March 18, 2016

Centralia Correctional Center
P.O. Box 7711
Centralia, Illinois 62801

RE: FOIA Request for Review – 2016 PAC 40554

Dear [Name],

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2014)). For the reasons that follow, the Public Access Bureau has determined that no further action is warranted.

On January 14, 2016, you submitted a FOIA request to the Joliet Police Department (Department) seeking, in pertinent part, copies of your fingerprints and D.N.A. from case #1150317004221. On February 2, 2016, the Department denied your request pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016). On February 26, 2016, you submitted this Request for Review contesting the Department's denial.

Section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014), as amended by Public Act 99-78, effective July 20, 2015) defines "private information" to include:

- Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)
The term "biometric identifier" is not defined in FOIA. However, section 10 of the Biometric Information Privacy Act (740 ILCS 14/10 (West 2014)) defines "biometric identifier" as "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry" (emphasis added), and it should be read together with section 2(c-5) of FOIA. See People v. Taylor, 221 Ill. 2d 157, 161 n.1 (2006) ("The doctrine of in pari materia provides that when two statutes deal with the same subject, they will be considered with reference to each other to give them a harmonious effect."). Thus, fingerprints are considered unique identifiers and may be withheld as exempt as "private information" under section 2(c-5). The Public Access Bureau has also previously determined that DNA is a biometric identifier and, therefore, "private information" under the section 2(c-5) definition of that term. III. Att'y Gen. PAC Req. Rev. Ltr. 12531, issued May 22, 2012, at 3. Accordingly, this office concludes that the Department did not violate FOIA by withholding your fingerprints and DNA pursuant to section 7(1)(b) of FOIA, and that no further action is warranted in this matter.

However, this office also notes that the Department is not required to assert that all "private information" is exempt, and may exercise its discretion to disclose records to you concerning your own biometric identifiers. III. Att'y Gen. PAC Req. Rev. Ltr. 15182, issued October 5, 2011, at 3; III. Att'y Gen. PAC Req. Rev. Ltr. 23175, issued May 12, 2015, at 3.

If you have any questions, you may contact me at the Springfield address listed on the first page of this letter. This correspondence serves to close the matter.

Very truly yours,

CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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cc: Mr. Brian Dupuis
Deputy Chief of Police
Technical Services
Joliet Police Department
150 West Washington
Joliet, Illinois 60432
PUBLIC ACCESS OPINION 14-008
(Request for Review 2014 PAC 29297)

FREEDOM OF INFORMATION ACT:
Disclosure of Photographs of a Former
Auxiliary Deputy Sheriff

Mr. Joseph Hosey
Patch.com
908 Stafford Court
New Lenox, Illinois

Mr. Jerome A. Nudera, Jr.
FOIA Officer
Will County Sheriff’s Office
20 West Washington Street
Joliet, Illinois 60432

RE: FOIA Request for Review – 2014 PAC 29297

Dear Mr. Hosey and Mr. Nudera:

This is a binding opinion issued pursuant to section 9.5(f) of the Freedom of
Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons discussed below, this
office concludes that the Will County Sheriff’s Office (Sheriff’s Office) violated the requirements
of FOIA by denying Mr. Joseph Hosey’s FOIA request seeking photographs of a former Sheriff’s
Office auxiliary deputy.

BACKGROUND

On May 2, 2014, Mr. Hosey, on behalf of Patch.com, submitted a FOIA request to
the Sheriff’s Office for "[a]ll personnel and any other photographs of former auxiliary deputy
Tony Marquez.¹ In an e-mail dated May 7, 2014, but sent on May 8, 2014, Jerome Nudera, FOIA Officer for the Sheriff’s Office, denied Mr. Hosey’s request, citing sections 2(c-5) and 7(1)(b) of FOIA (5 ILCS 140/2(c-5) (West 2012); 5 ILCS 140/7(1)(b) (West 2013 Supp.)).² Section 7(1)(b) exempts “private information” from disclosure.³ Section 2(c-5) defines “private information” to include:

unique identifiers, including a person’s social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

The Sheriff’s Office asserted in its response that the “[p]hotographs [of Mr. Marquez] are considered ‘private information’ due to the ‘biometric identifiers’ they contain.”⁴ On May 8, 2014, the Public Access Bureau received Mr. Hosey’s Request for Review of the denial of his FOIA request.⁵

On May 14, 2014, this office forwarded a copy of the Request for Review to the Sheriff’s Office and asked it to provide copies of the photographs it had withheld, as well as any additional factual information and legal arguments in support of its assertion of section 7(1)(b) of

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¹E-mail from Joseph Hosey, [Patch], to Kathy Hoffmeyer, [Will County Sheriff’s Office] (May 2, 2014).

