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Courtroom Number: 2408  
Location: District 1 Court  
Cook County, IL

FILED  
7/18/2018 11:00 AM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08965

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

WILLIAM CALLOWAY, )  
)  
Plaintiff, )  
) 2018CH08965  
v. )  
)  
CHICAGO POLICE DEPARTMENT, )  
)  
Defendant. )

**COMPLAINT**

NOW COMES Plaintiff, WILLIAM CALLOWAY, by his undersigned attorneys, LOEVY & LOEVY, and brings this suit to force Defendant CHICAGO POLICE DEPARTMENT to release all audio and video from the fatal shooting of Harith Augustus—not just the selective, incomplete, and edited recording that CPD released to justify the shooting in response to public criticism and questions.

**INTRODUCTION**

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. *Id.*

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3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/3.

4. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”

### **PARTIES**

5. Plaintiff WILLIAM CALLOWAY is the FOIA requester in this case.

6. Defendant CPD is a public body located in Cook County, Illinois.

### **BACKGROUND**

7. On July 14, 2018, a CPD officer shot and killed Harith Augustus.

8. CPD has already announced to the public the alleged circumstances and reason for the shooting.

9. The incident leading to the shooting began, according to CPD, because an officer observed Augustus “exhibiting characteristics of an armed person.”

10. CPD has not explained what these “characteristics of an armed person” were.

11. The shooting resulted in protests that garnered national media attention.

12. In an effort “to dispel inaccurate information” about the shooting, CPD released a partial body cam video on July 15, 2018.

13. The released video was edited, including through slow-motion in selective spots.

14. The released video shows only a portion of the incident and does not show the circumstances of CPD’s initial encounter with Augustus.

15. There are additional portions of the released video and additional other videos and possibly audio that CPD has not released.

16. CPD is not investigating the shooting. Rather, according CPD's superintendent, the shooting is being investigated by the Civilian Office of Police Accountability.

17. CPD and COPA are separate public bodies under FOIA with separate FOIA officers and separate FOIA obligations.

18. The plain language of the FOIA statute, in a passage that was specifically added to the statute in the last ten years, states that FOIA exemptions for interference or obstruction with "ongoing" investigations, "actually and reasonably contemplated" law enforcement proceedings, or "active" administrative enforcement proceedings only apply to investigations or proceedings conducted "by the public body that is the recipient of the request." 5 ILCS 140/7(1)(d). Thus, CPD, "the recipient of the request," cannot rely on any pending investigation by COPA to withhold the requested videos. CPD is well aware of this because it was litigated in the Laquan McDonald shooting video case.

19. Further, on multiple occasions, including the Laquan McDonald case, CPD has been unable to prove, by clear and convincing evidence, as the law requires, that release of videos of an officer involved shooting will interfere with any ongoing investigation by COPA or anyone else.

20. Immediately after any officer involved shooting, CPD routinely announces to the public what it contends to have happened, including, for example, whether a gun was allegedly recovered from the person shot, without awaiting the results of a COPA investigation.

21. CPD engages in a pattern, policy, and practice of selectively disclosing information, photos, and videos of officer involved shootings that is based in whole or in part on

whether CPD has been publicly accused of or questioned about misconduct or dishonesty and whether the information supports CPD's statements of what occurred. That pattern and practice is at issue in *Calloway v. Chicago Police Department*, 18 CH 5779 (Cook Cty.).

22. On at least two occasions, including this one, CPD has selectively released video or photographs that support its version of events in response to what it contends to be false information about the shooting but withheld the remaining materials.

### CALLOWAY'S REQUEST

23. On July 15, 2018, CALLOWAY requested from CPD all dash cam, body cam, and surveillance footage in connection with the Harith Augustus shooting.

24. "It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1.

25. While FOIA contains a five-day outside deadline to respond (absent a single five-day extension in very limited circumstances), "[e]ach public body shall, *promptly*, either comply with or deny a request for public records[.]" 5 ILCS 140/3(d).

26. By July 17, 2018, CPD determined and announced that it will not release any additional materials and that is leaving any further release to COPA.

27. FOIA does not allow a public body to delegate its statutory responsibilities to a different public body.

28. Despite having already decided that it would not be releasing additional footage, and despite the urgency of the public's right to complete information about the shooting, CPD has not responded to CALLOWAY's request, and thus has not satisfied its obligation to "promptly" respond.

29. CPD engages in a pattern, policy, and practice of delaying its responses to many FOIA requests, especially sensitive requests, for as long possible, often through the use of unwarranted extensions of time or failure to respond at all until litigation or a Public Access Counselor review is initiated.

**COUNT I –WILLFUL VIOLATION OF FOIA**

30. The above paragraphs are incorporated by reference.

31. CPD is a public body under FOIA.

32. The records sought in the FOIA request are non-exempt public records of CPD.

33. CPD has willfully and intentionally violated FOIA by refusing to produce the requested records.

**WHEREFORE**, CALLOWAY asks that the Court:

- i. declare that CPD has violated FOIA;
- ii. order CPD to produce the requested records;
- iii. award Plaintiff reasonable attorneys’ fees and costs;
- iv. award civil penalties for a willful violation; and
- v. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

*/s/ Matthew V. Topic*

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## FOIA for South Shore Police Shooting

1 message

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**william calloway** <whcalloway@gmail.com>

Sun, Jul 15, 2018 at 10:02 AM

To: FOIA <foia@chicagopolice.org>

Cc: Matt Topic <matt@loevy.com>

I request all dash cam, body cam, surveillance cam footage collect as part of the investigation into the officer involves shooting that occurred Saturday July 14th, on 71st & Chappell in the South Shore neighborhood.

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