

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 24, 2025

Via electronic mail



RE: FOIA Request for Review – 2024 PAC 84547

Dear [REDACTED]:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2023 Supp.)). For the reasons that follow, the Public Access Bureau has determined that this Request for Review is unfounded.

On December 4, 2024, you submitted a FOIA request to the Markham Police Department (Department) seeking, in relevant part, copies of camera footage from a July 13, 2024, incident at a specific address. On December 10, 2024, the Department responded by informing you that no responsive video footage existed. On December 27, 2024, this office received your Request for Review contesting the Department's response.

FOIA provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022). Under FOIA, the adequacy of a public body's search for responsive records is judged by a standard of reasonableness and depends upon the particular facts of the case. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31. However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982).

On January 10, 2025, the Deputy Public Access Counselor contacted the Department's FOIA officer and requested an explanation of its search for responsive footage. On January 21, 2025, Commander Eric. S. Blohm responded, explaining:

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

I ran a search in our report management system and found the incident cataloged under incident number 24MK18181. Under this incident, one police report was generated. I reviewed the report and redacted portions that are excluded pursuant to statute.

I then conducted a search for "police cam footage." This incident occurred at a private residence. Therefore, the only possible "police cam footage" that may exist is body worn camera footage. I am the records custodian for the police department and as part of my duties, I am responsible for the management of body camera footage. I conducted a search of our body worn camera footage which is stored by Axon at Evidence.com pursuant to our contract with them. No body worn camera footage was found.

I again reviewed the report and found that body worn camera was referenced in the report, but no arrest was made in this incident. I reviewed the audit records of the body camera recordings and found that they were not flagged. Because the footage was not flagged, they were deleted after the 90-day retention period as required by our department's policy.^[1]

Sections 10-20(7) and 7(b) of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act) (50 ILCS 706/10-20(7), 7(B) (West 2022)) provides, in relevant part:

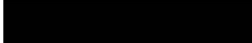
Recordings made on officer-worn cameras must be retained by the law enforcement agency or by the camera vendor used by the agency, on a recording medium for a period of 90 days.

* * *

(B) Following the 90-day storage period, any and all recordings made with an officer-worn body camera must be destroyed, unless any encounter captured on the recording has been flagged.

Based on the Department's explanation to this office and the information submitted with this Request for Review, the incident underlying the requested body camera footage did not result in an arrest or otherwise involve an encounter that required the recording to be flagged under the Body Camera Act. Therefore, the footage was not required to be preserved beyond 90 days under that statute. Because the Department has confirmed that it no

¹E-mail from Eric S. Blohm, Markham Police Department, to Christopher Boggs (January 21, 2025).

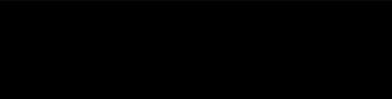

January 24, 2025

Page 3

longer possessed the body camera footage you were seeking at the time the Department received your FOIA request, your allegation that the Department improperly withheld responsive footage is unfounded.

If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter closes this matter.

Very truly yours,



CHRISTOPHER R. BOGGS
Deputy Public Access Counselor
Public Access Bureau

84547 f unf pd

cc: *Via electronic mail*
Commander Eric S. Blohm *315
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