²These are the only two provisions of FOIA that the Sheriff’s Office asserted as its bases for withholding Mr. Marquez’s photographs. Therefore, this binding opinion is limited to addressing the applicability of those provisions. This office does not make any findings as to whether other exemptions in section 7 of FOIA (5 ILCS 140/7 (West 2013 Supp.)) could potentially provide a valid basis for a public body to withhold photographs of law enforcement officials in other circumstances.

³E-mail from Jerome A. Nudera, Jr., FOIA Officer, Will County Sheriff’s Office, to Joseph Hosey (May 8, 2014).

⁴E-mail from Jerome A. Nudera, Jr., FOIA Officer, Will County Sheriff’s Office, to Joseph Hosey (May 8, 2014).

⁵E-mail from Joseph Hosey, to the Public Access Bureau (May 8, 2014).
FOIA. This office received the Sheriff's Office's response, including copies of the photographs, on June 3, 2014. The Sheriff's Office's response asserted that photographs of any part of the human body are "biometric identifiers" because they can be used to identify biological attributes. Thus, the Sheriff's Office maintained, the "[p]hotographs of former auxiliary deputy Tony Marquez contain 'biometric information' as defined, and should be subject to the [section 7(1)(b)] exemption as stated."

On July 1, 2014, the Public Access Counselor properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.

ANALYSIS

"All records in the custody or possession 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 (West 2012). FOIA requires that "[e]ach public body shall make available to any person for inspection and copying all public records, except as otherwise provided in Section 7 of this Act." 5 ILCS 140/3(a) (West 2012). The exemptions from disclosure are to be narrowly construed. Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from inspection and copying "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." As previously noted, "private information" is defined to include "biometric

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6 Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Jerome A. Nudera, Jr., FOIA Officer, Will County Sheriff's Office (May 14, 2014).
identifiers." The term "biometric identifier," however, is not defined in FOIA. It is well established that undefined statutory terms must be given their ordinary and popularly understood meaning. *People v. Comage*, 241 Ill. 2d 139, 157 (2011).

The term "biometrics" is commonly understood to refer to "the measurement and analysis of unique physical or behavioral characteristics (as fingerprint or voice patterns) especially as a means of verifying personal identity."11 Similarly, the term "identifier" means "one that identifies."12 Accordingly, the phrase "biometric identifier" is commonly understood to refer to the measurement and analysis of a unique physical or behavioral characteristic that identifies a person, such as a fingerprint or voice pattern.

Applying the commonly understood meaning of biometric identifier to the photographs in question, it does not appear that the photographs constitute biometric identifiers. This office was provided with copies of six photographs of Mr. Marquez. One photograph is found on a Sheriff’s Office identification card and shows Mr. Marquez’s face and head; the photograph is similar to one found on a driver’s license or other identification card. Four other photographs show Mr. Marquez’s head, face, and shoulders. The sixth photograph includes Mr. Marquez’s head, face, and shoulders, but also includes his torso. The photographs are all general in nature; they do not focus on a unique physical attribute or particular characteristic associated with Mr. Marquez. Consequently, the photographs are not biometric identifiers as that phrase is commonly used in Illinois law.

This conclusion is consistent with other Illinois statutory provisions. The Biometric Information Privacy Act (740 ILCS 14/1 et seq. (West 2012)), an act intended to regulate the collection, possession, and use of biometric identifiers by private entities engaged in business and security screening, for example, defines "biometric identifier" to include "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10 (West 2012). That Act also expressly excludes from the definition of biometric identifier "writing samples, written signatures [and] photographs[.]" (Emphasis added.) 740 ILCS 14/10 (West 2012).

In addition, the rules of statutory construction also support the conclusion that photographs are not biometric identifiers. The maxim of *inclusio unius est exclusio alterius* is

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applicable to the definition of "private information" in section 2(c-5). Under that principle, "where a statute lists the thing or things to which it refers, the inference is that all omissions are exclusions, even in the absence of limiting language." *McHenry County Defenders, Inc., v. City of Harvard*, 384 Ill. App. 3d 265 (2nd Dist. 2008). Had the General Assembly intended to exempt photographs from disclosure under section 7(1)(b), it may be assumed that it would have specifically referenced photographs in the definition of "private information" in section 2(c-5) of FOIA. It did not. Therefore, it may be assumed that photographs do not constitute "private information."

Along with omitting the word "photograph" from the definition of "private information," the General Assembly specifically included photographs in FOIA's definition of "public records." Section 2(c) of FOIA (5 ILCS 140/2(c) (West 2012)) defines "public records" as "all records, reports forms, writings, letters, memoranda, books, papers, maps, [and] photographs." Section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2012)) also provides that a photograph of an individual who has been arrested must be disclosed no later than 72 hours after an arrest. These specific references to photographs in FOIA indicate that the General Assembly did not intend for all photographs of people to be exempt from disclosure.

