

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

AMERICAN CIVIL LIBERTIES
UNION OF ILLINOIS,

Plaintiff,

v.

CHICAGO POLICE DEPARTMENT,

Defendant.

Case No. **2021CH03442**

14046990

COMPLAINT

Plaintiff AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS (“ACLU of Illinois”) brings this Freedom of Information Act suit to order Defendant CHICAGO POLICE DEPARTMENT (“CPD”) to release records related to CPD’s expanded social media monitoring task force announced by Mayor Lori Lightfoot on August 14, 2020.

NATURE OF THE LAWSUIT

1. This is a complaint under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* In violation of FOIA, CPD failed to release any requested records regarding its expanded social media monitoring task force, which was launched in the wake of historic, large-scale protests in Chicago against racial injustice and police violence against Black people. The exemptions CPD invoked in response to the request do not justify this refusal. The ACLU of Illinois seeks an order requiring CPD to release the records and awarding the ACLU of Illinois other appropriate relief.

JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court under Section 11(a) of FOIA.

3. Venue is proper in Cook County under Section 11(c) of FOIA because CPD is located in Cook County.

PARTIES

4. The ACLU of Illinois is an Illinois not-for-profit corporation. It is a non-partisan, statewide organization dedicated to protecting and expanding the civil rights and civil liberties guaranteed in the United States and Illinois Constitutions and statutes. These include the right to protest and dissent, the right to be free from unreasonable searches and seizures, and the right to view public records. The ACLU of Illinois also works with communities to combat policing that is unlawful and harmful and that disproportionately affects communities of color. It is crucial to the ACLU of Illinois' mission that it receive timely information to keep its membership and the public apprised of developments and concerns in those areas.

5. CPD is a public body located in Cook County, Illinois.

STATEMENT OF FACTS

Law enforcement monitoring of First Amendment activities

6. United States law enforcement agencies, from the Federal Bureau of Investigation ("FBI") to local police, have a history of spying on Americans and infiltrating or otherwise obstructing political activist groups. Law enforcement agencies across the country have monitored and harassed groups and individuals for doing no more than peacefully exercising their First Amendment rights.

7. This long history of surveillance has often targeted Black people and Black-led organizations for the purpose of disrupting advocacy against white supremacy and police violence against Black communities. In the early twentieth century, the U.S. government engaged in extra-judicial surveillance of Black activists, including Ida B. Wells and Marcus Garvey, labeling them "race agitators." In the 1950s and 1960s, through the notorious Counterintelligence Program, the FBI conducted covert activities against Martin Luther King, Jr., leaders of the Student Nonviolent Coordinating Committee and the Black Panther Party, el-

Hajj Malik el-Shabazz (previously known as “Malcolm X”), and other Black people involved in the civil rights movement. Similarly, in the late 1960s and 1970s, the FBI surveilled and investigated Black-owned bookstores on the grounds that the stores were purportedly centers of extremism. During this time, CPD’s Red Squad regularly infiltrated and spied on Black people for engaging in First Amendment activities. Most recently, in 2017, the FBI created and disseminated to law enforcement nationwide an intelligence assessment that asserted—without any evidence—that a group of so-called “Black Identity Extremists” purportedly poses a threat of domestic terrorism. The FBI indicated in this assessment that social media surveillance would be one way to determine if an individual should be identified as a so-called Black Identity Extremist.

8. With the advent of social media, law enforcement agencies began to spy on First Amendment activity by joining social media groups, using keywords and hashtags to discover who is talking about various subjects, and monitoring social media accounts they deem suspicious. Technology is now available from multiple vendors to facilitate such surveillance.

9. Activists nationwide, including in Chicago, now rely on social media platforms such as Facebook and Twitter (among others) as one of the foremost means to spread their messages and organize public protests. Social media has been particularly critical to the dissemination of messages and calls to action related to the Black Lives Matter movement.

10. CPD has a history of secrecy concerning social media monitoring. In 2018, it refused to provide information about its social media monitoring software in response to a FOIA request from the ACLU of Illinois. It took a FOIA lawsuit and a settlement agreement for CPD even to provide the name the software vender (Dumami) that it had used since 2014. More recently, CPD signed a two-year contract effective January 1, 2020 to use Clearview AI’s

powerful facial recognition tool without notifying the public or even the Mayor's office until the New York Times ran an exposé on the company later that month. (Clearview AI terminated the contract after they were sued for violating an Illinois privacy law.)

Summer 2020 announcement of expanded social media monitoring

11. On May 25, 2020, George Floyd was murdered by a Minneapolis police officer. In response to Mr. Floyd's murder, protests against police misconduct and systemic racism in policing erupted in cities all over the world.

12. In Chicago, thousands of people gathered to protest racial injustice and police violence against Black people throughout the summer of 2020. Protesters relied on social media, including Facebook, Twitter, and Instagram, to organize protests and maintain contact with one another during the protests.

13. Many protesters who demanded a stop to police violence during the summer of 2020 were confronted by Chicago police officers who used excessive force against them. Videos and media reports captured Chicago police striking protesters on the head with batons, spraying them with pepper spray at close range, shoving and punching them, and retaliating against people recording this police violence, including by smacking them in the face and seizing their phones. Many Chicago police officers removed or covered their badges and nametags, obscuring their identities. Joseph M. Ferguson & Deborah Witzburg, *Report on Chicago's Response to George Floyd Protests and Unrest*, City of Chicago Office of the Inspector General (Feb. 2021), <https://igchicago.org/wp-content/uploads/2021/02/OIG-Report-on-Chicagos-Response-to-George-Floyd-Protests-and-Unrest.pdf> [hereinafter *OIG Report*]. Many witnesses testified about their experiences in federal court.

14. Hundreds of people reported CPD use-of-force incidents. OIG Report at 102–04. At times, the City shut down public transportation and set curfews. Some instances of looting took place that City officials blamed on the protests.

15. On August 14, 2020, after more than two months of police intimidation and violence against protesters, Mayor Lori Lightfoot announced a new 20-member “task force” unit within the police department that would use technology and data analytics to monitor public social media activity 24 hours a day. *Chicago Authorities to Monitor Social Media Amid Looting Threats, Lightfoot Says*, NBC Chicago (Aug. 14, 2020, 5:46 PM), <https://www.nbcchicago.com/news/local/chicago-authorities-to-monitor-social-media-amid-looting-threats-lightfoot-says/2322460/>.

16. Mayor Lightfoot stated that “. . . over these past few months, social media platforms have repeatedly been used to organize large groups of people to engage in illegal activity.” *Id.*; Gregory Pratt et al., *Mayor Lori Lightfoot Announces Beefed-Up Chicago Police Plan To Track, Prevent Future Looting Throughout City*, Chicago Tribune (Aug. 14, 2020, 6:00 PM), <https://www.chicagotribune.com/politics/ct-lori-lightfoot-public-safety-plan-news-conference-20200814-uw36wzrezjeu7h4wjccbvvy-story.html>.

17. “This proactive monitoring will provide the crucial information our public safety agencies need in order to be aware of planned activity as early as possible and to enable them to respond quickly and appropriately,” Mayor Lightfoot said. Matt Masterson, *‘We Are United’: Lightfoot, Local Officials Announce Plans To Prevent Further Looting*, WTTW (Aug. 14, 2020, 2:14 PM), <https://news.wttw.com/2020/08/14/we-are-united-lightfoot-local-officials-announce-plans-prevent-further-looting>.

