



Rahm Emanuel
Mayor

Chicago Department of Aviation

Ginger S. Evans
Commissioner

Freedom of Information

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April 24, 2017

VIA ELECTRONIC MAIL

James Peterson, Senior Attorney
Judicial Watch, Inc.
425 Third Street, S.W., Suite 800
Washington, DC 20024
Email: jpeterson@judicialwatch.org

Dear Mr. Peterson:

This letter is in response to your Freedom of Information Act ("FOIA") request received by the City of Chicago Department of Aviation ("CDA") in our offices on April 11, 2017. On April 18, 2017, the CDA sent you a letter to extend the time period to respond to your FOIA request. In your request, you state the following:

Judicial Watch requests copies of all records related to the involuntary removal of passenger David Dao from United Flight 3411 (operated by Republic Airlines) on April 9, 2017, including, but not limited to, incident reports, justification memos, communications with United Airlines and Republic Airlines, communications with the Chicago Mayor's office, communications with the press, and communications with any other third parties.

Due to the volume of requests made for records regarding this incident, the CDA has compiled a set of all relevant records which can be found at the following link:

<https://www.dropbox.com/sh/pxvqchijd4cqatz/AADHbmPkOIioRts4cC7u1Pxa?dl=0>

The password to use is April92017c0c

This set of records fully responds to your request, and may also include additional records you did not specifically seek. Produced herewith are the following:

1. CDA Accident/Incident Report: this documentation consists of the CDA's completed Accident/Incident Report, statements from the officers that were involved in the incident, an April 9, 2017 O'Hare Communications Center Display Event printout and the Incident/Passenger(s) Complaint of David Dao.
2. Supplemental Report of Aviation Security Officer James Long dated April 10, 2017
3. Supplementary Report dated April 11, 2017 correcting the date of the Accident/Incident Report from March 9, 2017 to April 9, 2017
4. O'Hare Communications Center Display Event printout from April 10, 2017
5. Event Chronology for ORD Event Number #P170401725
6. Policy and Procedures Field Manual dated May 2002: Section 1/4.2 on page I-8 addresses the use of force by Aviation Security personnel (in two PDF files)
7. Safety & Security Division Direction 13-03 (Use of Force Policy) dated March 1, 2013
8. Memo from Aviation Security Deputy Commissioner dated April 17, 2017 regarding the Use of Force Policy
9. Personnel files for the four Aviation Security personnel that were placed on administrative leave as a result of the incident on the airplane (in four PDF files)
10. Four video files regarding the incident and the response thereafter
11. Two audio files regarding the incident and the response thereafter

To the extent you are seeking anything additional, please submit a FOIA to CDAFOIA@cityofchicago.org and we will begin processing that request.

Regarding the documents that have been provided, please note that 5 ILCS 140/7(1)(b) exempts from disclosure, "private information." Private information is defined in Section 2(c-5) as, "...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 emails 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" 5 ILCS 140/2(c-5).

Several of the documents provided herewith contain redactions of "private information" pursuant to Section 7(1)(b) as follows:

- Item 1 (Accident/Incident Report) - dates of birth, home addresses and telephone numbers
- Item 4 (O'Hare Communications Center Display Event) - employee identification numbers under the column "Closing ID"
- Item 9 (Personnel Files) - dates of birth, home addresses and telephone numbers, social security numbers, and email addresses
- Item 10 (Video) – footage showing employees inputting their personal identification code to access the doorway from the gate to the jet bridge has been blurred

Additionally, one O'Hare Access Control Badge System Report that is included in the Accident/Incident Report documentation otherwise provided in item 1 is prohibited from production as Sensitive Security Information ("SSI"), and is therefore exempt from production under Section 7(1)(a) of FOIA, which exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 140/7(1)(a).

SSI is information which is protected from public disclosure pursuant to 49 U.S.C. § 40119(b), 49 U.S.C. § 114(s), and 49 C.F.R. part 1520 of the Transportation Security Regulations. In particular, the Transportation Security Administration has the authority to prohibit the disclosure of information obtained or developed in carrying out security activities if it determines that disclosure of such information would be detrimental to the security of passengers in transportation. See *Public Citizen v. FAA*, 988 F.2d 186 (D.C. Cir. 1993) (affirming the Federal Aviation Administration's authority to promulgate sensitive security regulations involving airport procedures and prohibit disclosure of such information). Documents containing SSI may not be released to any person or entity except as provided by 49 C.F.R. part 1520. In particular, 49 C.F.R. 1520.9 restricts disclosure of SSI only to covered persons who have a need to know, unless otherwise authorized.

