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**CITIZEN REVIEW WORKING GROUP
AGENDA
09/08/16**

- I. Presentation from City Legal – Attorney Laura Hall
 - Freedom of Information Act

- II. Review Doodle Poll on Community Meeting dates

- III. Next Steps in the process

MINUTES

Citizen Review Working Group
September 8, 2016 – 10:00
Champaign Police Department
Multi-Purpose Room
82 E. University, Champaign, IL

MEMBERS PRESENT: Chief Anthony Cobb Deputy Chief Jon Swenson
Lieutenant Tod Myers Laura Hall
Bruce Brown Rachel Joy
Michele Cooper Alissia Young
Tod Rent

TOPICS DISCUSSED:

Chief Cobb called the meeting to order and distributed the Agenda. He acknowledged that there were several members absent. Dr. Schlosser is absent because of a family issue, Travis Dixon can't make Thursday meetings but keeps up via the minutes and recordings and Dorothy David is out of town because of a family emergency. The agenda should be revised to remove Subpoena Powers as we will only be talking about the Freedom of Information Act today. Chief Cobb introduced Assistant City Attorney Laura Hall, who is the City's FOIA expert; she will discuss the Freedom of Information Act (FOIA).

Laura Hall distributed two handouts, the first is information about FOIA and the second is information about the new Body Camera Act. The reason FOIA is important to Citizen Review is that if a Citizen Review Board is constituted, it will be a public body and subject to FOIA and the Open Meetings Act. Laura described the FOIA process:

- A citizen requests information; the request can be submitted at several locations in the City, the Legal Department, the Police Department, the City Clerk's Office, etc.
- The requested information is gathered and reviewed.
- A decision is made as to which information is releasable and that, which is not, i.e. personnel discipline actions older than four years old cannot be released; personnel evaluations cannot be released.
- It is illegal to release some information.
- Information deemed to be private is redacted i.e. addresses, phone numbers, social security numbers, etc.
- The City is required to respond to the request within five business days unless they request an extension which is typically five additional days.
- If the citizen is unhappy with the information they receive, they can appeal two ways:
 - To the Public Access Counselor which is the Attorney General's Office (PAC).
 - They review the appeal and will ask for more information and an explanation as to why the info was not releasable.
 - Laura would respond to their inquiries.

- The requestor can respond.
- The PAC makes a determination:
 - an Advisory Opinion, which is advice that the City does not have to follow if we disagree with it; or
 - a Binding Opinion which has the force of law and we are required to follow.
- The second way to appeal is to file a pleading in Circuit Court.
 - Laura has not had a decision appealed to Circuit Court.
- Two issues often arise:
 - People who don't know exactly what they want and they make a very broad request.
 - Some people are suspicious of local government and think we won't give them what they want so they make a more global request thinking their document will slip in.
 - We are not allowed to ask people why they're making a request, they don't have to explain themselves to us, if they want a public record, and they get it.
 - We sometimes have to work with people to help them narrow their request to the information they really want.
 - It is a crime for us not to release information.
 - We always respond and we take requests seriously.

The definitions of a public record and a public body are described in the FOIA handout.

Michele Cooper indicated she didn't understand why if someone asks for information, why you're not allowed to ask them why they want the information? Laura responded it is actually in the law; she always tells the requestor that they don't have to answer but that it would help to target the information they want. Sometimes people don't realize how difficult it can be to find the information they want.

The City is also governed by the Local Records Act that mandates the length of time we have to maintain records depending on what those records are. If we want to destroy old records, we have to petition an office in Springfield to get permission to destroy old records. The City Clerk handles those requests.

Laura indicated she has to analyze every piece of information that is released to ensure it meets criteria i.e. is it a public document?

Chief Cobb asked that if someone is appointed by the Mayor to sit on a Board of Commission, are they considered public when they serve in that role. Laura indicated that they could be if it impacts public business. Tod thought that there is a distinction between whether we're acting as an individual or if we're acting as a board. That once we're a quorum, it's clear that everything that we produce is a public record.

Laura summarized some of the exemptions outlined in the FOIA handout and gave some examples of requests they have received and how the City has responded. The assumption should always be that everything you produce as a public body is a public record and is releasable under FOIA, excluding any information that is required by law to be redacted or redacted pursuant to the discretionary exceptions and protectable personal information.

Chief Cobb asked if there were any questions regarding FOIA.

Laura moved the discussion to the new Body Camera law. This law creates even more issues regarding FOIA. In her research she found that a small community north of here stopped using their Body Cameras because they could not deal with the volume of FOIA requests.

Chief Cobb told the group that Council has approved CPD's purchase of body cameras. We are reviewing our policies and working through the new law over the next few months. We will upgrade our squad car video systems first and then body cameras. Everything should be in place after the first of the year.

The rules regarding releasing video from body cameras are complicated.