18. During the August 14, 2020, announcement, Chicago Police Superintendent David Brown also emphasized that CPD had been monitoring social media for a while but that he hoped to expand the “capacity” of social media monitoring. Pratt, *supra*.

19. In 2021, activists have continued to use social media to organize and publicize protests against police violence. These have included an April 17, 2021 protest in Chicago’s Logan Square neighborhood to condemn the killing of 13-year-old Adam Toledo, who was shot in the chest by police when his hands were in the air, and protests in May and June 2021 concerning the police killing of 22-year-old Anthony Alvarez.

20. To date, neither the Mayor nor CPD has said publicly whether CPD’s social media program announced in August 2020 is still in place, or whether CPD intends to use it in connection with ongoing protests against racial injustice and police violence.

The ACLU of Illinois’ FOIA request

The Illinois Freedom of Information Act

21. To evaluate police misconduct and hold police accountable for any illegal and unconstitutional actions, the public must have access to basic facts about police monitoring of social media accounts.

22. “Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of [the Illinois Freedom of Information Act].” 5 ILCS 140/1.

23. All public records 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.

24. “Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.” 5 ILCS 140/11(a).

25. “If the court determines that a public body willfully and intentionally failed to comply with [FOIA], or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.” 5 ILCS 140/11(j).

The ACLU of Illinois’ FOIA request & CPD’s response

26. On August 26, 2020, the ACLU of Illinois sent an email to CPD requesting certain public records pursuant to FOIA (“the ACLU’s Request,” attached as Exhibit A). CPD received the ACLU’s Request on August 27, 2020, and designated it with Reference No. P599523-082720.

27. The ACLU’s Request sought various records relating to CPD’s activities during protests that occurred throughout the summer of 2020 (“the Requested Records”). Among the Requested Records were records related to CPD’s social media monitoring (“the Social Media Records”), which included:

All records relating to the expanded social media monitoring announced on August 14, 2020, including but not limited to documents sufficient to show:

- a. The purpose(s) for the expanded social media monitoring;
- b. The criteria for monitoring particular social media accounts;
- c. The uses to which information collected from social media accounts may be put;
- d. The participation of any local, state, or federal entities in the social media monitoring, including but not limited to the provision of software, personnel, technical support, or information about the subjects of monitoring;

- e. The persons or entities with whom information collected from social media accounts may be shared;
- f. The length of time for which information collected from social media will be retained; and
- g. The supervision of the expanded social media monitoring.

28. On August 27, 2020, CPD sent an email with a letter to the ACLU of Illinois requesting a five-day extension.

29. On September 10, 2020, CPD responded to the FOIA request by producing one contract and a first amendment worksheet. CPD did not produce any Social Media Records. The response email is attached as Exhibit B.

30. On January 19, 2021, the ACLU of Illinois submitted a revised FOIA request that narrowed many of the categories of the initial request. It also repeated the request for the Social Media Records. A true and correct copy of the revised request is attached as Exhibit C.

31. On January 26, 2021, CPD emailed the ACLU of Illinois indicating that the request was in process and requesting a five-day extension.

32. On February 2, 2021, CPD sent an email to the ACLU of Illinois (the “Final Response,” attached as Exhibit D) and provided most of the Requested Records, but categorically withheld all of the Social Media Records, as follows:

In regard to item #9 of your request, it was determined that this request is denied pursuant to Section 7(1)(d)(vi) and Section 7(1)(v).

Section 7(1)(d)(vi) protects information that would:

(vi) 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 in receipt of the request;

Section 7(1)(v) exempts from inspection and copying 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."

CPD's processes and specialized techniques into social media monitoring is detailed thoroughly in an internal confidential order. Release of this record would immediately compromise the vulnerability assessments, security measures, and response policies and plans that are designed to respond to potential attacks upon the City of Chicago. Release of this sensitive information would constitute a clear and present danger to the health and safety of the community and release could also reasonably jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Therefore, it was determined that these records must be withheld pursuant to Section 7(1)(d)(v) and 7(1)(d)(vi).

Final Response p. 4-5.

33. The Final Response correctly cited the second quoted exemption on p. 5 as Section 7(1)(v). The first quoted exemption, however, is erroneously cited as Section 7(1)(d)(vi). The correct citation for that exemption is Section 7(1)(d)(v).

34. Section 7(1)(d)(vi), which is cited but not quoted in the Final Response, allows public entities to withhold records that would "endanger the life or physical safety of law enforcement personnel or any other person."

35. Since the Final Response *cited* Sections 7(1)(v) and 7(1)(d)(vi), but *quoted* Sections 7(1)(d)(v) and 7(1)(v), it is not clear which exemptions CPD actually intended to invoke. On April 27, 2021, the ACLU of Illinois emailed CPD requesting clarification on this point, but did not receive a response. A true and correct copy of the April 27, 2021, email is attached as Exhibit E.

36. In any case, none of the FOIA exemptions cited *or* quoted in the Final Response permit the categorical refusal to disclose *any* information about a program that the Mayor and the Police Chief called a press conference to announce.

37. None of the exemptions cited or quoted in the Final Response justify the complete withholding of all records. For example, given that Mayor Lightfoot addressed the purported purpose of the expanded social media monitoring at the August 14, 2020 press conference, there is little chance that records documenting that purpose could endanger officers or reveal specialized investigative techniques or response plans. Likewise, the request for records showing who has access to social media information or how long the information may be retained does not implicate any of those matters. And it strains credulity to suggest that information about a program that takes place indoors in front of a computer screen could put an officer's life in jeopardy. But even if the Social Media Records contain *some* exempt information, the law requires CPD to redact that information rather than withhold the records in their entirety. 5 ILCS 140/7(1).

38. Plaintiff reserves the right to expand its explanation of why the cited exemptions do not apply after it receives discovery and/or an index contemplated by 5 ILCS 140/11(e), which requires a "description of the nature or contents of each document withheld, or each deletion from a released document, provided, however, that the public body shall not be required to disclose the information which it asserts is exempt" and a "statement of the exemption or exemptions."

39. As of the filing of this Complaint, CPD has not communicated further with the ACLU of Illinois regarding the ACLU's Request and has not released the Social Media Records.

40. CPD has violated FOIA by withholding Social Media Records that are not exempt from disclosure.

41. Alternatively, CPD has violated FOIA by failing to perform an adequate search for the Social Media Records.

42. Additionally, CPD has violated FOIA by failing to state a “detailed factual basis” for the exemptions it cited or quoted in the Final Response, or “the names and titles or positions of each person responsible for the denial.” 5 ILCS 140/9(a), (b).

43. Upon information and belief, CPD violated FOIA willfully.

CLAIM FOR RELIEF
VIOLATION OF THE ILLINOIS FREEDOM OF INFORMATION ACT

44. Paragraphs 1-43 are incorporated by reference as if fully stated herein.

45. CPD is a public body under FOIA.

46. The Social Media Records are public records of CPD.

47. No FOIA exemptions apply to all of the Social Media Records, or to all of the information within the Social Media Records.