Indeed, the intent of FOIA is to provide the public with "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[,]" 5 ILCS 140/1 (West 2012). Given that intent, it seems highly unlikely that the General Assembly intended for all photographs of people to be exempt from disclosure. If the term "biometric identifiers" in section 2(c-5) of FOIA encompassed all photographs of people, as the Sheriff's Office contends, a photograph of the Governor taking the oath of office and other photographs of public officials and employees performing public duties would be exempt from disclosure under section 7(1)(b) of FOIA. It is a well-known principle of statutory construction that where a literal reading of the statute would lead to consequences which the General Assembly could not have contemplated, the statute must "be construed in a manner that avoids absurd or unjust results." *Croissant v. Joliet Park District*, 141 Ill. 2d 449, 455 (1990).

The Sheriff's Office notes in its response that the FBI defines biometrics as "the measurable (anatomical and physiological) or behavioral characteristics used for identification of an individual. Fingerprints are a common biometric modality, but others include things like DNA, irises, voice patterns, palmprints, and facial patterns." (Emphasis added.) In support of its assertion that biometric identifiers include photographs, the Sheriff's Office cites a definition from the Biometrics Institute Limited, which is described as an impartial international forum for

biometric users. Specifically, the Sheriff's Office quoted portions of the Frequently Asked Questions section of the Biometrics Institute Limited website, which states, in pertinent part:

A biometric is any biological attribute that can be used for identification - hence strictly a photo qualifies, as does in fact a picture or video of any part of the body. However just because a selection of photos exists of employees for instance *** this does not mean there is the capability or intention to do anything biometric with the photos.

In other words they could be called 'latent' biometrics - similar to a latent fingerprint that is left on a surface but that may not be used. Any clear photo of a person contains some biometric information - but if there is no intention to convert it to a template or match it against a facial gallery then I would say it is open to debate as to its status as a biometric in the technical or legal sense.  

Reading these materials in a light most favorable to the position of the Sheriff's Office, they are not unequivocal with regard to whether a general photograph of a subject should be considered a "biometric identifier." The FBI information also does not reference photographs as biometric identifiers. In addition, the Sheriff's Office does not assert that the requested photographs contain measurable (anatomical and physiological) or behavioral characteristics used for identification of an individual as defined by the FBI.

The Sheriff's Office's reliance on these equivocal statements discussing the term "biometric identifiers" to support its denial of Mr. Hosey's FOIA request is not persuasive, particularly given that the General Assembly specifically defined "public records" in FOIA to include photographs. Accordingly, this office concludes the Sheriff's Office has not sustained its burden of demonstrating that the requested photographs are exempt from disclosure pursuant to section 7(1)(b) of FOIA.

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FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On May 2, 2014, Mr. Joseph Hosey, on behalf of Patch.com, submitted a FOIA request to the Will County Sheriff's Office seeking "[a]ll personnel and any other photographs of former auxiliary deputy Tony Marquez."

2) In an e-mail dated May 7, 2014, and sent on May 8, 2014, the Sheriff's Office denied Mr. Hosey's request citing sections 2(c-5) and 7(1)(b) of FOIA and asserting that the requested photographs are "biometric identifiers" and therefore are exempt "private information" as defined in section 2(c-5) of FOIA.

3) On May 8, 2014, Mr. Hosey submitted a Request for Review that was received by the Public Access Counselor on the same day. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).

4) On May 14, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the Sheriff's Office and requested copies of all photographs that it had withheld, together with its factual and legal arguments in support of the assertion of the section 7(1)(b) exemption.

5) By letter dated May 23, 2014, and received on June 3, 2014, the Sheriff's Office furnished this office with copies of the withheld photographs, and reasserted its position that the photographs are exempt from disclosure because they contain biometric information.

6) On July 1, 2014, the Public Access Counselor properly extended the time to issue a binding opinion by 30 business days, to August 19, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2(c) of FOIA defines "public records" as "all records, reports, forms, writings, letters, memoranda, books, papers, maps, [and] photographs[.]

8) Section 7(1)(b) of FOIA exempts "private information" from inspection and copying. Section 2(c-5) of FOIA defines "private information" to include "biometric identifiers." The term "biometric identifier" is not defined in section 2(c-5) or elsewhere in FOIA.
9) The term "biometric identifier," however, is commonly understood to refer to the measurement and analysis of a unique physical or behavioral characteristic that identifies a person.

10) The photographs in question are all general in nature and do not focus on a unique physical attribute or characteristic of Mr. Marquez. This office concludes that the requested photographs are not biometric identifiers as that phrase is commonly used and do not constitute "private information" exempt from disclosure under section 7(1)(b) of FOIA.

