disclosure of the company name caused Geofeedia not to provide access or support for use by CPD for its investigations.

Defendants' Cross MSJ, Ex. A, ¶ 9.

II. Summary Judgment For Defendants Is Proper Because The Redactions Made To The Open Source Records Were In Accordance With FOIA Exemptions.

Plaintiff has clarified that it is narrowing its requests to the documents compiled in Exhibit 3 of its Response. Based on this narrowing, CPD was able to look up the names listed within the documents and has verified, that all but one name is a victim name. *See Affidavit of Jesus Orozco*, Ex. B, ¶5. Plaintiff acknowledges, "[t]he public's interest in knowing whether a protest leader was illicitly monitored is obviously much greater than knowing the identity of a victim." Pls. Resp. 15. Therefore, this information was properly redacted pursuant to Section 7(1)(c) of FOIA. Moreover, most of the open source records indicate that the name redacted is a victim name. Even if the names were suspects or those incidentally found within the records, CPD provided a detailed explanation as to why release would be an unwarranted invasion of personal privacy. Specifically, individuals would find it objectionable for the public to know that CPD was reviewing their social media accounts, and therefore, release would be an invasion of personal privacy. Moreover, CPD provides legal support for its position and explained that the Court in *Fischer v. U.S. Department of Justice*, 596 F.Supp.2d 34, 46 (D.C. 2009), recognized the D.C. District has consistently held that Federal FOIA Exemption 7(C) protects the privacy interest of all persons mentioned in law enforcement records, including investigators,

suspects, witnesses, and informants.² Plaintiff offers no legal support for his position that the names should be unredacted. It is unclear whether Plaintiff is contesting the other redactions made by CPD. Nevertheless, for the same reasons that the names of individuals are exempt, identifying information of individuals, including IR numbers, Instagram addresses, icons, screennames, photos, twitter names and account information, snapchat information, school information, employment information, and Facebook numbers and usernames, are also exempt pursuant to 7(1)(c) of FOIA. Finally, signatures, IR numbers, Instagram addresses, and Twitter account information are all unique identifiers, and were properly redacted pursuant to Section 7(1)(b) of FOIA. The redactions made to protect the privacy interests of individuals and their private information are appropriate pursuant to Sections 7(1)(b) and 7(1)(c) of FOIA.

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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² 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 THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PATRICK McDONOUGH,

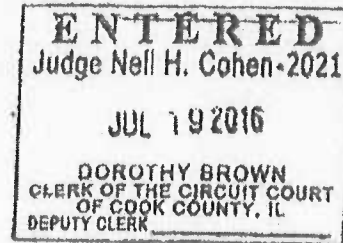
Plaintiff,

v.

CITY OF CHICAGO DEPARTMENT
OF WATER MANAGEMENT,

Defendant.

16 CH 681



MEMORANDUM AND ORDER

Plaintiff Patrick McDonough and Defendant City of Chicago Department of Water Management have filed cross-motions for summary judgment pursuant to 735 ILCS 5/2-1005.

I. Background

On September 15, 2015, Plaintiff Patrick McDonough submitted a Freedom of Information Act ("FOIA") request to Defendant City of Chicago Department of Water Management ("DWM"). The request asked DWM to "provide a BADGE READER LISTINGS and or KRONOS Reports for all employees and contractors entering and leaving the Jardine Water Purification Plant in August 2015." (Compl. Ex. A).

On September 29, 2015, the DWM responded to Plaintiff's request asserting that the requested information was exempt from disclosure under §7(v) of FOIA, 5 ILCS 140/7(v).

Plaintiff's Complaint alleges that the DWM willfully violated FOIA and acted in bad faith by failing to provide the requested records. Plaintiff seeks to compel the DWM to release the requested information. Plaintiff also seeks the imposition of penalties and reasonable attorney's fees and costs.

II. Cross-Motions for Summary Judgment

The parties have filed cross-motions for summary judgment. "Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Continental Casualty Co. v. Law Offices of Melvin James Kaplan, 345 Ill. App. 3d 34, 37 (1st Dist. 2003). "When . . . parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law." *Id.*



A. The Law Applicable to FOIA Requests

Under FOIA, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2. A public body must comply with a request for public documents unless the documents fall within one of the narrowly construed exceptions of Section 7 of the FOIA. Watkins v. McCarthy, 2012 IL App (1st) 100632, ¶13; BlueStar Energy Svcs., Inc. v. Illinois Commerce Comm’n, 374 Ill. App. 3d 990 (1st Dist. 2007).