48. CPD violated FOIA by failing to release the Social Media Records.

49. Alternatively, CPD has violated FOIA by failing to conduct an adequate search for the Social Media Records.

50. Additionally, CPD violated FOIA by failing to state a “detailed factual basis” for the exemptions it cited or quoted in the Final Response, or “the names and titles or positions of each person responsible for the denial.”

51. On information and belief, CPD’s violations of FOIA were willful.

REQUEST FOR RELIEF

WHEREFORE, the ACLU of Illinois respectfully asks the Court for the following relief:

- A. Declare that Defendant has violated FOIA;
- B. Order Defendant to conduct a thorough search for all Social Media Records;

- C. Order Defendant to immediately process all Social Media Records;
- D. Order Defendant to promptly release the Social Media Records in their entirety;
- E. Order Defendant to pay civil penalties pursuant to 5 ILCS 140/11(j);
- F. Enjoin Defendant from charging Plaintiff fees for processing the Request;
- G. Award the ACLU of Illinois reasonable attorneys' fees and costs pursuant to 5 ILCS 140/11(i);
- H. Enter a preliminary and permanent injunction against Defendant for the requested relief herein; and
- I. Award such other relief the Court deems just and proper.

DATED: July 15, 2021

Respectfully submitted,

/s/ Rebecca K. Glenberg
Attorney for Plaintiff

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Ariana S. Bushweller*
Nusrat Choudhury**
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*Pro Hac Vice application forthcoming

**Illinois Admission Pending

Exhibit A



ROGER BALDWIN FOUNDATION
OF ACLU, INC.

Illinois

ROGER BALDWIN FOUNDATION OF
ACLU, INC.
150 N. MICHIGAN AVENUE
SUITE 600
CHICAGO, ILLINOIS 60601-7570
(312) 201-9740
FAX (312) 201-9760
WWW.ACLU-IL.ORG

August 26, 2020

VIA EMAIL

Chicago Police Department
Freedom of Information Section, Unit 114
3510 S. Michigan Ave. Chicago, IL 60653
foia@chicagopolice.org

**Re: Freedom of Information Act Request Regarding Chicago Police Department
Activities with Respect to Protests.**

Dear Freedom of Information Officer:

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, I submit this FOIA request on behalf of the Roger Baldwin Foundation of the ACLU of Illinois ("Requestor"), which seeks the production of the following records¹ related to the Chicago Police Department (CPD) response to protests between May 25, 2020 and the date of production. None of these requests should be construed to include attorney-client communications:

1. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to any protest² in Chicago on or after May 25, 2020 until the date of production.
2. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to curfew enforcement³ in Chicago on or after May 25, 2020 until the date of production.
3. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to restrictions on travel into downtown Chicago between May 30, 2020 and June 6, 2020.
4. Compilations, databases, and other records sufficient to show the total number of citations and arrests conducted by CPD in relation to any (1) protest or (2) curfew since

¹ The term "records" as used herein includes, but is not limited to, all documents or communications preserved in electronic or written form, including but not limited to correspondence, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, audits, studies, inquiries, examinations, inspections, investigations, probes, surveys, rules, technical manuals, technical specifications, training manuals, and/or computer files and databases.

² The phrase "in relation to a protest" or "relating to a protest" includes all speech or activities prior to, during, and following the event in question. Thus, this request includes records generated before, during, or after a protest involving conduct or speech related to planning, organizing, and attending a public protests.

³ This request includes records generated before, during, or after a curfew enforcement action regardless of when the curfew-related conduct occurred.

May 25, 2020, or (3) restrictions on travel into downtown between May 30, 2020 and June 6, 2020; production should include the following information for each arrest and citation:

- a. Date of the offense;
 - b. Race of the individual arrested or cited;
 - c. Offense charged;
 - d. Location of detention;
 - e. Duration of detention;
 - f. Disposition;
 - g. Documented use of force including, but not limited to, firearm discharge, Taser discharge, use of chemical agents,⁴ canine use, and baton use.
5. Records regarding the use of the following technologies on or after May 25, 2020; production should include the date, location, and reason for use for each of the following forms of technology used by CPD:
 - a. Cell site simulators;
 - b. Automatic License Plate Readers;
 - c. Aerial drone surveillance;
 - d. Long Range Acoustical Devices; and
 - e. Facial recognition technology, including but not limited to Clearview AI.
 6. Unedited video footage⁵ filmed by representatives, contractors, or employees of CPD relating to (1) protests or (2) curfew violations in Chicago on or after May 25, 2020.
 7. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD relating to any organization that has, or was believed to have, participated in or organized, protests on or after May 25, 2020.
 8. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD relating to individuals who have, or were believed to have, participated in or organized protests on or after May 25, 2020.⁶
 9. Records documenting instances of use of force by protestors against police officers or other individuals on or after May 25, 2020.
 10. Policies, procedures, practices, directives, orders, and training records in effect between May 25, 2020 and the present discussing police activities at protests.

⁴ The term “chemical agent” includes, but is not limited to Oleoresin Capsicum (OC) devices, special weapons that dispense Capsaicin II Powder Agent (PepperBall), or other chemical agent as described in Oleoresin Capsicum (OC) Devices And Other Chemical Agent Use Incidents, General Order G03-02-05 (effective Feb. 29, 2020), Chicago Police Department, <http://directives.chicagopolice.org/directives/data/a7a57b9b-15f2592c-33815-f25c-5c8e6a6716bbf194.html>.

⁵ The term “video footage” includes, but is not limited to aerial footage, and does *not* include body-worn camera footage.

⁶ This request does not include any names or other identifying information for any individuals.

11. Policies, procedures, practices, directives, orders, and training records in effect between May 25, 2020 and the present discussing the enforcement of curfew orders.
12. Policies, procedures, practices, directives, orders, training records, and internal communications between representatives or employees of the CPD concerning measures to ensure COVID-19 prevention and mitigation in the course of police interactions with civilians during protests.
13. Internal communications between representatives or employees of the CPD identifying or otherwise relating to individual protestors, including any references to “marshal(s),” “organizer(s),” “legal observer(s),” and/or “leader(s),” of protests on or after May 25, 2020.
14. Documents sufficient to show all contracts in effect or providing services for any time from May 25, 2020 to present between the City of Chicago or CPD with any company that provides social media monitoring.
15. All records relating to the expanded social media monitoring announced on August 14, 2020, including but not limited to documents sufficient to show:
 - a. The purpose(s) for the expanded social media monitoring;
 - b. The criteria for monitoring particular social media accounts;
 - c. The uses to which information collected from social media accounts may be put;
 - d. The participation of any local, state, or federal entities in the social media monitoring, including but not limited to the provision of software, personnel, technical support, or information about the subjects of monitoring;
 - e. The persons or entities with whom information collected from social media accounts may be shared;
 - f. The length of time for which information collected from social media will be retained; and
 - g. The supervision of the expanded social media monitoring.

