



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

**KWAME RAOUL**  
ATTORNEY GENERAL

December 16, 2021

**PUBLIC ACCESS OPINION 21-012**  
**(Request for Review 2021-PAC-S-0806)**

FREEDOM OF INFORMATION ACT:  
Disclosure of 911 Response Times

*Chicago Tribune*  
Attn: Joe Mahr/ Newsroom  
560 West Grand Avenue  
Chicago, Illinois 60654

Mr. Marc Augustave  
Senior Counsel  
City of Chicago Department of Law  
Legal Information and Prosecutions Division  
2 North LaSalle, Suite 460  
Chicago, Illinois 60602

Dear Mr. Mahr and Mr. Augustave:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons discussed below, this office concludes that the Office of Emergency Management and Communications (OEMC) of the City of Chicago (City) violated the requirements of FOIA by improperly withholding the 911 call response time data responsive to Mr. Joe Mahr's FOIA request.

**BACKGROUND**

On August 12, 2021, Mr. Mahr, on behalf of the *Chicago Tribune*, submitted a FOIA request to OEMC seeking electronic data. Specifically, the request sought "[a]ll publicly releasable fields of 911 call data, to the most recent date of compliance, covering incidents as far

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back in time as the data is kept."<sup>1</sup> Mr. Mahr listed for reference various fields of data that OEMC had provided to him in response to prior FOIA requests, such as the event numbers and first dispatch dates/times. He specifically noted, however, that "OEMC has not provided the 'response time,' or time that a unit has been noted to have arrived on the scene of an incident."<sup>2</sup> Although OEMC had previously denied response time data pursuant to sections 7(1)(d)(vi) and 7(1)(v) of FOIA,<sup>3</sup> Mr. Mahr asked OEMC to reconsider its practice of using those two exemptions to deny the requested response time data.<sup>4</sup>

On August 19, 2021, OEMC extended its time to respond by five business days<sup>5</sup> pursuant to section 3(e)(iv) of FOIA<sup>6</sup> and then reached "a series of agreed-upon extensions"<sup>7</sup> with Mr. Mahr, as allowed under section 3 of the Act.<sup>8</sup> The additional extensions were sought on August 26, 2021,<sup>9</sup> September 2, 2021,<sup>10</sup> and September 10, 2021.<sup>11</sup> On September 17, 2021,

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<sup>1</sup>FOIA request from Joseph A. [Mahr] to Office of Emergency Management and Communications (OEMC) (August 12, 2021).

<sup>2</sup>FOIA request from Joseph A. [Mahr] to Office of Emergency Management and Communications (OEMC) (August 12, 2021).

<sup>3</sup>5 ILCS 140/7(1)(d)(vi), (1)(v) (West 2020), as amended by Public Act 102-038, effective June 25, 2021.

<sup>4</sup>FOIA request from Joseph A. [Mahr] to Office of Emergency Management and Communications (OEMC) (August 12, 2021).

<sup>5</sup>Correspondence from M. Mason – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr (August 19, 2021).

<sup>6</sup>5 ILCS 140/3(e)(iv) (West 2020) (permitting an extension of five business days when "the requested records have not been located in the course of routine search and additional efforts are being made to locate them[.]").

<sup>7</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

<sup>8</sup>5 ILCS 140/3(e) (West 2020) ("The person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties.").

<sup>9</sup>Correspondence from M. Mason M. Mason – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr (August 26, 2021).

<sup>10</sup>Correspondence from M. Mason M. Mason – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr (September 2, 2021).

<sup>11</sup>Correspondence from M. Mason – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr (September 10, 2021).

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OEMC responded to the FOIA request by providing Mr. Mahr with a dataset for 911 call records from August 1, 2017, through August 19, 2021, but denied the response times pursuant to sections 7(1)(d)(vi) and 7(1)(v) of FOIA.<sup>12</sup> OEMC's response to Mr. Mahr's request asserted:

Response times, by nature, deal with policies or plans designed to protect a community. In addition, response times provide details about the mobilization and deployment of public safety personnel, which is specifically exempt under FOIA. Furthermore if CPD [Chicago Police Department] on scene/arrival time information was made public, it could indirectly show a response time pattern. This information could assist those wishing to harm others to know a minimum average time before a call is responded to and/or how long it takes an officer to notify OMEC [sic] that he or she is responding to a call. Releasing response times would in fact provide those seeking to harm our first responders and residents with the tools necessary to avoid capture and increase the lethality as well as identify what areas are most favorable for wrongdoers to commit crimes. \* \* \* Releasing such information empowers vandals with the ability to know in advance where police and other valuable city resources will be and/or how long they will take to arrive on scene. Finally, releasing critical response information could allow for persons to cultivate a strategy in advance for undermining or otherwise targeting public safety efforts.<sup>[13]</sup>

