



March 19, 2024

J. Allen Thomas
Chief Assistant Corporation Counsel - Legal Information and Prosecutions
City of Chicago Department of Law
2 North LaSalle, Suite 460
Chicago, IL 60602

Sent Via email: Joseph.Thomas2@cityofchicago.org

Re: FOIA request number F062437-120423

Mr. Thomas:

I had some difficulty tracking exactly what the Mayor's Office seeks in the way of clarification because there have been so many different requests by this requestor (Matt Chapman), with a number of identifying FOIA case identifiers. If I am reading the email correctly, the requestor is seeking a Request for Review on FOIA request number **F062437-120423**, so Chicago is seeking information from SoundThinking to assess whether to apply the trade secret exemption.

The request was for "audit log information" for all ShotSpotter alerts between 1/1/17 and the "present date" at the time (which I *think* was 11/22/23 per one of the email attachments), using Executive Order 83-1 as the controlling authority. I cannot find any reference in our records that Chicago notified SoundThinking about FOIA request F062437-120423. The requestor made similar requests for data under FOIA numbers **P897555** and **P866043**, invoking Executive Order 83-1 and Illinois' FOIA, respectively. There, we explained in communications to CPD that we believed the requested information was exempt from disclosure as trade secrets.

The remainder of the attached items from your email seem to be documentation provided by the requestor in support of his assertion that there is no "clear nor convincing evidence that the records would cause competitive harm." In support of his argument, the requestor divulges that he has received "many years' worth of alerts through FOIA requests in the past (even alerts that were dismissed)." He then objects to Chicago having denied the request at issue (F062437-120423), **given that Chicago had released similar information prior, without asserting the trade secret exemption. At its core, the real issue is that Chicago should not have created and released the various documents for any of the noted requests – nor did SoundThinking know Chicago was doing so.** The requestor never should have received the "many years' worth of alerts" that he apparently believes are, and should be, the norm.

Very recently, in dealing with another FOIA request by the requestor (**P920601**), SoundThinking discovered that Chicago has been providing what look like Excel spreadsheet compilations to FOIA requestors. To create them, it appears Chicago accessed our historical database of alerts, called *InSight*. Just today, we admonished Chicago PD that the improper use of our *InSight* database to create these reports violates our contract with Chicago – though in the communication, we made clear our goal now is merely to prevent further breaches,

not act upon any particular breach. Our contract states in Section 3.1.5 – Confidentiality and Rights in Data – that Chicago only has a license to access and distribute Gunfire Data “exclusively for the City’s law enforcement, crime prevention, investigation and prosecutorial purposes” as well as the license to share that data with other law enforcement agencies and their vendors/contractors. Our contract further states specifically that SoundThinking “grants no rights or licenses in Gunfire Data for uses or purposes other than those expressly set forth” in Section 3.1.5. “Gunfire Data” is defined in section 3.1: “[D]ata or content created or generated by Contractor’s technology, as well as reports Contractor supplies to the City in the performance of the Services detailing incidents involving gunshots and locations from which shots were fired.” Those Excel spreadsheets contain gunfire data.

FOIA request number **P898117** is an example of one such request that should not have received responsive documents from Chicago. There, it appears the requestor sought an “updated copy of P839396.” (Presumably, **P839396** was an earlier FOIA request.) CPD then provided the requestor with six Excel files CPD deemed responsive to the P898117 request on December 14, 2023. We do not have a record of CPD contacting SoundThinking about request P898117, either.

Chicago should not have created any of those reports and provided them as public records because the data is owned by SoundThinking, not Chicago, and taken as a whole, the aggregate data represents trade secrets held by SoundThinking.

SUBSTANTIVE RESPONSE FOR FOIA REQUEST F062437-120423:

Executive Order 83-1 is an order “to assure all members of the public the right to inspect and copy public records and to prescribe the procedures with respect thereto” As with FOIA, the Executive Order is aimed at “the affairs of *government* and the official acts of those who represent [the constituents] as public servants.” (Emphasis added.) SoundThinking, Inc. is a private company, so the Executive Order generally does not apply. We recognize, however, that Chicago is a government entity, and we strive to help you fulfill your legal obligations while still protecting our company’s legitimate business interests, as allowed by law.

To the extent the Executive Order reaches SoundThinking – directly, or indirectly, through the City of Chicago – we believe the information sought by the requestor is exempt from disclosure. The exemptions to the general policy of open access are found in Section 8. Section 8 lists certain categories of exempt materials, including “trade secrets which are obtained from a person, and are privileged or confidential, and business proprietary or financial information which is obtained from a person, except as the person may authorize or as may be authorized by contract bidding requirements, ordinance, or statute.” (Executive Order 83-1, §8(b)(4.)) SoundThinking qualifies as a “person,” and thus can invoke the trade secrets exemption, because the term is defined broadly as “any individual, corporation, government, partnership, firm, organization or association” (§2(b)). In addition to the specific exemption, there is a general catch-all exemption, “information expressly exempted from disclosure by law or court order.” (§8(b)(1).) That general catch-all takes us back to the Illinois FOIA.