Please email the requested materials to jcaballero@aclu-il.org. We request that documents be provided in electronic format if at all possible to eliminate the need to copy the materials. Nevertheless, if necessary, you may mail the requested materials to:

Juan Caballero,
 Roger Baldwin Foundation of ACLU, Inc.,
 150 N. Michigan Ave, Ste. 600,
 Chicago, IL 60601

As you know, the Illinois FOIA requires that you make available for inspection and copying all public records, except certain exempt records, within five working days of receipt of a written

request. If you determine that portions of the requested records are exempt from the Act, we expect that you will delete such exempted material and send copies of the remaining non-exempt material within five working days. Also, if all or any part of this request is denied, please provide in writing the specific exemption(s) under the Act on which you rely to withhold the records.

We are prepared to pay reasonable copying costs for reproducing the requested materials, but request that you waive any such fees under the provision of FOIA that authorizes you to waive copying fees when release of requested information is "in the public interest." In compliance with section 6(c) of the amended FOIA, I represent to you that the documents are sought to determine information concerning the legal rights of the general public and this request is not for the purpose of personal or commercial benefit. Accordingly, a waiver of fees is in the public interest as defined by section 6(c).

If you deny the request for waiver, please notify me before compiling records for which the copying charge will exceed \$50.00 so that we can discuss narrowing the request to cover only the information I seek.

Please contact me at (312) 201-9740 ext. 315 or at jcaballero@aclu-il.org if you have any questions regarding this request. Thank you for your prompt attention.

Sincerely,

Juan P. Caballero
Staff Attorney

Exhibit B



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

September 10, 2020

Via Email:

Juan Caballero

ACLU

jcaballero@aclu-il.org

Re: NOTICE OF RESPONSE TO FOIA REQUEST
FOIA FILE NO.: P599523

Dear Juan Caballero,

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request, received August 26, 2020 for the following:

- "1. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to any protest in Chicago on or after May 25, 2020 until the date of production.*
- 2. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to curfew enforcement in Chicago on or after May 25, 2020 until the date of production.*
- 3. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to restrictions on travel into downtown Chicago between May 30, 2020 and June 6, 2020.*
- 4. Compilations, databases, and other records sufficient to show the total number of citations and arrests conducted by CPD in relation to any (1) protest or (2) curfew since May 25, 2020, or (3) restrictions on travel into downtown between May 30, 2020 and June 6, 2020; production should include the following information for each arrest and citation:*
 - a. Date of the offense;*
 - b. Race of the individual arrested or cited;*
 - c. Offense charged;*

Emergency and TTY: 9-1-1 · Non Emergency and TTY: (within city limits) 3-1-1 · Non Emergency and TTY: (outside city limits) (312) 746-6000

E-mail: police@cityofchicago.org · Website: www.cityofchicago.org/police

- d. Location of detention;*
- e. Duration of detention;*
- f. Disposition;*
- g. Documented use of force including, but not limited to, firearm discharge, Taser discharge, use of chemical agents,⁴ canine use, and baton use.*

5. Records regarding the use of the following technologies on or after May 25, 2020; production should include the date, location, and reason for use for each of the following forms of technology used by CPD:

- a. Cell site simulators;*
- b. Automatic License Plate Readers;*
- c. Aerial drone surveillance;*
- d. Long Range Acoustical Devices; and*
- e. Facial recognition technology, including but not limited to Clearview AI.*

6. Unedited video footage filmed by representatives, contractors, or employees of CPD relating to (1) protests or (2) curfew violations in Chicago on or after May 25, 2020.

7. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD relating to any organization that has, or was believed to have, participated in or organized, protests on or after May 25, 2020.

8. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD relating to individuals who have, or were believed to have, participated in or organized protests on or after May 25, 2020.

9. Records documenting instances of use of force by protestors against police officers or other individuals on or after May 25, 2020.

10. Policies, procedures, practices, directives, orders, and training records in effect between May 25, 2020 and the present discussing police activities at protests.

11. Policies, procedures, practices, directives, orders, and training records in effect between May 25, 2020 and the present discussing the enforcement of curfew orders.

12. Policies, procedures, practices, directives, orders, training records, and internal communications between representatives or employees of the CPD concerning measures to ensure COVID-19 prevention and mitigation in the course of police interactions with civilians during protests.

13. Internal communications between representatives or employees of the CPD identifying or otherwise relating to individual protestors, including any references to "marshal(s)," "organizer(s)," "legal observer(s)," and/or "leader(s)," of protests on or after May 25, 2020.

14. Documents sufficient to show all contracts in effect or providing services for any time from May 25, 2020 to present between the City of Chicago or CPD with any company that provides social media monitoring.

15. All records relating to the expanded social media monitoring announced on August 14, 2020, including but not limited to documents sufficient to show:

- a. The purpose(s) for the expanded social media monitoring;*
- b. The criteria for monitoring particular social media accounts;*
- c. The uses to which information collected from social media accounts may be put;*
- d. The participation of any local, state, or federal entities in the social media monitoring, including but not limited to the provision of software, personnel, technical support, or information about the subjects of monitoring;*
- e. The persons or entities with whom information collected from social media accounts may be shared;*
- f. The length of time for which information collected from social media will be retained; and*
- g. The supervision of the expanded social media monitoring."*

As permitted by 5 ILCS 140/3(e), the time was extended in order to conduct a thorough search for these records. Your request was reviewed by the undersigned in collaboration with the Department's Bureau of Technical Services Field Technology and Innovation Section, Crime Prevention and Information Center, Data Fulfillment and Analysis Section of the Strategic Data Analytics Division, Office of Legal Affairs, Finance Division, and Education and Training Division. It was determined that your request is unduly burdensome as currently written. As a result, it was determined that your request is granted in part and denied in part. CPD is providing you with the responsive First Amendment Worksheet and Sprout Social invoice.

Please be advised that certain information has been redacted from the enclosed responsive records pursuant to 5 ILCS 140/7(1)(b), 5 ILCS 140/7(1)(c), 5 ILCS 140/7(1)(d), and 5 ILCS 140/7(1)(m). Details of the redactions are set forth below.

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). The FOIA, in 5 ILCS 140/2(c-5), defines "private information" as follows:

"Private information" means 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.”

Therefore, bank account information, account numbers, telephone numbers, email addresses, and signatures are exempt and were properly redacted pursuant to Section 7(1)(b).

In addition, third-party names were also redacted as these individuals have a strong interest in keeping their identity private, which outweighs any public interest in this information; therefore, this information is exempt and protected from disclosure pursuant to 5 ILCS 140/7(1)(c) of FOIA. Section 7(1)(c) exempts from inspection and copying the following:

“[P]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy... ‘Unwarranted invasion of personal privacy’ means the disclosure of information is that highly personal or objectionable to reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” *Id.*

Investigative techniques and procedures were redacted pursuant to Section 7(1)(d)(v) and 7(1)(d)(vi), which protects information that would:

- (v) endanger the life or physical safety of law enforcement personnel or any other person;
- (vi) 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 in receipt of the request;

CPD's processes and specialized techniques in response to large events and gatherings is thoroughly detailed in the aforementioned records. Release of the particular processes followed in response to large events and gatherings in the City of Chicago would immediately compromise the vulnerability assessments, security measures, and response policies and plans that are designed to respond to potential attacks upon the City of Chicago. Release of this sensitive information would constitute a clear and present danger to the health and safety of the community and release could also reasonably jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. In addition, release would jeopardize the safety of Officers and its participants for future similar events. Therefore, it was determined that these records must be withheld pursuant to Section 7(1)(d)(v) and 7(1)(d)(vi).