Therefore, it is the opinion of the Attorney General that the Sheriff’s Office improperly denied Mr. Hosey's Freedom of Information Act request in violation of the requirements of the FOIA. Accordingly, the Sheriff's Office is directed to take immediate and appropriate action to comply with this binding opinion by disclosing the requested photographs of former auxiliary deputy Tony Marquez to Mr. Hosey.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law, 735 ILCS 5/3-101 et seq. (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Joseph Hosey as defendants. See 5 ILCS 140/11.5 (West 2012).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:  
Michael J. Luke
Counsel to the Attorney General
May 11, 2016

Via electronic mail
Mr. Sean Muserallo
WREX-TV
10322 Auburn Court
Rockford, Illinois 61101
smuserallo@wrex.com

Via electronic mail
Mr. Thomas J. Lester
Hinshaw & Culbertson, LLP
100 Park Avenue
Rockford, Illinois 61101-1389
tlester@hinshawlaw.com

RE: FOIA Request for Review – 2016 PAC 39535

Dear Mr. Muserallo and Mr. Lester:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that Rockford School District 205 (District) improperly withheld records in response to Mr. Sean Muserallo’s December 16, 2015, FOIA request.

On that date, Mr. Muserallo submitted a FOIA request to the District seeking, in relevant part, records relating to “alleged drug use by current or former teachers at Lincoln Middle School from September 1, 2015” to the date of the request, and:

any email correspondence or other writings, letters or memos from Jason Grey to Lori Hoadley or Jason Grey to any other school district administrator, investigator from the Winnebago County's State's Attorney's Office, Rockford Police Department or any other law enforcement agency regarding Amy Downin, Whitney Giardini, Jennifer Johansson and Elizabeth Heinrichs, and also
regarding police activity at Lincoln Middle School during the month of September 2015.\[1\]

On December 22, 2015, the District provided copies of certain records to Mr. Muserallo, including police reports, e-mails concerning allegations of drug use, letters of resignation from Ms. Giardini, Ms. Johansson, and Ms. Heinrichs, and salary information. The District withheld other records, which were specifically identified on a log sheet accompanying its response (Exemption Log) citing sections 7(1)(b), 7(1)(c), 7(1)(f), 7(1)(m), 7(1)(n), and 7(1)(q) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(f), (1)(m), (1)(n), and (1)(q) (West 2014), as amended by Public Act 99-298, effective August 6, 2015).

On January 21, 2016, this office sent the District a copy of the Request for Review and requested copies of the withheld records for our confidential review, as well as a detailed explanation of the factual and legal bases for the assertion of each section 7 exemption cited. The District submitted a written response and the requested records on February 1, 2016.\[2\] On February 8, 2016, this office forwarded a copy of the District's response to Mr. Muserallo; he did not reply.

**DETERMINATION**

All public records in the possession or custody of a public body are presumed to be open to inspection and copying (5 ILCS 140/1.2 (West 2014)), and exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997); see also 5 ILCS 140/1 (West 2014). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

**Section 7(1)(b) of FOIA**

Under section 7(1)(b), "[p]rivate information" is exempt from disclosure "unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)), defines "private information" as:

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1E-mail from Sean Muserallo to FOIA, [Rockford School District 205] (December 16, 2015).

2In its response, the District did not re-assert section 7(1)(q) of FOIA, which exempts from disclosure "[t]est questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment." As such, this office does not address this exemption, but also notes that it applies to an "applicant," not to a current employee.
unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added.)

The District asserted section 7(1)(b) of FOIA as a basis to withhold requested drug test results. Under section 2(c-5), "medical records" constitute "private information" that is exempt from disclosure under FOIA. A "medical record" is defined as "a record of a patient's medical information (as medical history, care or treatments received, test results, diagnoses, and medications taken)[."

Merriam-Webster Online Medical Dictionary, http://www.merriam-webster.com/medical/medical%20record (last visited April 27, 2016). Therefore, the laboratory test results are "medical records" as defined by FOIA. Accordingly, the District properly withheld the laboratory test results under section 7(1)(b) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA allows a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." (Emphasis added.)