- Recordings must be kept for 90 days.
- After 90 days the recordings are destroyed unless they're flagged.
- Recordings are flagged and maintained for two years for several reasons.
- Recordings involving a court case have to be maintained as long as the case has concluded and can only be destroyed by a court order.

Bruce Brown asked what isn't FOIAble? Is it the flagged videos or is it the videos beyond 90 days? Laura answered:

- A video that is not flagged at all, the only person who can obtain the video is the subject of the video or their legal representative or the police officer and his/her attorney.
- Flagged videos are releasable unless the subject of the recording has a reasonable expectation of privacy i.e. if someone is in their home they have a reasonable expectation of privacy. If that person is a victim or a witness police have to obtain permission from that person or their legal representative to release the video.
- If the subject of the video does not have a reasonable expectation of privacy, the video is releasable subject to exemptions.
- If a subject is arrested as a result of the encounter, the video is releasable. An arrest is public knowledge.
- Videos that have evidentiary value in criminal prosecutions or if the video is flagged for official purposes related to official duties by the police, it's not FOIAble.

FOIA and FOIA as it pertains to body camera video are very complex and each request has to be analyzed carefully. In some instances certain faces are required to be blurred out.

Chief Cobb indicated that there is redaction to deal with the blurring of faces. We would have to purchase that software.

Laura passed around copies of FOIA responses so that the committee members could see what a response might look like.

Michele Cooper asked how often FOIA requests are made? Deputy Chief Swenson replied that the police department received 2,300 plus requests last year, an average of 6 or 7 a day. We have one clerk that handles 98% of the requests on her own because they're routine, the other 2% of the requests are more complex; I can usually answer her questions about those and when I'm

stumped, I call Laura. It is a full time job for that clerk and we are on the cusp of needing another employee to help her at least on a part time basis.

Laura indicated we can charge for copies after 50 pages but we typically don't. We have to provide the information requested on specific media if the requestor asks for that i.e. a CD, DVD or a USB thumb drive. We do not have to provide something that doesn't already exist i.e. if an audio recording is requested and it meets the criteria they can have the audio recording but if a transcript of the recording is requested and it doesn't already exist we don't have to create a transcript.

Chief Cobb moved the conversation to community dialogues and the Doodle Poll used to determine the best dates for two community dialogues. The consensus was to hold the community dialogues on October 10 and October 13 from 6-8 pm. Meeting format was discussed. Possible meeting venues were discussed.

Chief Cobb announced a presentation on subpoena powers will be given at the September 15 meeting. Chief Cobb has been calling the committee members before each meeting to encourage attendance and he will continue to do so.

Audience member, Durl Kruse, made some comments about taser cameras and body cameras and how those videos are incorporated into the Citizen Review Board in Urbana, suggesting that CPD do the same. He also suggested that any proposed Citizen Review Board in Champaign also review use of force incidents, citizen complaints and IDOT report.

MEETING ADJOURNED at 11:37 AM

Minutes taken by: Mary Mullen

FOIA
The Freedom of Information Act
5 ILCS 140/1 et seq.

I. What is a public record?

"Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

II. What is a public body?

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act.

III. How to think about FOIA?

- a. The law presumes that if a record is in the custody or possession of a public body; it is a public record.
- b. A record in the custody and possession of a 3rd party which the public body has contracted with to perform a governmental function on behalf of the public body and the record directly relates to that governmental function.

IV. FOIA is not intended to :

- a. Create an unwarranted invasion of personal privacy

Private information is defined as:

"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.

TEST: “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 interest in obtaining the information.”

→ Disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

- b. The City is not obligated to create documents
- c. Be unduly burdensome.

Test: The burden on the public body outweighs the public interest in the information.

The requestor has to be given the opportunity to narrow the request.

V. Specific records identified by the Act.

- a. Records relating to public funds.
- b. Certified payroll records submitted under Section 5(a)(2) or the Prevailing Wage Act.
- c. Settlement agreements.
- d. Arrest reports identifying the name, age, address and photograph (if available), the charges, time and location of arrest, a name of arresting agency, the amount of bail if incarcerated, time and date received into, discharge from or transferred for the arresting agency’s custody.
- e. Criminal history records (NOT JUVENILE) . Public court records, records otherwise available under state or local law, records in which the requesting party Is the individual identified.

i. Exception:

- 1. Interferes with a pending or actually and reasonably contemplated law enforcement proceedings conducted by the agency
- 2. Endangers the life or physical safety of law enforcement or correctional personnel or any other person.
- 3. Compromises the security of any correctional facility.
- 4. Creates a substantial likelihood that a person will be deprived of a fair trial or impartial hearing
- 5. Unavoidable discloses a confidential source or information.

VI. Statutory Exemptions to FOIA.

- a. FOIA exempts information that is exempt under other laws.
 - i. The Personnel Record Review Act.
 - 1. Employee evaluations
 - 2. Discipline older than 4 years
 - ii. Juvenile Court Act.