Recommendations protected by attorney-client privilege and the work-product doctrine were redacted pursuant to Section 7(1)(m) of FOIA, which exempts from inspection and copying the following:

"Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in

litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of the public bodies."

In regard to item #10, #11, and #12 of your request, this request was forwarded to the Department's Education and Training Division for review. Search results returned positive for a Crowd Control Operations Bulletin, Department Response to COVID-19 Training Bulletin, and 7 Instructional Hours of Crowd Control and Behavior PowerPoints. Upon consultation with the Office of Legal Affairs, it was determined that these documents are denied pursuant to 5 ILCS 140/7(1)(d)(v), 5 ILCS 140/7(1)(d)(vi), and 5 ILCS 140/7(1)(v).

Section 7(1)(d)(v) protects information that would:

- (v) endanger the life or physical safety of law enforcement personnel or any other person;

Section 7(1)(d)(vi) protects information that would:

- (vi) 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 in receipt of the request;

Section 7(1)(v) exempts from inspection and copying 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."

CPD's processes and specialized techniques in response to large events and gatherings is thoroughly detailed in the aforementioned records. Release of the particular processes followed in response to large events and gatherings in the City of Chicago would immediately compromise the vulnerability assessments, security measures, and response policies and plans that are designed to respond to potential attacks upon the City of Chicago. Release of this sensitive information would constitute a clear and present danger to the health and safety of the community and release could also reasonably jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. In addition, release would

jeopardize the safety of Officers and its participants for future similar events. Therefore, it was determined that these records must be withheld pursuant to Section 7(1)(d)(v), 7(1)(d)(vi), and 7(1)(v).

In regard to item #14 and #15 of your request, these requests were forwarded to the Department's Crime Prevention and Information Center and Finance Division for review. Upon consultation with the Department's Crime Prevention and Information Center, it was determined that their area does not possess any responsive records to your request. Upon consultation with the Department's Finance Division, it was determined that a potentially responsive contract is already publicly available online. There was only one social media type purchase, Sprout Social, which was purchased for the Office of Community Policing. However, this is more of a social media management tool rather than a social media monitoring tool. This purchase was procured on the CDW contract #29659 on June 1, 2020. You may access this contract on the City of Chicago's website under the City's Department of Procurement Services webpage. You'll need to click on *Awarded Contracts/Contract Award & Vendor Database* then click on *Get Started Online*. At the top of the screen and towards the middle, click on *Contacts*. In the Contract (PO) # box, enter in 29659. Click on the PDF of that number and then the contract should populate.

Given the scope of your request, processing such a request would be unduly burdensome as written. FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Please be advised that CPD does not have any automated mechanism by which to track, query, or limit a search of records, documents, police reports, videos, emails, and communication records categorically as your request is seeking. In addition, CPD cannot categorically link reports including Arrest Reports to incidents surrounding protests, curfew, or restrictions into Downtown. In order to compile the requested records, CPD would have to manually conduct extensive research. Specifically, CPD would have to go through each of the thousands of police reports from May 25, 2020 to August 26, 2020 and read each narrative to determine whether or not each incident related to a protest, curfew, or restriction into Downtown. Upon consultation with the Department's Data Fulfillment and Analysis Section of the Strategic Data Analytics Division, it was determined that there were 12,712 Arrest Reports, 4,605 ANOVs, and 1,437 TRRs within the requested time period. Based on past requests for police reports, Arrest Reports are typically at least 5 pages in length, ANOVs are at least 1 page in length, and TRRs are typically between 3 and 10 pages in length. The total page count of 12,712 Arrest Reports, 4,605 ANOVs, and 1,437 TRRs, even using the aforementioned conservative estimates, would exceed well more than 63,560 pages of Arrest Reports, 4,605 pages of ANOVs, and 4,311 pages of TRRs, which would require substantial collection, redaction, and review of documents. Even assuming that CPD could review and compile the responsive documents based on the aforementioned search, this task represents an unduly burdensome request for action.

In an effort to conduct a search of email communications, the Department's Bureau of Technical Services Field Technology and Innovation Section searched for emails to/from any @chicagopolice.org email address from May 25, 2020 to August 26, 2020 containing any of the following key words: marshal, marshals, organizer, organizers, legal observer, legal observers, leader, leaders, COVID-19, protest, and/or protests. Please be advised that providing all of the aforementioned emails you are requesting alone constitutes more than 1,000,000 emails. Based on past requests for emails, emails are typically at least 1 page in length and the longest emails including their attachments can exceed well more than 1,000 pages in length. The total page count of 1,000,000 emails, even using a conservative estimate that each of those

files numbered only 1 page in length, would constitute more than 1,000,000 pages of responsive documents, which would require substantial collection, redaction, and review of documents. Even assuming that CPD could review and compile the responsive documents based on the aforementioned search, this task represents an unduly burdensome request for action.

Based on past requests, it would be reasonable to expect a trained FOIA officer to take at least three minutes to review one page of responsive documents. More than 1,072,476 pages of responsive documentation would require at least 53,624 hours to review, which is not inclusive of the time necessary to retrieve the documents, to the exclusion of all other tasks. Moreover, production of the aforementioned emails, Arrest Reports, ANOVs, and TRRs would only satisfy a small portion of your multipart FOIA request as you are also seeking all other records, documents, police reports, videos, compilations, databases, and any other type of communication records as listed in your above FOIA request. These facts, paired with the short response time allowed by FOIA, make the task of identifying, collecting, and reviewing potentially responsive records in a timely manner unduly burdensome upon CPD. As a result, CPD has determined that compliance with your request is unduly burdensome and that CPD's burden to process your request outweighs the public's interest.

At this time, your request is unduly burdensome as currently written. Pursuant to Section 3(g) of FOIA, we would like to extend to you an opportunity to modify your request to make it more manageable. CPD encourages you to review your request to ascertain the specific details to your query. Unless and until a new FOIA request is submitted that specifies and narrows the records you are seeking, CPD will be unable to provide further records. Once this is determined, a new FOIA request can be submitted to CPD, specifying the records you would like CPD to provide.

If I can be of further assistance, please contact me at the following address:

Chicago Police Department
Attention: Freedom of Information
Office of Legal Affairs, Unit 114
3510 S. Michigan Avenue
Chicago, IL 60653
foia@chicagopolice.org

You have a right of review by the Illinois Attorney General's Public Access Counselor, who can be contacted at 500 S. Second St., Springfield, IL 62706 or by telephone at 877-299-3642. You may also seek judicial review in the Circuit Court of Cook County under 5 ILCS 140/11.

Sincerely,

A. Marlan
Freedom of Information Act Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653

Exhibit C



ROGER BALDWIN FOUNDATION
OF ACLU, INC.

