

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

BRANDON SMITH,)
)
Plaintiff,)
)
v.)
)
CHICAGO POLICE DEPARTMENT,)
)
Defendant.)

COMPLAINT

NOW COMES Plaintiff, BRANDON SMITH, by his undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to require Defendant CHICAGO POLICE DEPARTMENT to produce videos showing CPD's shooting of Laquan McDonald.

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is 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 ("FOIA"). 5 ILCS 140/1.

2. 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.

3. Defendant CHICAGO POLICE DEPARTMENT has violated FOIA by refusing to produce video showing a CPD officer shooting Laquan McDonald after taking repeated bad faith extensions of time to respond for over two months.

4. Upon information and belief, CPD always intended to deny the request for video but took repeated extensions simply to delay so it could better manage negative press attention and avoid embarrassment to CPD and the administration.

PARTIES

5. Plaintiff SMITH is an Illinois resident.

6. Defendant CHICAGO POLICE DEPARTMENT is a public body located in Cook County, Illinois.

SMITH'S FOIA REQUESTS AND CHICAGO POLICE'S DENIAL

7. On May 26, 2015, SMITH requested from CPD under FOIA videos showing a CPD officer shooting Laquan McDonald and copies of FOIA requests and responses related to the video. CPD received the request on May 26, 2015. A true and correct copy of the request is attached as Exhibit A.

8. On June 2, 2015, CPD took the maximum permitted extension of five business days under FOIA. A true and correct copy of the extension letter is attached as Exhibit B.

9. Even though the request sought a limited number of records that are clearly non-exempt under FOIA, on June 8, 2015, CPD asked SMITH for an extension of another month to respond to the request. A true and correct copy of the second extension request is attached as Exhibit C.

10. SMITH agreed to the second extension request. A true and correct copy of the email is attached as Exhibit D.

11. On July 9, 2015, CPD asked for a third extension of time, until July 31, 2015, to respond to the request. A true and correct copy of the third extension request is attached as Exhibit E.

12. SMITH agreed to a one-day extension to produce the requested video and until July 31 to produce the related records. A true and correct copy of the email is attached as Exhibit F.

13. On August 4, 2015, CPD finally responded to the May 26 request, denying the request for the video. A true and correct copy of the response is attached as Exhibit G.

14. CPD has not produced the requested video.

15. Shootings of civilians by police officers is an issue of paramount importance in Chicago and elsewhere.

16. In order to evaluate the conduct of officers and hold them accountable, it is critical that the public receive full and complete information about officer-involved shootings as quickly as possible.

17. Upon information and belief, CPD has delayed and ultimately denied the production of the requested video for political and PR reasons, not because additional time has been required to obtain the video, review it, and determine if it is exempt under FOIA or because any exemptions apply.

COUNT I – VIOLATIONS OF FOIA BY CHICAGO POLICE DEPARTMENT

18. The above paragraphs are incorporated by reference.

19. CHICAGO POLICE DEPARTMENT is a public body under FOIA.

20. The requested video is a public record of CPD.

21. CPD violated FOIA by failing to produce the requested video.

22. CPD has willfully and intentionally violated FOIA by refusing to produce the requested video based on inapplicable exemptions and after delays that clearly violate FOIA.

WHEREFORE, SMITH asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that CHICAGO POLICE DEPARTMENT has violated FOIA;
- iii. order CHICAGO POLICE DEPARTMENT to produce the requested records redacting only the material that is exempt;
- iv. enjoin CHICAGO POLICE DEPARTMENT from withholding non-exempt public records under FOIA;
- v. order CHICAGO POLICE DEPARTMENT to pay civil penalties;
- vi. award SMITH reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiff
BRANDON SMITH

Matthew Topic
LOEVY & LOEVY
312 North May St., Suite 100
Chicago, IL 60607
312-243-5900
matt@loevy.com
Atty. No. 41295



Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

hey@brandonsmith.com <hey@brandonsmith.com>

Tue, May 26, 2015 at 5:19 PM

To: CPDfoia@cityofchicago.org, typewriter@prod.foiamachine.mailgun.org

May 26, 2015

CPDfoia@cityofchicago.org

Dear FOIA officer:

Pursuant to Illinois's Illinois Freedom of Information Act, 5 ILCS 140 (), I hereby request the following records:

Video files from any police camera, including vehicle dash cameras, that captured any part of the police response to Laquan McDonald, who was seen walking with a knife and eventually ended in McDonald's death on Oct. 20, 2014. The front end of the video edit should include the beginning of the response, when the officer(s) present learned of the call and travelled to the area. The back end of the edit should include the last time McDonald or his body was seen on camera--or until the video no longer shows an officer responding to the situation, whichever is later.