In the Exemption Log as well as the response to this office, the District asserted that e-mails related to drug testing results as well as interviews with the employees arising out of the allegations of drug use are exempt "personal information." In support of this assertion, the District primarily contends that the employees had resigned by the time of Mr. Muserallo's FOIA request and therefore the information is not related to their public duties. This office disagrees with this contention. The individuals were still employed by the District at the time of their tests and the testing borne on whether they would continue to be employed by the District. Therefore, the disclosure of this information relating to their public duties is not an invasion of personal privacy. Accordingly, this office concludes that the District has not sustained its burden of demonstrating that the e-mails and interviews related to drug testing are exempt from disclosure pursuant to section 7(1)(c) of FOIA.
Section 7(1)(m) of FOIA

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

In the Exemption Log, the District asserted that three e-mails sent or received by the District's General Counsel were exempt under section 7(1)(m). In its response to this office, the District appears to more broadly assert that all the withheld records are exempt because they:

are all documents related to the seeking of legal advice from the District's attorney Lori Hoadley, and were all made in confidence, by the client District. The District relied on attorney Hoadley's counsel throughout the process related to the disciplinary event that is the focus of Mr. Muserallo's request. As such, all correspondence and reports with and provided to Attorney Hoadley are exempt from disclosure to the public. 3

Section 7(1)(m) of FOIA exempts from disclosure communications covered by the attorney-client privilege. The attorney-client privilege applies to communications:

(1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are permanently protected, (7) from disclosure by himself or the legal advisor, (8) except the protection be waived. Illinois Education Association v. Illinois State Board of Education, 204 Ill. 2d 456, 467 (2003).

3Letter from Thomas J. Lester, Hinshaw & Culbertson LLP, to Neil P. Olson, Office of the Attorney General, Public Access Bureau (February 1, 2016), at 3.
Mr. Sean Muserallo  
Mr. Thomas J. Lester  
May 11, 2016  
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See also In re General Instrument Corp. Securities Litigation, 190 F.R.D. 527, 531 (N.D. Ill., 2000), quoting U.S. v. Evans, 113 F.3d 1457, 1461 (7th Cir. 1997) ("To be privileged, the documents must not only exhibit attorney involvement, but must involve 'a legal adviser acting in his capacity as such."). The section 7(1)(m) exemption must be narrowly construed to promote transparency "notwithstanding the countervailing policy favoring confidentiality between attorneys and clients." Illinois Education Association, 204 Ill. 2d at 470. A public body that withholds records under section 7(1)(m) must provide a supporting factual basis for the application of the exemption, including "some objective indicia that the exemption is applicable under the circumstances." (Emphasis in original.) Illinois Education Association, 204 Ill. 2d at 470.

After examining the records provided for our confidential review, this office concludes that the District has demonstrated that certain records are privileged communications, thus would not be subject to discovery in litigation, and fall within the scope of section 7(1)(m). Specifically, these records are: a September 15, 2015, e-mail chain between the General Counsel and District employees; an investigative report addressed to the General Counsel dated September 16, 2015; a September 18, 2015, e-mail between the General Counsel and Director of Security; and, an investigative report addressed to the General Counsel dated November 12, 2015. The District has not demonstrated that the exemption is applicable to other records, even if those records were provided to an attorney at some point, because the records do not indicate the kind of attorney involvement required for the attorney-client privilege to apply. Accordingly, this office concludes that the District has not sustained its burden of demonstrating that all the withheld records are exempt under section 7(1)(m) of FOIA.

Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption is equivalent to the deliberative process exemption in the federal FOIA (5 U.S.C. §552(b)(5) (2012)), which applies to "inter- and intra-agency predecisional and deliberative material." Harwood v. McDonough, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." Harwood, 344 Ill. App. 3d at 248. That exemption "typically does not justify the withholding of purely factual material." Enviro Tech Intern., Inc. v. United States Environmental Protection Agency, 371 F.3d 370, 374 (7th Cir. 2004). However, the federal courts have construed the scope of the deliberative process exemption to cover factual information that is so "inextricably connected to the deliberative material that disclosure of the factual material would reveal the agency’s decision-making..."
processes." Nadler v. Dept. of Justice, 955 F.2d 1479, 1491 (11th Cir. 1992); Ryan v. Dept. of Justice, 617 F.2d 781, 791 (D.C. Cir. 1980); see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 17451, issued April 10, 2012, at 4 (Because factual data was part of the deliberative process in inspection reports containing opinions and recommendations about inspected levees, the data was exempt from disclosure under section 7(1)(f)). 4 "[T]he critical question is whether disclosure of the materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." Chemical Weapons Working Group v. U.S. E.P.A., 185 F.R.D. 1, 3 (D.D.C. 1999) (quoting Dudman Communications v. Department of the Air Force, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

The District has generally asserted, both in the Exemption Log and in its response to this office, that all the withheld records are exempt from disclosure under section 7(1)(f): "All of the fact-finding of the investigation and interviews, drug testing, and email discussions related thereto, are all inextricably intertwined with the District's decision-making process." This office disagrees, and the analysis of each type of record withheld under section 7(1)(f) follows.