Illinois

ROGER BALDWIN FOUNDATION OF
ACLU, INC.
150 N. MICHIGAN AVENUE
SUITE 600
CHICAGO, ILLINOIS 60601-7570
(312) 201-9740
FAX (312) 201-9760
WWW.ACLU-IL.ORG

January 19, 2021

VIA EMAIL

Chicago Police Department
Freedom of Information Section, Unit 114
3510 S. Michigan Ave. Chicago, IL 60653
foia@chicagopolice.org

**Re: ACLU of Illinois Modification of Freedom of Information Act
Request Dated August 26, 2020 (FOIA File No. P599523)**

Dear Freedom of Information Officer:

This letter modifies the ACLU of Illinois Freedom of Information Act (FOIA) request submitted on August 26, 2020 (FOIA File No. P599523), a copy of which is attached for your reference. The Chicago Police Department (CPD) responded to this request on September 10, 2020 by denying almost all of the requests. The ACLU of Illinois takes issue with many of the exemptions cited. Specifically, the ACLU of Illinois notes the following deficiencies:

- **The CPD response's reliance on the "unduly burdensome" exemption is inappropriate.** The department's reliance on 5 ILCS 140/3(g) is inappropriate because CPD failed to respond to the initial FOIA request in a timely manner. The initial FOIA was submitted on August 26, 2020; the CPD's five-day extension notification was sent on September 4, 2020, seven business days *after* receipt of the initial FOIA request. In failing to respond to the initial FOIA within five business days, CPD waived its right to invoke the unduly burdensome exemption. 5 ILCS 140/3(d).
- **The CPD response misinterprets and fails to respond to all requested items:** In a paragraph purporting to address items 14 and 15 of our request, CPD responds only to item 14, which requested social media monitoring contracts. Item 15 requests records about a particular program: the expansion of CPD's practice of monitoring online activity, which Mayor Lightfoot announced on August 14, 2020.¹ According to subsequent news accounts, a new 20-person task force would monitor online social media

¹ Mayor Lightfoot Press Release, *Mayor Lightfoot Joins Law Enforcement and Prosecutorial Partners, Business and Community Leaders to Announce New Strategies to Protect Chicago's Neighborhoods* (Aug. 14, 2020), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2020/august/StrategyProtectingNeighborhoods.html.

activity 24-hours a day.² Since CPD did not produce records related to the expanded social media monitoring or the task force implementing it, we reiterate the request for these records.

- **The CPD response fails to produce non-exempted portions of responsive records:** The CPD response fails to justify the withholding of entire documents. On page 5 of the CPD response, the department cites 5 ILCS 140/7(1)(d)(v)-(d)(vi) and 5 ILCS 140/7(1)(v) to withhold documents responsive to items 10, 11, and 12 in their entirety.³ While the department has the authority to redact exempted information from responsive documents, it must “make the remaining information available for inspection and copying.” 5 ILCS 140/7(1). *See also Carter v. Meek*, 750 N.E.2d 242, 246 (2001) (“The record does not clearly show that the entire document, in every page and every sentence, contains material that would properly fall under the exemption.”).

Despite the deficiencies in the CPD response, we have narrowed our request as follows:

1. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to any protest⁴ in the CPD Central (01) and Near North (18) districts on the following dates:
 - May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
2. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to curfew enforcement⁵ in the CPD Central (01) and Near North (18) districts on the following dates:
 - May 30-31, 2020
 - July 17, 2020

² See Gregory Pratt and Jeremy Gerner, *Mayor Lori Lightfoot announces beefed-up Chicago police plan to track, prevent future looting throughout city*, Chicago Tribune, Aug. 14, 2020, <https://www.chicagotribune.com/politics/ct-lori-lightfoot-public-safety-plan-news-conference-20200814-uw36wzrezjeu7h4wjicbvvy-story.html>; Hollie Silverman and Ralph Ellis, *Chicago's new strategy to combat looting includes social media monitoring and 'robust legal action'*, CNN, Aug. 14, 2020, <https://edition.cnn.com/2020/08/14/us/chicago-lightfoot-strategy-to-stop-looting/index.html>; *Chicago Authorities to Monitor Social Media Amid Looting Threats, Lightfoot Says*, NBC Chicago, Aug. 14, 2020, <https://www.nbcchicago.com/news/local/chicago-authorities-to-monitor-social-media-amid-looting-threats-lightfoot-says/2322460/>.

³ Moreover, of the three documents CPD identifies as responsive to requests 10, 11, and 12 but too “dangerous” to release, two are actually available online. *See* Department Response to COVID-19 Training Bulletin (April 30, 2020), available at <http://directives.chicagopolice.org/directives/data/a7a57b85-17010e90-34c17-0119-53d7e59ce28d23f4.html?hl=true>; Training Bulletin – ETB 11-02 – Crowd Control Operations (Sept. 2011), available at <https://www.chicagocop.com/download/education-training-bulletin-etb-11-02-crowd-control-operations/>.

⁴ The phrase “in relation to a protest” or “relating to a protest” includes all speech or activities prior to, during, and following the event in question. Thus, this request includes records generated before, during, or after a protest involving conduct or speech related to planning, organizing, and attending a public protests.

⁵ This request includes records generated before, during, or after a curfew enforcement action regardless of when the curfew-related conduct occurred.

- August 15-17, 2020
3. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to restrictions on travel into downtown Chicago in the CPD Central (01) and Near North (18) districts on the following dates:
 - May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
 4. Compilations, databases, and other records sufficient to show the total number of citations and arrests conducted by the CPD Central (01) and Near North (18) districts in relation to any (1) protest, (2) curfew, or (3) restrictions on travel into downtown on May 30-31, 2020; July 17, 2020; or August 15-17, 2020. Production should include the following information for each arrest and citation:
 - a. Date of the offense;
 - b. Race of the individual arrested or cited;
 - c. Offense charged;
 - d. Location of detention;
 - e. Duration of detention;
 - f. Disposition;
 - g. Documented use of force including, but not limited to, firearm discharge, Taser discharge, use of chemical agents,⁶ canine use, and baton use.
 5. Unedited video footage⁷ filmed by representatives, contractors, or employees of CPD relating to (1) protests or (2) curfew violations in Chicago on the following dates:
 - May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
 6. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD Central (01) and Near North (18) districts relating to any organization that has, or was believed to have, participated in or organized, protests on the following dates:
 - May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
 7. Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD Central (01) and Near North (18) districts

⁶ The term “chemical agent” includes, but is not limited to Oleoresin Capsicum (OC) devices, special weapons that dispense Capsaicin II Powder Agent (PepperBall), or other chemical agent as described in Oleoresin Capsicum (OC) Devices And Other Chemical Agent Use Incidents, General Order G03-02-05 (effective Feb. 29, 2020), Chicago Police Department, <http://directives.chicagopolice.org/directives/data/a7a57b9b-15f2592c-33815-f25c-5c8e6a6716bbf194.html>.

⁷ The term “video footage” includes, but is not limited to aerial footage, and does *not* include body-worn camera footage.

relating to individuals who have, or were believed to have, participated in or organized protests on the following dates:⁸

- May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
8. Records documenting instances of use of force by protestors against CPD Central (01) and Near North (18) district police officers or other individuals in these districts on the following dates:
- May 30-31, 2020
 - July 17, 2020
 - August 15-17, 2020
9. All records relating to the expanded social media monitoring announced on August 14, 2020 and its implementation, including but not limited to documents sufficient to show:
- a. The purpose(s) for the expanded social media monitoring;
 - b. The criteria for monitoring particular social media accounts;
 - c. The uses to which information collected from social media accounts may be put;
 - d. The participation of any local, state, or federal entities in the social media monitoring, including but not limited to the provision of software, personnel, technical support, or information about the subjects of monitoring;
 - e. The persons or entities with whom information collected from social media accounts may be shared;
 - f. The length of time for which information collected from social media will be retained; and
 - g. The supervision of the expanded social media monitoring.