On October 5, 2021, Mr. Mahr submitted a Request for Review to the Public Access Counselor contesting the denial of the response time data.<sup>14</sup> As background, Mr. Mahr explained:

[W]hen emergency personnel are dispatched to scenes, multiple times are recorded by OEMC. There is the time a 911 call was

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<sup>12</sup>OEMC also partially redacted the "Location" and "X & Y Coordinates" fields pursuant to sections 7(1)(b) and 7(1)(c) of FOIA 5 ILCS 140/7(1)(b), (1)(c) (West 2020), as amended by Public Act 102-038, effective June 25, 2021. However, Mr. Mahr has not challenged those redactions. GovQA response by A. Martin – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr, Chicago Tribune (September 17, 2021).

<sup>13</sup>Correspondence from A. Martin – OEMC FOIA, Freedom of Information Officer, Office of Emergency Management & Communications, to Joseph A. Mahr, Chicago Tribune (September 17, 2021).

<sup>14</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

entered into the system. There is the time an emergency responder was dispatched. And there is the time an emergency responder actually arrived on scene. OEMC has provided the first two, but not the third.<sup>15]</sup>

Noting that section 7(1)(v) encompasses only "[v]ulnerability assessments, security measures, and response policies or plans[.]" Mr. Mahr argued that "[a]n arrival time to a 911 call is not specifically listed, nor can it be shoehorned into any of the three."<sup>16</sup> Mr. Mahr also contended that while the section 7(1)(d)(vi) exemption has been used successfully to withhold "things like keeping the identity of undercover officers secret[.]" OEMC did not demonstrate that the disclosure of the response times at issue here *would* endanger the life or physical safety of law enforcement personnel or any other person, as the exemption requires.<sup>17</sup> According to Mr. Mahr, OEMC did not provide "any evidence beyond a hypothetical that maybe it could happen."<sup>18</sup>

On October 7, 2021, the Public Access Bureau sent a copy of the Request for Review to OEMC. The Public Access Bureau also sent OEMC a letter asking for unredacted copies of the responsive records for this office's confidential review and a detailed explanation of the legal and factual bases for the applicability of the asserted exemptions.<sup>19</sup>

On October 21, 2021, the City's Department of Law transmitted to this office via electronic mail<sup>20</sup> a sample of the responsive records, an affidavit from the Chief of CPD's Bureau of Patrol, Brian McDermott, and a written answer on behalf of OEMC.<sup>21</sup> On that same date, this

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<sup>15</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

<sup>16</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

<sup>17</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

<sup>18</sup>E-mail from Joe Mahr, Chicago Tribune, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 5, 2021).

<sup>19</sup>Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Allegra Martin, City of Chicago Office of Emergency Management and Communications (October 7, 2021).

<sup>20</sup>E-mail from Marc Augustave, Senior Counsel, City of Chicago. Department of Law, to Joshua Jones [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 21, 2021).

<sup>21</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021).

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office forwarded a copy of OEMC's answer, including the affidavit, to Mr. Mahr and notified him of his opportunity to reply.<sup>22</sup> On October 26, 2021, Mr. Mahr submitted a reply.<sup>23</sup>

On December 2, 2021, this office extended the time within which to issue a binding opinion by 30 business days, to January 19, 2022, pursuant to section 9.5(f) of FOIA.<sup>24</sup>

### ANALYSIS

Section 1 of FOIA (5 ILCS 140/1 (West 2020)) declares that "it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government." 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 (West 2020). The Illinois Supreme Court has "on several occasions, held that the exceptions to disclosure set forth in the FOIA are to be read narrowly so as not to defeat the FOIA's intended purpose." *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006).

#### Section 7(1)(d)(vi) of FOIA

Section 7(1)(d)(vi) of FOIA exempts from disclosure:

(d) 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**:

\* \* \*

(vi) endanger the life or physical safety of law enforcement personnel or any other person[.] (Emphasis added.)

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<sup>22</sup>Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Joe Mahr, *Chicago Tribune* (October 21, 2021).

<sup>23</sup>E-mail from Joe Mahr, *Chicago Tribune*, to [Joshua] Jones [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 26, 2021).

<sup>24</sup>Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to *Chicago Tribune*, Attn: Joe Mahr/ Newsroom, and Marc Augustave, Senior Counsel, City of Chicago Department of Law, Legal Information and Prosecutions Division (December 2, 2021).