One set of records asserted to be exempt under 7(1)(f) are e-mails between the Director of Security for the District and the Middle School Principal on September 4, 2015, which included four photographs. However, these records are essentially factual and the District has not demonstrated how those communications are connected to the decision-making process. Likewise, the District has asserted that the Human Resource Director's notes of interviews with the involved employees are exempt, but those records also are factual accounts of those interviews and do not contain recommendations or opinions. Therefore, disclosure of these types of records containing factual material would not expose the District's decision-making process in such a way as to discourage candid discussion about the decision.

In addition, the District asserted that the four letters to the involved employees notifying them about their investigatory interviews are exempt. However, these communications to the affected employees, as opposed to District employees involved in the decision-making process, cannot be characterized as "inter- and intra-agency predecisional and deliberative material." Similarly, a September 22, 2015, e-mail from the District's General Counsel to a union representative, the Vice-President of the Rockford Educational Association, as well an e-

4Because Illinois's FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. Margolis v. Director, Ill. Department of Revenue, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

mail exchange on October 6, 2015 between the General Counsel and that same union representative, do not reflect communications among District employees. Therefore, these communications to third parties do not fall within the scope of section 7(1)(f).

Other records do not reveal any of the decision-making process because they are merely e-mails without any substantive content that transmitted other documents. These records are September 16, 2015, October 16, 2015, November 12, 2015, e-mails sent to the District’s General Counsel.

Accordingly, this office concludes that the District has not sustained its burden of demonstrating that all the withheld records are exempt under section 7(1)(f) of FOIA. Certain other records, which are exempt under section 7(1)(m) as described above, may also be withheld under section 7(1)(f).

Section 7(1)(n) of FOIA

Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." The Attorney General has issued a binding opinion that construed section 7(1)(n) to apply to "only records relating to the public body's adjudication of a disciplinary case or an employee grievance." III. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013, at 6. (Emphasis in original.) Records generated independently of an adjudication, such as a public body's internal investigation into an allegation of misconduct, do not relate to a public body's adjudication of a disciplinary case; such records fall outside the scope of section 7(1)(n). III. Att'y Gen. Pub. Acc. Op. No. 13-011, at 6; see also III. Att'y Gen. Pub. Acc. Op. No. 14-002, issued April 15, 2014, at 7 (legal invoices not exempt under 7(1)(n) because they existed independently of any possible future adjudication).

The Illinois Appellate Court construed section 7(1)(n) in the same manner in Kalven v. City of Chicago, 2014 IL App (1st) 121846, 7 N.E.3d 741 (2014). In that case, the Chicago Police Department (CPD) asserted 7(1)(n) to withhold complaint register (CR) files, which are CPD’s records of investigations into complaints made by citizens against police officers. Kalven, 2014 IL App (1st) 121846, ¶3, 7 N.E.3d at 743. CR files consist of the complaint itself and documents created during the investigation of the complaint. Kalven, 2014 IL App (1st) 121846, ¶3, 7 N.E.3d at 743. Analyzing the language of section 7(1)(n), the court noted that an "adjudication" involves a formalized legal process that results in a final and enforceable decision. Kalven, 2014 IL App (1st) 121846, ¶13, 7 N.E.3d at 745. In contrast, the court found that CR files are "part of an investigatory process that is separate and distinct from disciplinary adjudications." Kalven, 2014 IL App (1st) 121846, ¶14, 7 N.E.3d at 745. Therefore,
the court held that investigatory files such as CRs cannot be withheld under section 7(1)(n). 
_Kalven, 2014 IL App (1st) 121846, ¶22, 7 N.E.3d at 747._

The District contends that it "had initiated formal disciplinary proceedings in connection with this matter, as evidenced by the written notices, provided to the Bureau based on its request for the 'withheld responsive records,' dated September 14, 2015, addressed to Whitney Mayes (Giardini), Jennifer Johansson, and Elizabeth Heinrichs. Those employees were aware that disciplinary proceedings were being considered against them." We have reviewed those letters, and they are more fairly read as a notice of an investigatory interview rather than notice of a formal process. In fact, the District described the letters as regarding "scheduling of investigatory/disciplinary meeting" in the Exemption Log. As such, the notices appear to relate to what is often described as a _Loudermill_ hearing rather than an adjudication as required under section 7(1)(n). In addition, the employees resigned, and there was no adjudication of the charges against them. Therefore, there was no formalized legal process that resulted in a final and enforceable decision. Accordingly, this office concludes that the District improperly asserted section 7(1)(n) of FOIA as a basis to withhold records.

In accordance with the conclusions above, this office requests that the District disclose additional responsive records to Mr. Muserallo. This office will make available a list of those records to be disclosed if that will assist the District. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at nolson@atg.state.il.us or (217) 782-9078.

Very truly yours,

[Signature]

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

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6Letter from Thomas J. Lester, Hinshaw & Culbertson LLP, to Neil P. Olson, Office of the Attorney General, Public Access Bureau (February 1, 2016), at 3.