The information the requestor seeks is stored within SoundThinking’s database and would have to be queried directly from our database to compile responsive documentation. Unfortunately, what has happened is that Chicago accessed our database containing our data and *created* a report for the FOIA request. Our contract with Chicago emphasizes that SoundThinking retains ownership of our data and Chicago is obligated to protect it. Executive Order 83-1 does not require Chicago to create the report.

Economic Value: Through *ShotSpotter*, SoundThinking provides gunshot detection services that alert our customers to real-time outdoor gunfire. The most obvious value of these *individual* gunfire alerts is in getting police onto the scenes of shooting events quickly and precisely, so officers can locate and assist gunshot

victims, and initiate investigations to identify witnesses, locate ballistics evidence, and gather other relevant evidence. Our alerts also provide officer-safety benefits, crime deterrence, and can help improve community relations. SoundThinking provides customers access to our *aggregate* data through an application called *InSight*. Through *InSight*, historical data can be viewed, searched, sorted, and filtered a variety of ways and for myriad of purposes. The tool is quite powerful *and unique to SoundThinking*. For instance, aggregate data can be useful for making resource deployment decisions or steering community resources to where they are needed most. When used historically, the information also can serve invaluable investigative, intelligence, and analytical purposes.

SoundThinking is the nation's leading provider of gunshot detection services, but there are increasingly more competitors. To maintain our competitive edge, we must protect the unique processes, methods, techniques, capabilities, and other technical and non-technical details of SoundThinking's systems. The data in *InSight* allows for tracking and sharing certain aggregate data with customers. Because the aggregate information is unique to SoundThinking, we derive independent economic value from keeping our competitors from replicating it if it were to be disclosed publicly. The aggregate information is also a source of significant commercial value because we may choose to sell aggregated information to third parties, such as academics or other researchers. Indeed, we have sold our data in the recent past. If our competitors – or others, such as researchers seeking to examine the efficacy of laws or make policy recommendations – could obtain all our data for free by submitting public records requests to our customers, we risk suffering irreparable competitive harm. This is exactly the sort of financial harm the trade secrets laws protect against.

We think an analogy can be helpful to analyze application of SoundThinking data to Executive order 83-1 and Illinois' FOIA. SoundThinking sells gunshot detection services on a subscription basis. Through that subscription, Chicago obtains access to proprietary information it can use to carry out its public safety functions. SoundThinking compiles and organizes that information in unique and specific ways. Chicago likely has other contract subscription services as well, such as *Westlaw* or *LexisNexis* for legal research, wherein those companies compile, organize, cross-reference, and provide commentary to caselaw and statutes. But an individual could not obtain the contents of those proprietary legal databases simply by asking Chicago to produce them through a public records request. To do so would destroy the value of the information those companies have compiled, organized, and contracted to sell to customers like Chicago. The same is true for SoundThinking.

Efforts to Maintain Secrecy/Confidentiality: SoundThinking relies on federal and state law, as well as contractual and intellectual property rights protections (such as non-disclosure agreements, patents, copyrights, and trademarks) to establish and protect our intellectual property rights, trade secrets, and proprietary and confidential information. SoundThinking intentionally and purposefully includes clauses related to confidentiality, data ownership and protection, and disclosure in our contracts, which is the case with Chicago. We are very deliberate in maintaining that SoundThinking owns all the data provided through the use of *ShotSpotter* software and the *InSight* application. In addition to the contract language specifying that SoundThinking owns our data, some actual reports we provide our customers are marked "PROPRIETARY AND CONFIDENTIAL." We include those markings directly on materials we seek to protect from public exposure, to highlight their confidential and proprietary nature. A third way we strive to exercise the trade secrets protections the law affords is through diligent and consistent communications during business dealings. Thus, in addition to the confidentiality/proprietary/copyrighted language included in our contracts and on markings of documents, we emphasize in communications like this one, as well as in litigation we undertake, our strong desire to protect the financial value of our systems, data, and information. Hopefully, recent communications have reinforced that, now that we discovered the error and have instructed Chicago PD not to generate reports out of *InSight directly*.

For all these reasons, SoundThinking believes the nature of the information, circumstances under which it has been provided, and the effort we have taken to protect it, all satisfy the requirements of Illinois law to exempt reports created from *InSight* from disclosure. Although the law may allow companies to consent to disclosure, it does not compel it. **SoundThinking does not consent to disclosure.** Our position here is no more than the Illinois legislature thought appropriate under the law to protect legitimate business interests of companies like SoundThinking.

Please let me know if any questions come out of my explanation and I'd be happy to jump on another call. For any future reference, our customer service number for this request is 00283977.

Sincerely,



Melissa Krum Dooher
Senior Director, Forensics & Litigation Support