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The use of the term "would" in this provision signifies that the General Assembly intended a stricter standard than "could." *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, ¶43, \_\_\_ N.E.3d \_\_\_ (2021) ("The General Assembly knew the difference between the use of the term *could* instead of *would*; it had used the word 'would' in other FOIA exemptions. *See, e.g.,* \* \* \* § 7(1)(c), (d)[(vi)], (k), (u)." (Emphasis in original.)).

In its answer to this office, OEMC argued that the section 7(1)(d)(vi) exemption applies "because this information could place first responders in harm's way."<sup>25</sup> Referencing the affidavit from the Chief of CPD's Bureau of Patrol, OEMC argued:

As Chief McDermott explained, releasing CPD response times *could* provide those seeking to harm our first responders with the advantage of predicting when they would arrive on scene. Criminals would be able to effectively plan and strategize their attack, accordingly, jeopardizing the safety of first responders. [Citation.]

Taking all these factors into account, the safety of personnel *could* be compromised if CPD response times were publicized. This *could* allow criminals to target their activities to areas that take longer for CPD to respond and are most favorable to commit criminal activity. In essence, the release of this information could put these areas at risk. (Emphasis added.)<sup>[26]</sup>

In his affidavit, Chief McDermott stated that he has held the position of Chief of the Bureau of Patrol since July 2020, and that his "duties and responsibilities \* \* \* include the supervision of all 22 police districts and developing strategies to address crime and disorder."<sup>27</sup> Chief McDermott stated that it is his "strong opinion that the release of this information would likely places [sic] responders in harm's way[.]" and that "[t]he safety of CPD personnel would be compromised because this information would provide those seeking to harm our first responders with the advantage of predicting their arrival on scene."<sup>28</sup>

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<sup>25</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021), at 3.

<sup>26</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021), at 3.

<sup>27</sup>McDermott Aff. ¶2.

<sup>28</sup>McDermott Aff. ¶¶8, 9.

Mr. Mahr contested those claims in his reply:

Of course, nobody wants to put officers in harm's way. But OEMC is abusing this exemption, which was designed for things like records that identify an undercover officer. FOIA puts the burden on an agency to provide "clear and convincing evidence" that an exemption applies. OEMC does provide an affidavit, but it uses sweeping, vague and conclusory language to assert that releasing the data *could* hurt officers, without offering any evidence to back that up. The courts have required a much higher standard that [sic] a public body simply saying "Trust us." (Emphasis in original.)<sup>[29]</sup>

Mr. Mahr then cited *Day v. City of Chicago*, 388 Ill. App. 3d 70 (1st Dist. 2009), in which the Illinois Appellate court held that affidavits by a CPD FOIA officer, an attorney in CPD's Office of Legal Affairs, and a CPD Police Lieutenant were inadequate to demonstrate that records were exempt from disclosure because they did not contain "'detailed justifications' that lend themselves to 'adequate adversary testing' necessary to support the claimed" exemption. *Day*, 388 Ill. App. 3d at 77 (quoting *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)).

OEMC's assertion that the response times are exempt from disclosure under the section 7(1)(d)(vi) exemption is largely conclusory. OEMC's claim that disclosure of the response times could endanger the life or physical safety of first responders or others because the response times could be used to target criminal activities in areas that take longer for CPD to respond to than others consists of sweeping generalities, rather than a detailed factual basis. Chief McDermott would be expected to have certain relevant insight as Chief of the Bureau of Patrol, but his sparse, conclusory affidavit is akin to the affidavits found to be factually inadequate in *Day*. Given that the redaction of the specific location information from the response time data is uncontested, the disclosure of the response times would only show in which of the City's 22 sizeable police districts each incident occurred.<sup>30</sup> OEMC has not asserted that the response times *do* reflect patterns across police districts and a number of factors could obviously affect the response time for any call. For example, the distance traveled by the responding unit, traffic and weather conditions, and the number of other calls at or near the same time within a district all contribute to the amount of time that elapses before a unit reaches a scene. Unless the response time data clearly demonstrate a pattern of consistently slower

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<sup>29</sup>E-mail from Joe Mahr, Chicago Tribune, to Joshua Jones [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 26, 2021).

<sup>30</sup>The City has more than twice as many wards.

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response times within a particular district, which OEMC has not asserted, then the argument that response time data could be exploited for criminal purposes is purely speculative.