7In _Cleveland Bd. of Educ. v. Loudermill_, 470 U.S. 532, 546 (1985), the United States Supreme Court held that a public employee is "entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story", prior to termination, although this process is not a full adversarial evidentiary hearing.
March 1, 2013

Via electronic and U.S. mail

Mr. Mark Horstmeyer
Freedom of Information Officer
Moraine Valley Community College
9000 West College Parkway
Palos Hills, Illinois 60465-2478

RE: FOIA Request for Review – 2013 PAC 23275

Dear [redacted] and Mr. Horstmeyer:

The Public Access Counselor has received a Request for Review, pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2011 Supp.)), of the response by Moraine Valley Community College (College) to a FOIA request submitted by [redacted] on January 9, 2013.

In his request, [redacted] sought copies of the following:

1.) List or other documentation of all persons who are employees of the Moraine Valley Community College who were paid more than $1,000 during calendar year 2012. This list should include the name of the employee, the compensation paid in 2012, the street address of the employee, and the city/village with zip code of the employee's address.

2.) List or other documentation of all independent contractors and vendors (collectively the "contractors") doing business with Moraine Valley Community College who were paid more than $1,000 during calendar year 2012. This list should include the name of the contractor, the compensation paid in
2012, the type of work, product, or services of that contractor, the street address of the contractor, and the city/village with zip code of the contractor's address.

3.) Copies of all bills, statements, invoices or other documents pertaining to the reimbursement of any Board members during 2012 for any expenses or other payments made to them.\(^1\)

On January 18, 2013, the College provided [REDACTED] with records responsive to portions two and three of the request but partially denied the first.\(^2\) The College provided a list of the names of all employees and the amount paid to them in 2012 but did not include home addresses pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2011 Supp.), as amended by Public Acts 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012; 97-847, effective September 22, 2012). Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) (5 ILCS 140/2(c-5) (West 2011 Supp.)) defines "private information" as unique identifiers, including "home addresses[.]" Thus, home addresses are exempt under 7(1)(b) of FOIA unless another law requires disclosure.

In his Request for Review, [REDACTED] asserts that he only seeks the city and zip code information for each employee in order to analyze where employees of the College live. While section 2(c-5) of FOIA does not list a home zip code as a unique identifier, this office has previously determined that a public body may withhold a person's home zip code under section 7(1)(b) if the name of that person has been released to the requester. A simple cross-reference of the town and zip code with other commonly available resources such as the phone book, property assessments, or the Internet could ultimately lead to the disclosure of the home address of an individual. See Ill. Att'y Gen PAC Req. Rev. Ltr. 8615, issued November 19, 2010, at 2, and Ill. Att'y Gen PAC Req. Rev. Ltr. 9808, issued February 10, 2011, at 2. Therefore, the College properly withheld the city and home zip code information pursuant to section 7(1)(b) of FOIA. For this reason, we have determined that no further action is warranted in this matter.

Finally, this office reminds the College of its obligation pursuant to section 9(a) of FOIA (5 ILCS 140/9(a) (West 2010), which requires the College to inform requesters of their "right to review by the Public Access Counselor" and their "right to judicial review under Section 11 of this Act" when denied requested records.

\(^1\) FOIA request submitted by [REDACTED] to Moraine Valley Community College (January 9, 2013).

\(^2\) Response from Mark Horstmeyer, FOIA Officer, Moraine Valley Community College, to [REDACTED] (January 18, 2013).
If you have any questions, please contact me at (217) 785-7438 or at the Springfield address below. This letter shall serve to close this matter.

Very truly yours,

CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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PUBLIC ACCESS OPINION 14-015
(Request for Review 2014 PAC 30785)

FREEDOM OF INFORMATION ACT:
Disclosure of Résumé and Job Application
of Public Employee

Mr. William Buell
2753 39th Avenue
Columbus, Nebraska 68601

Mr. Mark Swenson
Management Analyst
Village of Winnetka
510 Green Bay Road
Winnetka, Illinois 60093

Dear Mr. Buell and Mr. Swenson:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f)
of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons
discussed below, this office concludes that the Village of Winnetka (Village) violated
the requirements of FOIA by denying in its entirety Mr. William Buell’s request for a copy of the
résumé and employment application of a Village employee.