Please email the requested materials to jcaballero@aclu-il.org. We request that documents be provided in electronic format if at all possible to eliminate the need to copy the materials. Nevertheless, if necessary, you may mail the requested materials to:

Juan Caballero,
 Roger Baldwin Foundation of ACLU, Inc.,
 150 N. Michigan Ave, Ste. 600,
 Chicago, IL 60601

Please contact me at (312) 201-9740 ext. 315 or at jcaballero@aclu-il.org if you have any questions regarding this request. Thank you for your prompt attention.

Sincerely,

⁸ This request does not include any names or other identifying information for any individuals.

Juan P. Caballero
Staff Attorney

Exhibit D



Lori E. Lightfoot
Mayor

Department of Police • City of Chicago
3510 S. Michigan Avenue • Chicago, Illinois 60653

David O. Brown
Superintendent of Police

February 2, 2021

Via Email:

Juan Caballero

ACLU

jcaballero@aclu-il.org

**Re: NOTICE OF RESPONSE TO NARROWED FOIA REQUEST
FOIA FILE NO.: P599523**

Dear Juan Caballero,

The Chicago Police Department (CPD) is in receipt of your narrowed Freedom of Information Act (FOIA) request, received January 19, 2021 for the following:

"1. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to any protest in the CPD Central (01) and Near North (18) districts on the following dates:

- *May 30-31, 2020*
- *July 17, 2020*
- *August 15-17, 2020*

2. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to curfew enforcement in the CPD Central (01) and Near North (18) districts on the following dates:

- *May 30-31, 2020*
- *July 17, 2020*
- *August 15-17, 2020*

3. Arrest reports, citations, First Amendment worksheets, and use-of-force reports relating to restrictions on travel into downtown Chicago in the CPD Central (01) and Near North (18) districts on the following dates:

- *May 30-31, 2020*
- *July 17, 2020*
- *August 15-17, 2020*

Emergency and TTY: 9-1-1 • **Non Emergency and TTY:** (within city limits) 3-1-1 • **Non Emergency and TTY:** (outside city limits) (312) 746-6000

E-mail: police@cityofchicago.org • **Website:** www.cityofchicago.org/police

4. *Compilations, databases, and other records sufficient to show the total number of citations and arrests conducted by the CPD Central (01) and Near North (18) districts in relation to any (1) protest, (2) curfew, or (3) restrictions on travel into downtown on May 30-31, 2020; July 17, 2020; or August 15-17, 2020. Production should include the following information for each arrest and citation:*

- a. Date of the offense;*
- b. Race of the individual arrested or cited;*
- c. Offense charged;*
- d. Location of detention;*
- e. Duration of detention;*
- f. Disposition;*
- g. Documented use of force including, but not limited to, firearm discharge, Taser discharge, use of chemical agents, canine use, and baton use.*

5. *Unedited video footage⁷ filmed by representatives, contractors, or employees of CPD relating to (1) protests or (2) curfew violations in Chicago on the following dates:*

- May 30-31, 2020*
- July 17, 2020*
- August 15-17, 2020*

6. *Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD Central (01) and Near North (18) districts relating to any organization that has, or was believed to have, participated in or organized, protests on the following dates:*

- May 30-31, 2020*
- July 17, 2020*
- August 15-17, 2020*

7. *Dossiers, reports, first amendment worksheets, and internal communications between representatives or employees of the CPD Central (01) and Near North (18) districts relating to individuals who have, or were believed to have, participated in or organized protests on the following dates:*

- May 30-31, 2020*
- July 17, 2020*
- August 15-17, 2020*

8. *Records documenting instances of use of force by protestors against CPD Central (01) and Near North (18) district police officers or other individuals in these districts on the following dates:*

- May 30-31, 2020*
- July 17, 2020*
- August 15-17, 2020*

9. *All records relating to the expanded social media monitoring announced on August 14, 2020 and its implementation, including but not limited to documents sufficient to show:*

- a. The purpose(s) for the expanded social media monitoring;*
- b. The criteria for monitoring particular social media accounts;*

- c. The uses to which information collected from social media accounts may be put;*
- d. The participation of any local, state, or federal entities in the social media monitoring, including but not limited to the provision of software, personnel, technical support, or information about the subjects of monitoring;*
- e. The persons or entities with whom information collected from social media accounts may be shared;*
- f. The length of time for which information collected from social media will be retained; and*
- g. The supervision of the expanded social media monitoring."*

As permitted by 5 ILCS 140/3(e), the time was extended in order to conduct a thorough search for these records. Your request was reviewed by the undersigned in collaboration with the Department's Bureau of Technical Services Field Technology and Innovation Section, Crime Prevention and Information Center, Data Fulfillment and Analysis Section of the Strategic Data Analytics Division, Bureau of Detectives, Bureau of Counter-Terrorism, Office of News Affairs, and Office of Legal Affairs. It was determined that your request is unduly burdensome as currently written. As a result, it was determined that your request is granted in part and denied in part. CPD is providing you with May 30, 2020 to May 31, 2020 Arrest Reports, Security Briefs, and the responsive information to your request that CPD is able to track pertaining to Arrest, Charge Dispositions, Administrative Notice of Violation (ANOV), and Tactical Response Report (TRR) data.

In regard to your request for Arrest Reports, please be advised that the Arrest Reports from May 30, 2020 to May 31, 2020 are publicly available online. You may access the aforementioned documents using the following link:

<https://chicagopolicepublic.blob.core.usgovcloudapi.net/may29jun1/index.html>.

Please be advised that information pertaining to the investigations of juvenile offenders were redacted and 61 juvenile Arrest Reports were withheld in full pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1 et seq. ("JCA"). 5 ILCS 140/7(1)(a) of the FOIA statute exempts from disclosure, "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Illinois Juvenile Court Act of 1987 strictly restricts the disclosure of law enforcement records that pertain to a juvenile's arrest, charge, or investigation. Such information must be withheld in full pursuant to 705 ILCS 405/5-905(5); 705 ILCS 405/1-7(c). Specifically, pursuant to Sec. 1-7: "[t]he records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public." 705 ILCS 405/1-7(C). Therefore, this information is exempt from disclosure under 5 ILCS 140/7 (1)(a) of the Freedom of Information Act, which exempts from production "information specifically prohibited from disclosure by a federal or State law or rules and regulation adopted under federal or State law."