In addition, OEMC's October 5, 2021, response to Mr. Mahr's FOIA request, as well as its response to this Request for Review, repeatedly asserted that disclosure of the response times *could* be exploited for criminal purposes, which is insufficient under section 7(1)(d)(vi). Moreover, OEMC sets forth no facts showing that criminal activities, including attacks on first responders, are predicated on knowledge of similarly broad response time data in any jurisdiction. Such speculative claims are insufficient to demonstrate that disclosure *would* have the consequence of endangering life or physical safety. Therefore, OEMC has failed to sustain its burden of proving by clear and convincing evidence that the redacted response times are exempt from disclosure under section 7(1)(d)(vi).

#### **Section 7(1)(v) of FOIA**

Section 7(1)(v) of FOIA exempts from disclosure three specific types of records that could result in attacks on a community's population or systems and provides:

**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. (Emphasis added.)

In a binding opinion, this office concluded that records showing the number of sworn police officers assigned to each of the City's police districts were not assessments, measures, policies, or plans within the scope of the section 7(1)(v) exemption. Ill. Att'y Gen. Pub. Acc. Op. No. 11-002, issued February 25, 2011, at 3. This office has also issued a binding opinion similarly concluding that police officer "employee attendance records are not vulnerability assessments, security measures, or response policies or plans." Ill. Att'y Gen. Pub. Acc. Op. No. 21-005, issued June 2, 2021, at 7.

In its response to this office, OEMC argued that the response times are exempt from disclosure under section 7(1)(v) because disclosure "could reasonably jeopardize CPD's effectiveness and the safety of CPD personnel."<sup>31</sup> OEMC claimed that the response time data "is detailed information that is directly connected to the mobilization or deployment of CPD personnel or equipment[.]"<sup>32</sup> According to OEMC, "disclosure of CPD response times would publicize the capabilities and vulnerabilities of CPD. For instance, this would enable those planning criminal activities to know what areas of the city are most vulnerable because of known CPD response times."<sup>33</sup> In support of its assertions, OEMC cited the recent Illinois Appellate Court decision concerning section 7(1)(v), *Chicago Sun-Times*, 2021 IL App (1st) 192028, \_\_ N.E.3d \_\_.

In that case, the *Chicago Sun-Times* requested copies of surveillance camera recordings of an altercation on a Chicago Transit Authority (CTA) platform, and CTA denied the request pursuant to section 7(1)(v). *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶¶6-7, \_\_ N.E.3d \_\_. The CTA explained that surveillance cameras installed at its rail stations after the September 11, 2001, terrorist attacks with funds from a United States Department of Homeland Security program are designed to protect the public and critical infrastructure. *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶48, \_\_ N.E.3d \_\_. The court found persuasive an affidavit submitted by a homeland security expert who stated that the requested recordings "revealed the quality, resolution, field of view, and blind spots of the CTA's surveillance cameras, and that information could enable individuals to evade these security devices when targeting passengers, planning attacks, or evading capture by law enforcement." *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶49, \_\_ N.E.3d \_\_. The court held that the footage was exempt under section 7(1)(v). *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶51, \_\_ N.E.3d \_\_. Crucially, there was no question in *Chicago Sun-Times* that the responsive recordings constituted "security measures" within the scope of section 7(1)(v); rather, the issue was whether their disclosure could reasonably be expected to jeopardize the effectiveness of CTA's surveillance system.

In his reply to OEMC's response to this office, Mr. Mahr maintained that OEMC's argument overlooked the plain language of the exemption:

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<sup>31</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021), at 2.

<sup>32</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021), at 2.

<sup>33</sup>Letter from Marc Augustave, Senior Counsel, City of Chicago Department of Law, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (October 20, 2021), at 2-3.

OEMC takes only the last sentence, and tries to argue that records listing 911 response times are details of mobilization or deployment. But OEMC ignores the first sentence, which list only three type of qualifying records: vulnerability assessments, security measures and response policies or plans. (Note, for response policies or plans, the law doesn't expand that to include records documenting the *actual* responses, only what was planned.) Regardless, this exemption is limited to records "designed to" handle "potential attacks." A 911 call log isn't designed to identify, prevent or respond to potential attacks. It's a routine document designed to track when police and fire personnel show up. (Emphasis in original.)<sup>34</sup>

