

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

JAMIE KALVEN, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHICAGO POLICE DEPARTMENT )  
 )  
Defendants. )  
 )  
 )

**COMPLAINT**

NOW COMES Plaintiff, JAMIE KALVEN, by his undersigned attorneys, THE MANDEL LEGAL AID CLINIC AT THE UNIVERSITY OF CHICAGO, and brings this Freedom of Information Act suit to require Defendant CHICAGO POLICE DEPARTMENT (CPD) to stop withholding public records regarding completed investigations into the cover up of Chicago Police Officer Jason Van Dyke's killing of Laquan McDonald.

**INTRODUCTION**

1. The citizens of Chicago are engaged in an historic public debate about police reform. This debate was precipitated by public release of records related to Officer Van Dyke's killing of 17-year-old, Laquan McDonald. The McDonald case remains at the center of our ongoing public discourse about police accountability and public safety. Among other things, the case prompted a federal investigation by the United States Department of Justice which found that the Chicago Police Department engages in a pattern and practice of civil rights violations that disproportionately affects members of Chicago's minority communities.

2. That is the context in which the Defendant Chicago Police Department has refused to provide Jamie Kalven with the completed investigations into the cover up of Laquan McDonald's killing. The misconduct investigations, which found that at least eleven police officers and supervisors had committed serious misconduct, involved an exhaustive inquiry into the operation of the CPD's code of silence, machinery of institutional denial that has allowed police abuse of members of the public to go unchecked. These public records could not be more critical to the ability of citizens to engage in informed debate about police reform, to effectively monitor the police, and to ensure that the CPD is working in the public interest.

3. In 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.

4. 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 140/1.2.

**PARTIES**

5. Plaintiff JAMIE KALVEN is an award-winning journalist and an Illinois resident. He has spent years documenting police abuse in Chicago, reporting extensively on individual instances of police abuse and on the systemic conditions that facilitate and shield such abuse. He was the first journalist to investigate the circumstances of Laquan McDonald's death, and his reporting has been widely credited with creating the conditions for police reform in Chicago. Among the acknowledgements he has received for this work are the 2015 Polk Award for Local

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Reporting and the 2016 Ridenhour Courage Prize. Mr. Kalven was also the plaintiff in *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, which established the precedent that closed police misconduct investigations are not exempt under FOIA. Following the *Kalven* decision, Mr. Kalven and his colleagues launched the Citizens Police Data Project, which has been used widely by journalists, academics, policymakers, lawyers, and members of the public to monitor police misconduct complaints in Chicago. The project was awarded the Society of Professional Journalists' Sunshine Award for its contribution to open government, the Hillman Foundation's Sidney Award, the Knight News Challenge Award, and was cited by the United States Department of Justice in its historic investigation into a pattern and practice of civil rights violations by the CPD.

6. Defendant CHICAGO POLICE DEPARTMENT (CPD) is a public body located in Cook County, Illinois. The CPD possesses and controls the records at issue in this case.

**KALVEN'S FOIA REQUESTS AND DEFENDANT'S IMPROPER DENIAL**

7. On November 11, 2016, KALVEN made a FOIA request to the CPD for the records of the eleven completed investigations by the Office of the Inspector General of Chicago police officers involved in the cover up of the shooting of Laquan McDonald by Jason Van Dyke provided to the Chicago Police Department, along with any attachments. *See* Exhibit 1, FOIA request of Jamie Kalven.

8. The requested documents are "public records" as defined by 5 ILCS 140/2(c).

9. Defendant CPD possesses and controls the requested documents.

10. CPD denied the request citing Illinois FOIA exemptions 7(1)(a) and 7.5(h), which it stated exempts release of documents "of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under the Act." 5 ILCS 140/7.5(h). *See* Ex. 2, CPD Denial of FOIA Request. CPD cited §20-95

of the Executive Ethics Commission and Executive Inspector General's Act as the statute under which the documents would be exempt.

11. CPD's denial on the basis of 7.5(h) was improper because the Executive Ethics Commission and Executive Inspector General's Act was not meant to cover investigative reports such as these. The Illinois Court of Appeals has repeatedly ruled that a public body's records of completed investigations into police misconduct are not exempt and must be produced pursuant to FOIA. *Kalven v. City of Chicago*, 2014 IL App (1st) 121846; *Fraternal Order of Police v. City of Chicago*, 2016 IL App (1st) 143884, *appeal denied sub nom. Fraternal Order of Police v. Chicago Police Sergeants Ass'n*, 60 N.E.3d 872 (Ill. 2016); *Watkins v. McCarthy*, 2012 IL App (1st) 100632; *Gekas v. Williamson*, 393 Ill. App. 3d 573 (4th Dist. 2009); *Peoria Journal Star v. City of Peoria*, 2016 IL App (3rd) 140838; *Gonigam v. Office of Sheriff of McHenry Cty.*, 2014 IL App (2d) 140159-U.

12. Exemption 7.5(h) was not intended to allow public bodies to make secret public records of police misconduct investigations by simply referring the investigation to the local inspector general. Such a reading of the exemption would have the result of denying the public access to records in those cases in which the public interest is most intense, such as the Laquan McDonald cover-up, the Koschman case, and the investigation of Commander Glenn Evans.

13. CPD's denial on the basis of Exemption 7.5(h) is also improper because the exemption applies only to records "of" the inspector general, not records in the possession and control of the CPD.

