OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 15, 2025

Via electronic mail
[redacted]

RE: FOIA Request for Review – 2024 PAC 84296

Dear [redacted]:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA).[1] For the reasons set forth below, the Public Access Bureau concludes that this Request for Review is unfounded.

On November 21, 2024, you submitted a FOIA request to the DuPage County Sheriff's Office (Sheriff's Office) seeking records, including body-worn camera footage, pertaining to an incident that took place at a certain house on October 6, 2024. That same day, the Sheriff's Office denied the body-worn camera footage pursuant to section 7(1)(c) of FOIA.[2] On December 10, 2024, you submitted a Request for Review contesting the denial of the body camera footage.

Section 7.5(cc) of FOIA[3] expressly exempts from inspection and copying "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the

[1]5 ILCS 140/9.5(c) (West 2023 Supp.).

[2]5 ILCS 140/7(1)(c) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

[3]5 ILCS 140/7.5(cc) (West 2023 Supp.), as amended by Public Acts 103-592, effective June 7, 2024; 103-605, effective July 1, 2024; 103-636, effective July 1, 2024; 103-786, effective August 7, 2024; 103-859, effective August 9, 2024; 103-991, effective August 9, 2024; 103-1049, effective August 9, 2024.

extent authorized under that Act." Section 10-20(b) of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act)[4] provides in pertinent part:

> Recordings made with the use of an officer-worn body camera are not subject to disclosure under the Freedom of Information Act, except that:
>
> (1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, shall be disclosed in accordance with the Freedom of Information Act if:
>
> (A) the subject of the encounter captured on the recording is a victim or witness; and
>
> (B) the law enforcement agency obtains written permission of the subject or the subject's legal representative;
>
> (2) except as provided in paragraph (1) of this subsection (b), any **recording which is flagged** due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and
>
> (3) upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, **the recording to the subject of the encounter captured on the recording** or to the subject's attorney, or the officer or his or her legal representative. (Emphasis added.)

Based on this law, in instances where there is no expectation of privacy, the Department is required to disclose, in accordance with FOIA, recordings from law enforcement officer worn body cameras only if the recordings are (1) flagged for any of the reasons specified in section 10-20(b)(2) of the Body Camera Act, or (2) if they are requested by the subject of the encounter captured on the recording or the subject's attorneys. The Public Access Bureau has

[4]50 ILCS 706/10-20(b) (West 2022).

consistently concluded that the "subject of the encounter" means the person who appeared in the recording and "interacted with a law enforcement officer in the course of a law enforcement activity." Ill. Att'y Gen. PAC Req. Rev. Ltr. 48793, issued August 31, 2017, at 4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 83729, issued June 26, 2023, at 3.

On January 8, 2025, an Assistant Attorney General (AAG) in the Public Access Bureau spoke by telephone with an Assistant State's Attorney (ASA) in the DuPage County State's Attorney's Office who explained that there is no indication that the Sheriff's Office was required to flag the footage at issue for any of the reasons set forth in section 10-20(b)(2) of the Body Camera Act. Additionally, the ASA informed the AAG that you were not present when the body camera footage was taken. On January 9, 2025, the AAG spoke to you by telephone. During that conversation, you confirmed that you were not present when the body cam video was taken but asserted that you should be able to obtain the footage based on a belief that the footage depicts a police officer watching a ring doorbell recording of you at the house, and because you were discussed by individuals who are depicted in the footage.

Based on your statement and the statements of the ASA, it is clear that you were not present when the body-camera footage was taken and that you did not interact with law enforcement at any time during the recording of the body-camera footage. Although the individuals interacting with the officer may have shown the officer a recording of you on a ring doorbell and may have discussed you, it does not make you a subject of the encounter because you had no interaction with law enforcement at any time during the recording. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 76600, issued July 10, 2023, at 3 (a person discussed in body camera footage was not the subject of the encounter). Because the footage is not a flagged video and because you are not the subject of the encounter, the Body Camera Act prohibits disclosure of such footage to you.[5] Therefore, this office has determined that this Request for Review is unfounded.

This file is closed. If you have any questions, please contact me at 312-814-5201,

[5]We note that section 10-20(b)(1) of the Body Cam Act may also prohibit the disclosure of the footage here because, according to the ASA, most of the footage is taken inside a private home where you do not reside, but where the subjects of the video likely have a reasonable expectation of privacy. In addition, because this office has determined that the Body Cam Act prohibits disclosure of the footage to you, this office declines to address the Sheriff's Office's contention that footage is exempt under section 7(1)(c) of FOIA.

edie.steinberg@ilag.gov, or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,

[redacted]

EDIE STEINBERG
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Public Access Bureau

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