



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 6, 2022

Via electronic mail

Mr. Jake Ader
105241-48596783@requests.muckrock.com

Via electronic mail

Ms. Dana O'Malley
Assistant General Counsel
Chicago Police Department
3510 South Michigan
Chicago, Illinois 60653
pacola@chicagopolice.org

RE: FOIA Request for Review – 2021 PAC 67116; CPD FOIA No. P633074

Dear Mr. Ader and Ms. O'Malley:

This determination letter 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 that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) conducted a reasonable search for records responsive to Mr. Jake Ader's January 25, 2021, FOIA request.

On that date, Mr. Ader submitted a FOIA request to CPD seeking copies of all suggestion program reports, including their replies and determinations, submitted to the CPD's Research and Development Division from January 1, 2020, through January 25, 2021. On February 5, 2021, CPD extended the time for its response by five business days under section 3(e) of FOIA (5 ILCS 140/3(e) (West 2020)). On February 19, 2021, CPD responded, asserting that it was unable to locate responsive records. On February 21, 2021, Mr. Ader submitted this Request for Review contesting CPD's response, alleging that CPD's "search for responsive records was inadequately processed."¹

¹Request for Review from J. Ader to Office of the Illinois Attorney General, Public Access Counselor (February 21, 2021).

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On March 11, 2021, this office forwarded a copy of the Request for Review to CPD and requested that it provide a detailed description of the searches conducted for responsive records, including the repositories searched and personnel consulted. This office also requested that CPD describe, to the extent possible, the manner with which CPD would maintain the types of records requested, excluding any of the parameters as set forth in the request. On May 17, 2022, CPD responded, explaining in relevant part:

Here, [CPD] performed a reasonable search for the requested records after FOIA personnel contacted CPD's Research and Development Division (R&D) to determine if it had any responsive documents to Mr. Ader's request. The R&D Division provides administrative support for Department activities and personnel through developing CPD's policies and procedures, conducting CPD's official statistical reporting, evaluation, and other research, and by evaluating CPD's new uniform items and police equipment. Pursuant to Special Order S01-05, the R&D Division is also tasked with establishing and monitoring the Department's Suggestion Program in an effort to collect suggestions from Department members in order to improve the efficiency and effectiveness of Department operations. [(Citation omitted.)] Any Department member may participate in the suggestion program by submitting a suggestion^[1] in the form of a To- From subject report directly to the director of the R&D Division. [(Citation omitted.)] Thus, in order to ascertain whether the Department maintained suggestion reports for the requested time period (Jan. 1, 2020-Jan. 25, 2021), personnel from the R&D Division searched the database where it customarily logs its tasks, including suggestion reports, received by R&D. Upon searching its database, R&D personnel found no responsive records related to Mr. Ader's request during the requisite time period. Moreover, after receiving the request for review from your office, a Lieutenant within the R&D Division conducted an additional search of the same database system that maintains suggestion reports and found no responsive records for the requisite time period.^[2]

²Letter from Vaughn C. Ganiyu, Senior Attorney, Legal Affairs Division – Unit 114, Chicago Police Department, to Christopher R. Boggs, Supervising Attorney, Public Access Bureau, Office of the Attorney General (May 17, 2022), at 2.

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On May 20, 2022, this office forwarded a copy of CPD's response to Mr. Ader. He did not submit a reply.

DETERMINATION

Section 1.2 of FOIA (5 ILCS 140/1.2 (West 2020)) provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of [that] particular request." *Campbell v. U.S. Dep't of Justice*, 164 F. 3d 20, 28 (D.C. Cir. 1998). "Although a public body is not required to perform an exhaustive search of every possible location, the body must * * * search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶31, 169 N.E.3d 1066, 1076 (2020) (quoting *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)). "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).

In CPD's answer to this office, CPD asserted that it initially performed a reasonable search when it contacted the Research and Development Division (R&D) to determine if it maintained responsive records for the period in question. According to both CPD and this office's review of Special Order S01-05³, R&D is the division responsible for establishing and monitoring CPD's suggestion program. CPD also confirmed that upon receipt of this Request for Review, a Lieutenant within the R&D conducted an additional search of the same database system that maintains suggestion reports but received negative results for the requisite time period.

The information provided to this indicates that CPD took measures that were reasonably-calculated to locate records responsive to Mr. Ader's request. CPD stated that its division responsible for receiving and maintaining the requested records twice searched the relevant record-keeping system with negative results. Further, this office has not received any evidence supporting the assertion that CPD maintains suggestion program reports, their replies or determinations for the time period in question. Under these circumstances, this conclude that CPD's response to Mr. Ader's request did not violate FOIA.

³Chicago Police Department Special Order S01-05, Suggestion Program (issued September 23, 2004), available at <http://directives.chicagopolice.org/#directive/public/6291> (last visited June 3, 2022).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 785-7438.

Very truly yours,

Christopher R. Boggs

CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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