By its plain language, section 7(1)(v) applies to only three categories of records: "[v]ulnerability assessments, security measures, and response policies or plans[.]" In construing a statute, "the primary objective \* \* \* is to ascertain and give effect to the intent of the General Assembly." *Southern Illinoisan*, 218 Ill. 2d at 415. "[T]he surest and most reliable indicator of" legislative intent "is the statutory language itself, given its plain and ordinary meaning." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶24, 77 N.E.3d 625, 630 (2017). The plain language of section 7(1)(v) cannot be construed to apply to records that are merely related to, or even directly connected to, vulnerability assessments, security measures, or response policies or plans that are designed to identify, prevent, or respond to potential attacks. Section 7(1)(v) encompasses only vulnerability assessments, security measures, or response policies or plans themselves that are designed for the purposes listed in the exemption. Response time data are factual records demonstrating the performance of public duties by public employees, as opposed to vulnerability assessments, security measures, or response policies or plans. Further, response time records are not plans *designed* to meet any objective, as is also necessary to fall within the scope of the exemption. Because section 7(1)(v) is inapplicable by its plain language, OEMC improperly denied the response times Mr. Mahr requested.

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<sup>34</sup>E-mail from Joe Mahr, Chicago Tribune, to Joshua Jones [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 26, 2021).

## FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 12, 2021, Mr. Joe Mahr, on behalf of the *Chicago Tribune*, submitted a FOIA request to OEMC seeking copies of records containing fields of data concerning 911 calls, emphasizing his interest in the fields showing response time data.

2) On August 19, 2021, OEMC extended its time to respond by five business days pursuant to section 3(e)(iv) of FOIA, and then reached a series of agreed extensions with Mr. Mahr pursuant to section 3(e) of FOIA.

3) On September 17, 2021, OEMC responded by providing Mr. Mahr with copies of certain fields of responsive call data, but redacted the response times pursuant to sections 7(1)(d)(vi) and 7(1)(v) of FOIA.

4) In an e-mail transmitted to the Public Access Bureau on October 5, 2021, Mr. Mahr submitted a Request for Review contesting OEMC's redaction of the response times under sections 7(1)(d)(vi) and 7(1)(v) of FOIA. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2020)).

5) On October 7, 2021, the Public Access Bureau sent a copy of the Request for Review to OEMC. The Public Access Bureau also sent OEMC a letter asking for unredacted copies of the responsive records for this office's confidential review, and a detailed explanation of the legal and factual bases for the applicability of the asserted exemption.

6) On October 21, 2021, the City of Chicago Department of Law provided this office with a sample of the responsive records, an affidavit from the Chief of CPD's Bureau of Patrol, and a written answer on behalf of OEMC.

7) On that same date, the Public Access Bureau forwarded to Mr. Mahr a copy of OEMC's answer and notified him of his opportunity to reply. On October 26, 2021, Mr. Mahr submitted a reply.

8) On December 2, 2021, the Public Access Bureau extended the time within which to issue a binding opinion by 30 business days, to January 19, 2022. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

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9) Section 7(1)(d)(vi) of FOIA exempts from disclosure law enforcement records created for law enforcement purposes, but only to the extent that disclosure "would \* \* \* endanger the life or physical safety of law enforcement personnel or any other person." OEMC did not set forth facts sufficient to demonstrate by clear and convincing evidence that disclosure of the response time data would have that effect.

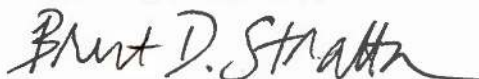
10) Section 7(1)(v) of FOIA exempts from disclosure "[v]ulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations," when destruction or contamination would pose a clear and present danger and disclosure could reasonably be expected to jeopardize the effectiveness of the measures or personal safety. Response time data are factual records concerning the service provided by public employees; they are not vulnerability assessments, security measures, or response policies or plans that are designed to identify, prevent, or respond to potential attacks. Accordingly, OEMC did not demonstrate that response time records fall within the plain language of the section 7(1)(v) exemption.

Therefore, it is the opinion of the Attorney General that the Office of Emergency Management and Communications of the City of Chicago violated the requirements of FOIA by improperly denying response time data responsive to Mr. Mahr's Freedom of Information Act request. Accordingly, OEMC is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Mahr and the *Chicago Tribune* with the response time data responsive to his August 12, 2021, FOIA request.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois, the *Chicago Tribune*, and Mr. Joe Mahr as defendants. *See* 5 ILCS 140/11.5 (West 2020).

Very truly yours,

KWAME RAOUL  
ATTORNEY GENERAL



By:

Brent D. Stratton  
Chief Deputy Attorney General

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cc: Ms. Allegra Martin  
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**CERTIFICATE OF SERVICE**

Sarah L. Pratt, Public Access Counselor, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-012) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 16, 2021.

  
SARAH L. PRATT  
Public Access Counselor

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