I also request copies of all letters/emails sent from CPD or its FOIA officers to people requesting video showing Laquan McDonald.

Under the Illinois Freedom of Information Act, 5 ILCS 140 the government is allowed to charge only the cost of copying materials. I am requesting that you waive all applicable fees associated with this request as I believe this request is in the public interest and is not for commercial use. Release of this information is in the public interest because it will contribute significantly to public understanding of government operations and activities. If you deny this request for a fee waiver, please advise me in advance of the estimated charges associated with fulfilling this request. Please send me a detailed and itemized explanation of those charges.

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. Since time is a factor, please communicate with me via this email address.

Please contact me if you have any questions about my request.

Sincerely,

Brandon Smith

hey@brandonsmith.com

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8/5/2015 11:49 AM

2015 CH-01780

FOIA



Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

FOIA <foia@chicagopolice.org>

Tue, Jun 2, 2015 at 2:35 PM

To: "hey@brandonsmith.com" <hey@brandonsmith.com>

Good afternoon Mr. Smith,

The CPD needs additional time to respond to your request. Attached is a notice of extension to your FOIA request.

Sincerely,

Olivia Medina
Public Information Officer
Office of Legal Affairs, Unit 114
Chicago Police
[312-745-5308](tel:312-745-5308)

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From: hey=brandonsmith.com@mailgun.org [hey=brandonsmith.com@mailgun.org] On Behalf Of
hey@brandonsmith.com [hey@brandonsmith.com]

Sent: Tuesday, May 26, 2015 9:12 AM

To: CPDfoia@cityofchicago.org; typewriter@prod.foiamachine.mailgun.org

Subject: Dash cam video of Laquan McDonald

[Quoted text hidden]



Extension to FOIA #15-3053 - Brandon Smith.pdf

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Rahm Emanuel
Mayor

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

Garry F. McCarthy
Superintendent of Police

June 2, 2015

sent via e-mail

Brandon Smith
E-Mail: hey@brandonsmith.com

Re: NOTICE OF EXTENSION TO FOIA REQUEST
REQUEST RECEIPT DATE: May 26, 2015
FOIA FILE NUMBER: 15-3053

Dear Mr. Smith:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request for records related to video files from any police camera related to the death of Laquan McDonalds death on October 20, 2014; and copies of all letter/emails sent from CPD or its FOIA officers to people requesting video showing Laquan McDonald. Under the Freedom of Information Act, a public body may extend the time to respond to a FOIA request by up to 5 business days for a limited number of reasons. 5 ILCS 140/3(e). We are extending the time to respond to your request by 5 business days for the following reason(s):

the requested records are stored in whole or in part at other locations than the office having charge of the requested records;

- ☒ (X) the request may require the collection of a substantial number of specified records, if any exist;
- ☐ () the request is couched in categorical terms and may require an extensive search for the records responsive to it;
- ☐ () the requested records have not been located in the course of routine search and additional efforts are being made to locate them;
- ☒ (X) the requested records, if any exist, may require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of the Freedom of Information Act or should be revealed only with appropriate deletions;
- ☐ () the request for records cannot be complied with by the public body within the time limits prescribed by paragraph (c) of this Section without unduly burdening or interfering with the operations of the public body;
- ☒ (X) there is need for consultation, which shall be concluded with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

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If you need any further assistance you may contact the undersigned at 312-745-5308 or the following address:

Chicago Police Department
Attention: Freedom of Information
Office of Legal Affairs, Unit 114
3510 South Michigan Avenue
Chicago, Illinois 60653

Sincerely,



Olivia Medina
Public Information Officer
Department of Police

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Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

FOIA <foia@chicagopolice.org>

Mon, Jun 8, 2015 at 12:32 PM

To: "hey@brandonsmith.com" <hey@brandonsmith.com>

Good afternoon Mr. Smith,

I am working diligently on processing your request. I would greatly appreciate if you can extend a courtesy on providing CPD an additional extension. I am currently on working on identifying and gathering the responsive records to your request. I anticipate a response by July 9, 2015. I hope that you agree to the requested extension.

Thank you in advance.