“If the public body seeks to invoke one of the exemptions in section 7 as grounds for refusing disclosure, it is required to give written notice specifying the particular exemption claimed to authorize the denial.” BlueStar, 374 Ill. App. 3d at 994, quoting, Illinois Educ. Ass’n v. Illinois State Bd. of Educ., 204 Ill. 2d 456, 464 (2003). “Thereafter, the party seeking disclosure of information under FOIA can challenge the public body’s denial in the circuit court.” Id. The public body carries the burden of proof to establish that the documents at issue are exempt from disclosure. Id.

B. The DWM’s Claimed Exemption

The DWM asserts that the requested information is exempt under §7(v) of FOIA which provides as follows:

(v) 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 740/7(v).

The DWM has submitted the affidavit of Ralph Chiczewski, an Assistant Commissioner of Safety and Security for the DWM since October of 2011. (DWM MSI, Ex. 2 at ¶1). Chiczewski was previously an Assistant Deputy Superintendent for the Chicago Police Department overseeing the Intelligence Section, the Counter Terrorism Task Force and the Critical Infrastructure City of Chicago Business District. (Id.).

Chiczewski is responsible for all security at the DWM’s facilities and work sites including oversight of armed sworn officers and unarmed security forces as well as technology related security. (Id. at ¶5).

Chiczewski states that the DWM is responsible for the provision of drinking water to 41% of the population of Illinois. (*Id.* at ¶6). The Jardine Water Purification Plant ("JWPP") is the world's largest conventional water treatment plant. (*Id.*)

Chiczewski states that water infrastructure is considered a high target for terrorist attacks because of the potential for a great amount of harm including disruption of service and water contamination. (*Id.* at ¶¶7-8). Chiczewski asserts that based on his experience and education, disclosure of the entry and exit times of the DWM's contractors (including security, chemical and other vendors) and employees would severely defeat and circumvent the extensive security measures in place as JWPP. (*Id.* at ¶9). Chiczewski states that the information, if disclosed, could jeopardize the DWM's chemical deliveries, staffing levels and other operational issues endangering the provision of safe drinking water. (*Id.*). Plaintiff has not submitted any evidence contradicting any part of Chiczewski's affidavit.

The DWM has also submitted certain articles regarding the nation's water infrastructure and terrorism. (DWM's MSJ at Exs. 3, 4, 7, 8 and 9). Plaintiff contends that this court should not consider these articles because they are inadmissible hearsay. The court agrees that the articles are hearsay, but believes that the DWM has met its burden without reference to the articles.

Chiczewski's affidavit shows that the JWPP is a high value target for terrorists because of the large amount of water treated at the facility. His affidavit further shows that disclosing the information sought by Plaintiff, the entering and exit times of all employees and vendors, could jeopardize the provision of safe water to the residents of Illinois. The court notes that §7(v) expressly provides that information concerning deployment of personnel falls within the exemption. Based on the plain language of §7(v) and Chiczewski's uncontradicted affidavit, the information sought by Plaintiff falls within the claimed exemption.

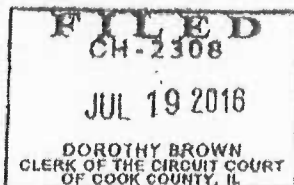
The DWM is entitled to summary judgment on Plaintiff's Complaint.

III. Conclusion

Plaintiff's Motion for Summary Judgment is denied. The DWM's Cross-Motion for Summary Judgment is granted.

The status date of August 1, 2016 is stricken.

Enter: 7/19/16



Neil H. Cohen
Judge Neil H. Cohen

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

AFFIDAVIT OF Jesus J. Orozco

I, Jesus J. Orozco, 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, Jesus J. Orozco, am employed by the City of Chicago Police Department ("CPD") and have been a sworn officer with CPD since December 1996.
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 obtaining information about major incidents, assist in generating information bulletins, officer safety alerts, searching department systems to assist department units investigate crime.
4. As part of my duties, I was asked to look up whether the name provided in the pages, attached and incorporated herein as Exhibit 1, were names of victims.
5. After a search of the names in Chris, I was able to determine all the names in Exhibit 1 are victims' names, except for one name provided in RD number JA499322. While the first name listed on the document does not match the first name of the victim, the last name is the same.



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:

A handwritten signature in cursive script, appearing to read "Jerry J. Dwyer", written over a horizontal line.

Chicago Police Department

this 12 day of February, 2019.