Given the scope of your request, processing such a request would be unduly burdensome as written. FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and

there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Please be advised that CPD does not have any automated mechanism by which to track, query, or limit a search of records, documents, police reports, and videos categorically as your request is seeking. CPD cannot categorically link document and video including Arrest Reports to incidents surrounding protests, curfew, or restrictions into Downtown. In order to compile the requested records, CPD would have to manually conduct extensive research. CPD would have to go through all of the police reports from each of the requested time frames and read each narrative to determine whether or not each incident related to a protest, curfew, or restriction into Downtown. Upon consultation with the Department's Data Fulfillment and Analysis Section of the Strategic Data Analytics Division, it was determined that there are 123 additional adult Arrest Reports (not counting the Arrest Reports already being provided in the above link) and 176 TRRs within the requested time periods for the 001st and 018th Police Districts. Based on past requests for police reports, Arrest Reports are typically 5 pages in length at minimum and TRRs are typically between 3 and 10 pages in length. The total page count of 123 adult Arrest Reports and 176 TRRs, even using the aforementioned conservative estimates, would exceed well more than 615 pages of Arrest Reports and 528 pages of TRRs, which would require substantial collection, redaction, and review of documents. Even assuming that CPD could review and compile the responsive documents based on the aforementioned search, this task represents an unduly burdensome request for action.

Based on past requests, it would be reasonable to expect a trained FOIA officer to take at least three minutes to review one page of responsive documents. More than 1,143 pages of responsive documentation would require at least 57 hours to review, which is not inclusive of the time necessary to manually and individually retrieve the documents, to the exclusion of all other tasks. Moreover, production of the aforementioned Arrest Reports and TRRs would only satisfy a small portion of your multipart FOIA request as you are also seeking all other records, documents, reports, videos, and communication records as listed in your above FOIA request. These facts, paired with the short response time allowed by FOIA, make the task of identifying, collecting, and reviewing potentially responsive records in a timely manner unduly burdensome upon CPD. As a result, CPD has determined that compliance with your request is unduly burdensome and that CPD's burden to process your request outweighs the public's interest.

In regard to your request for internal communications, it was determined that this request is unduly burdensome as currently written. Please be advised that CPD does not have any automated mechanism by which to track, query, or limit a search of all communication records categorically as your request is seeking. In addition, your request for communications was interpreted as including emails. In order to effectively run an email search, the Department's Bureau of Technical Services Field Technology and Innovation Section needs (1) the email address(es) and/or employee name(s) of the account(s) you wish searched; (2) key words you wish to search for; and (3) the timeframe to be searched.

In regard to item #9 of your request, it was determined that this request is denied pursuant to Section 7(1)(d)(vi) and Section 7(1)(v).

Section 7(1)(d)(vi) protects information that would:

- (vi) 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 in receipt of the request;

Section 7(1)(v) exempts from inspection and copying 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."

CPD's processes and specialized techniques into social media monitoring is detailed thoroughly in an internal confidential order. Release of this record would immediately compromise the vulnerability assessments, security measures, and response policies and plans that are designed to respond to potential attacks upon the City of Chicago. Release of this sensitive information would constitute a clear and present danger to the health and safety of the community and release could also reasonably jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Therefore, it was determined that these records must be withheld pursuant to Section 7(1)(d)(v) and 7(1)(d)(vi).

In regard to your request for First Amendment worksheets, please be advised that search results returned negative; therefore, CPD does not possess any responsive records to this portion of your request.

In regard to your request for copies of citations, it was determined that CPD is not the keeper of records you are seeking. Please note that each City Department is a separate "public body" under Section 2 of FOIA, 5 ILCS 140/2(a). See *Duncan Publishing Inv v. City of Chicago*, 304 Ill. App.3d 778, 784, 709 N.E. 2d 1281, 1282 (1st Dist 1999). A FOIA request must be directed to the Department that maintains the records you're seeking.

Please visit the City of Chicago's website for a list of City FOIA Departments and the records each maintains: https://www.cityofchicago.org/city/en/narr/foia/foia_contacts.html.

At this time, portions of your multipart FOIA request are unduly burdensome as currently written. Pursuant to Section 3(g) of FOIA, we would like to extend to you an opportunity to modify your request to make it more manageable. CPD encourages you to review your request to ascertain the specific details to your query. Unless and until a new FOIA request is submitted that specifies and narrows the records you are seeking, CPD will be unable to provide further records. Once this is determined, a new FOIA

request can be submitted to CPD, specifying the records you would like CPD to provide.

If I can be of further assistance, please contact me at the following address:

Chicago Police Department
Attention: Freedom of Information
Office of Legal Affairs, Unit 114
3510 S. Michigan Avenue
Chicago, IL 60653
foia@chicagopolice.org

You have a right of review by the Illinois Attorney General's Public Access Counselor, who can be contacted at 500 S. Second St., Springfield, IL 62706 or by telephone at 877-299-3642. You may also seek judicial review in the Circuit Court of Cook County under 5 ILCS 140/11.

Sincerely,

A. Marlan
Freedom of Information Act Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653

Exhibit E

 Reply all |
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RE: Non-Commercial Police FOIA Request :: P599523-082720



Juan Caballero

Tue 4/27, 4:56 PM

Chicago Public Safety <chicagops@mycusthelp.net>; Rebecca Glenberg; Ariana Bu: ✉

 Reply all |
 

Inbox



Action Items



Officer Marlan,

I write again ask you to clarify portions of your February 2, 2021 FOIA response letter (File No. P599523); specifically, I write to know which two FOIA exemptions you intended to invoke to justify the withholding of records responsive to item #9 of the narrowed FOIA request. Your February 2 response letter cites FOIA sections 7(1)(d)(y), 7(1)(d)(y), and 7(1)(v) in seemingly contradictory manners. While your response letter cites sections 7(1)(v) and 7(1)(d)(vi) on page 4, it immediately proceeds to quote Section 7(1)(d)(y) while misattributing the quoted text to Section 7(1)(d)(vi). Moreover, in the following paragraph on page 5, you contend, “[r]elease of this sensitive information would constitute a clear and present danger to the health and safety of the community and release could also reasonably jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public.” This sentence appears to parallel the text of section 7(1)(d)(vi). However, the following sentence cites “Section[s] 7(1)(d)(y) and 7(1)(d)(vi),” without any reference to Section 7(1)(v).

From the context of the letter, I presume that you *did* intend to cite Section 7(1)(v) as part of your justification for withholding records related to item #9; is that correct? If so, did you intend to cite section 7(1)(d)(y) or 7(1)(d)(vi) to justify the withholding of these records? I am not sure which one is correct since you cited one section but quoted the other.

Thank you for the clarification

Juan P. Caballero

Staff Attorney

Pronouns: he/him/his

Roger Baldwin Foundation of ACLU, Inc.

150 N. Michigan Ave., Ste.600

Chicago, IL 60601

■ 312.201.9740 x315 ■ jcaballero@aclu-il.org

www.aclu-il.org

From: Chicago Public Safety <chicagops@mycusthelp.net>

Sent: Tuesday, March 2, 2021 1:47 PM

To: Juan Caballero <JCaballero@aclu-il.org>

Subject: Non-Commercial Police FOIA Request :: P599523-082720

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Hi Juan,

Yes, the Excel spreadsheet that was provided includes information from the 123 Arrest Reports and 176 TRRs that were withheld/deemed unduly burdensome to produce. Information pertaining to juveniles on the spreadsheet were redacted with a "J" indicator.

A. Marlan
CPD FOIA Officer

FILED DATE: 7/15/2021 9:13 AM 2021CH03442