

# COMMITTEE ON OPEN GOVERNMENT

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By electronic mail only

June 23, 2020

Kevin Riford  
[REDACTED]

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

Dear Mr. Riford,

I am writing in response to your request for an advisory opinion regarding the obligations of the Niagara County Sheriff's office (the County) under the Freedom of Information Law (FOIL) in connection with requests for its policies and procedures concerning body/dash camera footage.

In response to your FOIL request for "all the records of the rules, regulations, and policies regarding the preservation and deletion of body and dash camera footage," the County denied access on the ground that the records "would reveal criminal investigative techniques or procedures." In response to your administrative appeal, the FOIL appeals officer concurred with the original ground for denial and also asserted that Civil Rights Law § 50-a prohibited disclosure.

By way of background, FOIL is based upon a presumption of access. All records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in § 87(2)(a) through (q) of the Law. Here, the County has asserted that § 87(2)(e)(iv) permits the agency to withhold two Orders from the Sheriff's Office, one relating to body camera video and the other for mobile (dash) video. The County asserted that the "Orders contain operational and evidentiary protocols for deputies and other employees of the sheriff's office."

Section 87(2)(e)(iv) authorizes an agency to withhold records that: "are compiled for law enforcement purposes and which, if disclosed, would . . . reveal criminal investigative techniques or procedures, except routine techniques and procedures." In the leading decision involving that exception, the Court of Appeals held that its purpose is to prevent violators of the law from being apprised of nonroutine procedures by which law enforcement officials gather information, specifying that:

The Freedom of Information Law was not enacted to furnish the safecracker with the combination to the safe . . . . Indicative, but not necessarily dispositive, of whether investigative techniques are nonroutine is whether disclosure of those procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by [law enforcement] personnel . . . .

Fink v. Lefkowitz, 47 N.Y.2d 567, 572 (1979) (internal citations omitted).



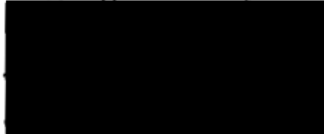
Department  
of State

Under the circumstances, it seems unlikely that the disclosure of the policies and procedures relating to the preservation and deletion of body and dash camera footage would enable potential lawbreakers to evade detection or encourage criminal activity. If that is so, § 87(2)(e)(iv) would not serve as an appropriate basis for denying access.

On appeal, the County also asserted that Civil Rights Law § 50-a permitted the County to deny access to the requested records. While this statute, which protected as confidential the personnel records of police officers, corrections officers, and paid firefighters, was in effect at the time of your request, I note that on June 12, 2020, the Governor signed legislation repealing that statute with immediate effect. Even at the time of your request, however, it is unlikely that the County would be able to meet its burden of proof in asserting that statute as a ground for denial. As noted above, Civil Rights Law § 50-a made confidential personnel records of police officers used to evaluate performance toward continued employment and promotion. In our view, a procedure manual cannot be considered a "personnel record" and those manuals, independent of other records relating to a particular officer, would not be used to evaluate the performance of a police officer.

I hope this information proves useful.

Sincerely,



cc: Rebecca J. Wydysh, Chair, Niagara County Legislature