The O'Hare Access Control System Report which details name and employee access badging information has been determined to be SSI and is not able to be released since there is no need to know the information contained in the document per the regulations set forth at 49 C.F.R. 1520.9.

Please note that other redactions have been made to the records described in Item 9 in accordance with FOIA, in addition to the redactions mentioned above pursuant to Section (7)(1)(b).

Specifically, Section 7(1)(c) sets forth "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" shall not be disclosed "unless the disclosure is consented to in writing by the individual subjects of the information." "Unwarranted invasion of personal privacy" means "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c). Because the Aviation Security personnel did not consent to have the information disclosed, the names of family and household members, IRS Form W-4, student loan

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information, health records, and information about outside employment has been excluded or redacted.

In addition, the names and identifying information of witnesses to the event have been redacted pursuant to Section 7(1)(d)(iv) of FOIA, which exempts, in part, information that would “disclose the identity of...persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies.” 5 ILCS 140/7(1)(d)(iv).

In addition to the aforementioned redactions, personnel evaluations have been withheld from employees’ personnel files pursuant to the dictates of the Illinois Personnel Records Act, which states that “[t]his Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.” 820 ILCS 40/11. Because these records are specifically prohibited from production under State law, they are exempt pursuant to Section 7(1)(a) of FOIA, which exempts “[i]nformation specifically prohibited from disclosure by federal or State law or rules or regulations implementing federal or State law.” 5 ILCS 140/7(1)(a).

Further, hiring evaluation forms have been withheld from employees’ personnel records pursuant to Section 7(1)(f) of FOIA, which exempts “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]” 5 ILCS 140/7(1)(f). Because the withheld evaluation forms consist of preliminary opinions and recommendations regarding hiring, they have properly been withheld under this Section.

Additionally, with respect to your request for “*communications with United Airlines and Republic Airlines, communications with the Chicago Mayor’s office, communications with the press, and communications with any other third parties,*” we are seeking clarification regarding what records you are seeking when you ask for “*correspondence.*” The FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.

Because of the broadness of the phrasing of your request for “*communications with United Airlines and Republic Airlines, communications with the Chicago Mayor’s office, communications with the press, and communications with any other third parties*”, the language could potentially include a myriad of documents that would be exempt from disclosure pursuant to 5 ILCS 140/7(1)(f) which protects “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.” Additionally, certain records could potentially be excluded from disclosure pursuant to 5 ILCS 140/7(1)(m) which protects “[c]ommunications between a public body and an attorney...representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body....”

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Additionally, your request for “*communications with United Airlines and Republic Airlines, communications with the Chicago Mayor’s office, communications with the press, and communications with any other third parties*” can be interpreted to include emails. In order to effectively run an email search, the CDA needs the names or email accounts that you wish searched. The present system’s tool set cannot identify the department where an email user works, and therefore, a search for emails related to this incident would require a search of emails for all of the City of Chicago’s thousands of employees. It should be noted that an email search is not able to be based on an entire department of the City of Chicago, for example, all CDA employees. Moreover, you have not provided the CDA with any key words which you would like searched. As such, your request as currently written would result in a volume of emails that would be burdensome to produce. The four parameters that would assist the CDA in conducting an email search include: (1) the email address of the account you wish searched; (2) key words you wish to search for; (3) the email address of each individual’s mailbox, if you seek email correspondence to and from two individuals; and (4) the time frame to be searched. Without this additional information, your request as currently written is unduly burdensome on the daily operations of the CDA.

Therefore, it is necessary that your FOIA request for “*communications with United Airlines and Republic Airlines, communications with the Chicago Mayor’s office, communications with the press, and communications with any other third parties*” be clarified and narrowed. If you would like assistance in clarifying and narrowing this portion of your request, please contact me, and I will assist you. Otherwise, as explained above, as this portion of your FOIA request is currently drafted, the CDA is unable to respond to the request.

If you agree to clarify and narrow this portion of your request, you must submit a revised written request to my attention. The CDA will take no further action or send you any further correspondence unless and until such request is narrowed in writing. If we do not receive a clarified and narrowed request within fourteen (14) calendar days of the date of this letter, your current request will be denied.

In the event that we do not receive a narrowed request and this portion of your current FOIA request is therefore denied, you will 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.

This concludes the CDA’s response to your request.

Sincerely,



Sandra Fried

FOIA Information Officer