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Sarah Pratt  
Public Access Counselor  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62701

By Email

Ms. Pratt,

This is to request review of partial denial of a FOIA request in accordance with 5 ILCS 140/9.5(a).

I have attached my initial request and the letter from the agency, Metra, denying release of portions of the requested records, including fully denying release of the third item requested, Metra's Program Compliance Submission for Passenger Train Emergency Preparedness plan. I request review only of that denial.

The Passenger Train Emergency Preparedness plan is a document that Metra and all passenger railroads are required by Title 49, Section 239 of the Code of Federal Regulations to produce and submit to the Federal Railroad Administration for approval. The Federal Railroad Administration has wielded this emergency preparedness plan approval mechanism to opaquely and indirectly dictate economic aspects of passenger train operations in ways it is arguably not currently otherwise empowered to do, such as the controlling the number of crew members required to be on board trains. FRA said as much in a 2016 Notice of Proposed Rulemaking, stating amid discussion of a crew size rule that ultimately did not come into effect that "Although it has done so indirectly, FRA has rejected some one-person passenger operations based on the passenger train emergency preparedness approval process required under 49 CFR 239.201."(<https://www.federalregister.gov/documents/2016/03/15/2016-05553/train-crew-staffing>). I sought Metra's emergency preparedness plan so that I could better understand this indirect mechanism by comparing FRA approved crew size language for a longstanding commuter railroad like Metra, with language approved for newer commuter railroads, such as those in Denver and Salt Lake City.

In entirely denying release of the item, Metra cited Section 7(1)(v) of FOIA. Section 7(1)(v) exempts records "only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measure or the safety of the personnel who implement them or the public." On systems like Metra, train crew staffing is typically actually dictated by labor contracts at levels in excess of what might be required by the FRA, and those contracts are unlikely to be so closely protected. Furthermore, the number of crew members on the train would tend to be plainly obvious by regular observation to passengers. Anyone riding the train can count the number of uniformed conductors collecting tickets, or see how many engineers are sitting behind the window of the locomotive as the train enters the station. Disclosure of any language in the plan regarding train crew staffing requirements is unlikely to jeopardize the effectiveness of the sort of measure cited in the exemption, nor the safety of anyone, and so should not be exempt from release.

More generally, experience examining other Passenger Train Emergency Preparedness plans leads me to suspect Metra's plan may contain other portions that can be released without so jeopardizing the effectiveness of any measure, or the safety of anyone, such as the frequency with which Metra staff must receive training on the contents of plan, which Metra crew members must receive CPR training, etc. Any such portions should also not be exempt from release.

I do not dispute that some portions of the requested record may rightfully be exempt from release under the exemption the agency cited. I request that you find that only sensitive portions truly subject to the cited exemption should be withheld, and that the agency can and should redact such portions and release the segregable remainder of the record.

I've separately emailed this request for review to the agency. Thank you for your consideration.

Sincerely,

Joseph Durso