**COUNT I – VIOLATIONS OF FOIA BY CHICAGO POLICE DEPARTMENT –  
NOVEMBER 11 REQUEST**

14. The above paragraphs are incorporated by reference.

15. CHICAGO POLICE DEPARTMENT is a public body under FOIA.

16. The requested records exist and are public records of CPD.
17. CPD violated FOIA by failing to produce non-exempt public records.
18. CPD's violations were willful and intentional or otherwise in bad faith.

**WHEREFORE**, Plaintiff Kalven asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that CHICAGO POLICE DEPARTMENT violated FOIA;
- iii. order CHICAGO POLICE DEPARTMENT to produce the requested records
- iv. enjoin CHICAGO POLICE DEPARTMENT from withholding non-exempt public records under FOIA;
- v. order CHICAGO POLICE DEPARTMENT to pay civil penalties;
- vi. award KALVEN reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Craig B. Futterman

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One of the Attorneys for Plaintiff  
JAMIE KALVEN

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<sup>1</sup> With substantial assistance from University of Chicago law students Sofie Brooks, Ayla Syed, Alan Hassler, Kashan Pathan, and Adeola Adeyosoye.

**EXHIBIT 1:**

Kalven FOIA Request

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FOIA Request for Police Officer Investigations

Sofie Brooks <sofie.brooks@gmail.com>
To: FOIA@chicagopolice.org
Bcc: Chaclyn Hunt <chaclynhunt@gmail.com>

Fri, Nov 11, 2016 at 4:28 PM

Please provide by e-mail the eleven investigations by the Office of the Inspector General of Chicago police officers involved in the shooting of Laquan McDonald by Jason Van Dyke provided to the Chicago Police Department. Please include the complete investigations and any attachments.

Consistent with the City's policy implemented with the settlement of Kalven v. City of Chicago, 2014 IL App (1st) 121846, I do not object to the redaction of the names and identifying information of complainants, non-police witnesses, and police witnesses/ whistleblowers who support the claim that the accused officer or officers committed misconduct. Per the policy, the Department should not redact the birth year, age, gender, or race of these individuals. I also do not object to the redaction of personal information about the accused officers, such as the officer's social security number, home address, and home phone.

It is my position that all the requested information is public and non-exempt under the Act. The Illinois Court of Appeals has made clear that records bearing on allegations of police misconduct are public information, and must be made available to members of the public upon request under the Illinois Freedom of Information Act, according to Kalven.

I am requesting this information on behalf of Jamie Kalven the Invisible Institute. Because we are a non-profit and see the information in order to disseminate it to the public, and because the information regards the safety, welfare, and legal rights of the general public, the request meets the statutory definition of "in the public interest." This request is not for commercial benefit as defined in the statute because this request is made by a member of the news media whose principal purpose is to access and disseminate information regarding the general public's safety, welfare, and legal rights. To the extent you intend to assess any charges, please notify me to discuss first.

Sincerely,
Sofie Brooks

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**EXHIBIT 2:**

CPD Denial of Kalven FOIA

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Rahm Emanuel  
Mayor

Department of Police · City of Chicago  
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson  
Superintendent of Police

November 17, 2016

**VIA EMAIL**

Sofie Brooks  
sofie.brooks@gmail.com

**RE: NOTICE OF RESPONSE TO FOIA REQUEST**  
**REQUEST DATE: November 11, 2016**  
**FOIA FILE NO.: P054192**

Dear Ms. Brooks:

The Chicago Police Department is in receipt of your Freedom of Information Act (FOIA) request seeking the following:

*"...the eleven investigations by the Office of the Inspector General of Chicago police officers involved in the shooting of Laquan McDonald by Jason Van Dyke provided to the Chicago Police Department. Please include the complete investigations and any attachments."*

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Your request was received and reviewed by the undersigned. Please note that because your request was submitted after close of business it is considered to have been received the next business day. Upon review, it was determined that records you seek are exempt from disclosure and are therefore being withheld in their entirety. Section 7(1)(a) of FOIA exempts from disclosure: "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law."

5 ILCS 140/7.5(h) precludes from disclosure records "of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act." The state act referenced in Section 7.5(h) is the Executive Ethics Commission and Executive Inspectors General Act. Section 20-95 of that Act specifically provides that:

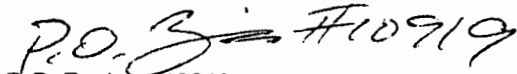
All investigatory files and reports of the Office of an Executive Inspector General, other than monthly reports required under Section 20-85, are confidential, are exempt from disclosure under the Freedom of Information Act, and shall not be divulged to any person or agency, except as necessary (i) to a law enforcement authority, (ii) to the ultimate jurisdictional authority, (iii) to the Executive Ethics Commission, (iv) to another Inspector General appointed pursuant to this Act, or (v) to an Inspector General appointed or employed by a Regional Transit Board in accordance with Section 75-10. 5 ILCS 430-20-95(d)

Therefore your request is denied.

If I can be of further assistance, you may contact me at (312)745-5308, or via mail at the below address:

Chicago Police Department  
Attention: Freedom of Information Officer  
Office of Legal Affairs Unit 114  
3510 S. Michigan Ave  
Chicago, IL 60653

Sincerely,



P.O. Zuniga #10919  
Freedom of Information Officer  
Chicago Police Department  
Office of Legal Affairs

You have a right of review by the Illinois Attorney General's Public Access Counselor (PAC) You can file a request for review by writing to:

Public Access Counselor  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62706  
Phone: 312-814-5526 or 1-877-299-FOIA (1-877-299-3642)  
Fax: 217-782-1396 E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter (see 5 ILCS 140/9.5(a)). When filing a Request for Review, you must include a copy of the original FOIA request and this denial letter. You may also seek judicial review under 5 ILCS 140/11.

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