Olivia Medina
Public Information
Office of Legal Affairs, Unit 114
[312-745-5308](tel:312-745-5308)

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Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

Brandon Smith <hey@brandonsmith.com>

Mon, Jun 8, 2015 at 2:42 PM

To: FOIA <foia@chicagopolice.org>

Ms. Medina,

I will grant the request for extra time. I will touch base with you on that date. Thank you.

Brandon

--

brandon smith
independent journalist
cell [740-505-0038](tel:740-505-0038)
[brandonsmith . com / about](http://brandonsmith.com/about)

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Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

FOIA <foia@chicagopolice.org>

Thu, Jul 9, 2015 at 1:53 PM

To: Brandon Smith <hey@brandonsmith.com>

Good Afternoon Mr. Smith,

I am still diligently working on your request. It is taking longer than I had anticipated. I would greatly appreciate it if you can grant the undersigned an additional extension up to July 31 to respond to your request. Once I have gathered all the responsive records, I still have to review and redact the documents responsive to your request.

Thank you for your patience.

Olivia Medina
Public Information
Office of Legal Affairs, Unit 114
Chicago Police
312-745-5308

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Brandon Smith <hey@brandonsmith.com>

Dash cam video of Laquan McDonald

Brandon Smith <hey@brandonsmith.com>

Thu, Jul 9, 2015 at 2:18 PM

To: FOIA <foia@chicagopolice.org>

Ms. Medina,

I hereby grant the July 31 extension for all parts of the request that are not releasing the video I seek.

For the part of the request regarding the release of the video in question, I hereby grant an extension until the end of the business day tomorrow, July 10.

Sincerely,

Brandon Smith

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brandonsmith . com / about

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Rahm Emanuel
Mayor

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

Garry F. McCarthy
Superintendent of Police

August 4, 2015

sent via e-mail

Brandon Smith
E-Mail: hey@brandonsmith.com

RE: NOTICE OF RESPONSE TO FOIA REQUEST
REQUEST DATE: May 27, 2015
FOIA FILE NO.: 15-3053

Dear Mr. Smith:

The Chicago Police Department ("CPD") is in receipt of your e-mailed two-part Freedom of Information Act (FOIA) request for the following:

"Video files from any police camera, including vehicle dash cameras, that captured any part of the police response to Laquan McDonald, who was seen walking with a knife and eventually ended in McDonald's death on Oct. 20, 2014. The front end of the video edit should include the beginning of the response, when the officer(s) present learned of the call and travelled to the area. The back end of the edit should include the last time McDonald or his body was seen on camera--or until the video no longer shows an officer responding to the situation, whichever is later."

"I also request copies of all letters/emails sent from CPD or its FOIA officers to people requesting video showing Laquan McDonald."

Your request was reviewed by the undersigned as well as the Independent Police Review Authority (IPRA). In regard to part one of your request for any video file, it is determined that your request is denied. As of today's date IPRA's investigation into this shooting is still ongoing. To the extent that any video related to the shooting of Laquan McDonald exists, the release of it or any other evidence related to this pending investigation would create a substantial likelihood or irreparable harm affecting the integrity of the investigation and potentially deprive the involved officer(s) of an impartial hearing. Accordingly, your request for any video files concerning this particular incident is denied pursuant to 5 ILCS 140/7(1)(d)(ii) and (iii) which protects:

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:

- (ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request.
- (iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

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In regard to part two of your request for "copies of all letters/emails sent from CPD or its FOIA officers to people requesting video showing Laquan McDonald, a search of CPD records revealed fourteen responses (twelve of which were emailed and two were mailed.) A total of 52 pages are attached with this notice. However, please be advised that certain information has been redacted from the record pursuant to 5 ILCS 140/7(1)(b). Details of the redactions are set forth below:

Private information such as private email addresses and personal cellular telephone numbers have been redacted pursuant to 5 ILCS 140/7(1)(b). 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." The FOIA statute, in 5 ILCS 140/2(c-5), defines "private information" as follows:

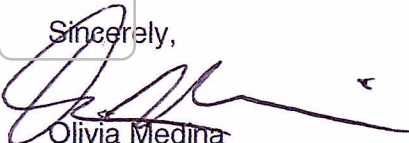
"Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, *personal financial information*, passwords or other access codes, medical records, home or personal telephone numbers, and personal 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." (Emphasis added)

If I can be of further assistance, you may contact me at (312) 745-5308, or by mail at the following address:

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

In the event that you consider this a denial of your FOIA request, 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 (217)558-0486. You may also seek judicial review of a denial under 5 ILCS 140/11 of FOIA.

Sincerely,



Olivia Medina
Public Information Officer
Department of Police

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