1. Records presumed to be confidential.
 2. Law enforcement records maintained by law enforcement agencies that relate to a minor who has been **arrested and taken into custody**.
 - a. May be released to a citizen review board if investigating the conduct of a law enforcement officer.
 3. Law enforcement officers, and *personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers*, may not disclose the identity of any minor in releasing information to the general public as to the arrest, **investigation** or disposition of any case involving a minor.
 - 4.
 - iii. The Illinois School Student Record Act,
 - iv. Library Confidentiality Act.
 - v. Identity Protection Act.
 1. Social security numbers
 2. Driver's license numbers
 - vi. Drivers privacy protection act
 1. Driver's license numbers
 2. Photograph
 3. Name address
 4. Telephone number
 5. Medical and disability information
 - vii. FOID card/firearm information
- VII. Discretionary Exemptions to FOIA.
- a. Personal privacy
 - i. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.
 - ii. Meaning: disclosure of this information which is highly objectionable to a reasonable person and the subject's right to privacy outweighs any legitimate public interest in obtaining the information.
 - b. Internal operations
 - i. Preliminary materials and drafts or "the deliberate process"
 1. Expression of opinions, formulation of action or policy
 2. Final documents are not exempt
 - ii. Adjudication of employee grievances
 1. Final outcome where discipline is imposed is not exempt
 - c. Law enforcement and security
 - i. Investigatory materials when disclosure would interfere with ongoing investigations, unavoidably disclose the identity of an informant, disclose specialized investigative techniques, or cause other harms.

- ii. Records if disclosed would pose a threat to security.
- d. Business and finance
 - i. Information regarding a 3rd party in the public bodies possession.
 - 1. Trade secrets
 - 2. Commercial or financial information
 - 3. Real estate purchase negotiations.
- e. Attorney communication
 - i. Attorney client privilege
- f. Educational matters
 - i. Test questions, scoring keys, other data
- g. Miscellaneous
 - i. Policies plans and maps designed to identify prevent or respond to attacks on the municipal population, facilities, or systems but only to the extent that such disclosure could reasonably be expected to jeopardize the effectiveness of these measures.

BODY CAMERAS

50 ILCS 706/1 *et seq.*

Generally

1. Turned on at all times
2. Capable of recording 10 hours
3. Turned off when:
 - a. Victim requests
 - b. Witness to a crime or a community member request
 - c. Officer interacting with a confidential informant
 - d. Officer engaging in community care taking functions
 - e. Officer must provide notice when person has a reasonable expectation of privacy.
4. No officer may hinder or prohibit any person, not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or when the officer has not reasonable expectation of privacy.

Release of Information

- I. Recordings must be maintained for at least 90 days.
- II. After 90 days the recordings must be destroyed unless flagged. They may be maintained for training purposes and can only be viewed by police personnel (Not FOIAble)
- III. Reasons for flagging. These recordings must be maintained for 2 years. If there was a court case they can't be destroyed until the final disposition and a court order.
 - a. **A formal or informal complaint has been filed;**
 - b. **The officer discharge his or her firearm or used force during the encounter;**
 - c. **Death or great bodily harm occurred to any person in the recording;**
 - d. **The encounter resulted in a detention or an arrest, excluding traffic stops which resulted in only a minor traffic offense or business offense;**
 - e. **The officer is the subject of an internal investigation or otherwise being investigated for possible misconduct;**
 - f. The supervisor of the officer, prosecutor, defendant, or court determines that the encounter has evidentiary value in a criminal prosecution; or
 - g. The recording officer requests that the video be flagged for official purposes related to his or her official duties.
- IV. What is releasable?
 1. Unflagged recordings are not releasable generally.
 2. Any recording which is flagged due to the
 - a. Filing of a complaint
 - b. Discharge of a firearm
 - c. Use of force
 - d. Arrest or detention

- e. Resulting in death or bodily harm

Unless they are exempt as provided in paragraph (1)

3. Paragraph (1) states:

- a. If the subject had a **reasonable expectation of privacy** at the time of the recording and that recording was flagged pursuant to a through e above it would only be disclosed if the subject of the recording was a **victim or witness** and the police obtained permission from the subject or subject's attorney.
 - b. *If the subject does not have a reasonable expectation of privacy then the recording is releasable.*
 - c. A subject **does not** have a reasonable expectation of privacy if the subject was arrested as a result of the encounter.
 - d. A witness **does not** include a person who is a victim or who was arrested as a result of the encounter
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- 4. All recordings, flagged or unflagged must be disclosed to the subject of the encounter or the subject's attorney or the officer or the officer's legal representative.
- 5. Recordings must be redacted to remove the identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved with the encounter.
- 6. Nothing in this law requires the disclosure of any recording which would be exempt from disclosure under FOIA.