BACKGROUND

Mr. Buell submitted an undated FOIA request to the Village seeking “a copy of
the completed employment application and resume for Mr. James J. Bernahl for the position of
Assistant Director of Public Works & Engineering[.]” In a letter dated August 12, 2014, the

1FOIA request submitted by William Buell to Village of Winnetka (undated).
Village denied that request citing section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014), which exempts "personal information" from disclosure, and section 7.5(q) of FOIA (5 ILCS 140/7.5(q) (West 2013 Supp.), as amended by Public Act 98-756, effective July 16, 2014), which exempts from inspection and copying "[i]nformation prohibited from being disclosed by the Personnel Record[ ] Review Act." On August 13, 2014, the Public Access Bureau received Mr. Buell's Request for Review of the denial of his FOIA request, in which he also expressed his concern that Mr. Bernahl's "hir[ing] may have been in violation of State of Illinois - 65 ILCS 5/5-3-7(2) and 330 ILCS 55/1 (from Ch. 126 ½, par. 23)[.]"

On August 18, 2014, the Public Access Bureau sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of the records it withheld for this office's confidential review, together with a detailed explanation of the factual and legal bases for its assertion that those records are exempt from disclosure under sections 7(1)(c) and 7.5(q) of FOIA. The Village furnished the requested materials on August 29, 2014, and asserted in its response that the records are exempt from disclosure pursuant to section 7(1)(c) of FOIA. The Village's response did not include a discussion of the applicability of section 7.5(q), but did assert that the records are also exempt from disclosure in their entireties pursuant to sections 7(1)(f) and 7(1)(b) of FOIA (5 ILCS 140/7(1)(f), 7(1)(b) (West 2013 Supp.), as amended by

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2The letter from the Village references "Section 7.1(c) of the Act[.]" Because section 7.1 of FOIA (5 ILCS 140/7.1 (West 2008)) has been repealed (see Public Act 96-542, effective January 1, 2010), we have assumed that the reference in the letter is to section 7(1)(c) of FOIA. See Letter from Mark Swenson, Management Analyst, Village of Winnetka, to William Buell (August 12, 2014).


4E-mail from William Buell to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 13, 2014).


On September 2, 2014, this office sent a copy of the Village's response to Mr. Buell.  

On October 10, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA (5 ILCS 140/9.5(f)) (West 2012)).  

**ANALYSIS**

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act."

**Section 7(1)(c) of FOIA**

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." FOIA defines an "unwarranted invasion of personal privacy" as:

the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's

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right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. (Emphasis added.) 5 ILCS 140/7(1)(c) (West 2013 Supp.) as amended by Public Act 98-756, effective July 16, 2014.

In response to the Public Access Bureau, the Village argued that because the employment history and other information in Mr. Bernahl's résumé and employment application "do not pertain to the public duties of public employees and are 'properly contained within a personnel file ... [they] fare per se exempt from disclosure" under FOIA.10 (Emphasis in original.) In support of that argument, the Village cited several cases (see Gekas v. Williamson, 393 Ill. App. 3d 573, 583 (4th Dist. 2009); Stern v. Wheaton-Warrenville Community Unit School District 200, 233 Ill. 2d 396 (2009); Copley Press, Inc. v. Board of Education for Peoria School District No. 150, 359 Ill. App. 3d 321 (3rd Dist. 2005)), which interpreted an earlier version of the personal privacy exemption. Prior to January 1, 2010, the personal privacy exemption was found in section 7(1)(b) of FOIA (see 5 ILCS 140/7(1)(b) (West 2008)) and exempted from disclosure:

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

* * *

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions. (Emphasis added.)

In analyzing the personal privacy exemption found in section 7(1)(b) prior to January 1, 2010, appellate court districts reached different conclusions regarding whether information falling within a specific statutory category, such as 7(1)(b)(ii), was exempt per se from disclosure, or whether a court was nonetheless required to analyze whether disclosure would amount to a clearly unwarranted invasion of personal privacy by balancing: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of alternative means of obtaining the requested information. In Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 408 (1997), the Illinois Supreme Court concluded that the disclosure of records falling within one of the categories in section 7(1)(b) would presumptively result in an unwarranted invasion of personal privacy. Accordingly, under Lieber, records contained in a public body's personnel files were considered per se exempt from disclosure and no balancing of interests was required.

The Village's reliance on Copley Press, Gekas, and Stern to deny Mr. Buell's FOIA request is misplaced, however. Subsequent to these decisions, the General Assembly enacted Public Act 96-542, effective January 1, 2010, amending FOIA and, among other things, replacing former section 7(1)(b) with current section 7(1)(c), which addresses disclosure of information that would constitute a clearly unwarranted invasion of personal privacy. Under section 7(1)(c), records are no longer exempted simply because they are maintained in a personnel file. Rather, a public body is obligated to release records containing personal information regarding its officers and employees unless it determines that "the subject's right to privacy outweighs any legitimate public interest in obtaining the information." In other words, the General Assembly has replaced the per se exemptions with a balancing test requiring a public body to balance the privacy rights of an employee and the interests of the public in obtaining information concerning the employee. In balancing these interests, "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

The courts in Copley Press, Gekas, and Stern did not directly address whether information contained in a public employee's résumé and job application bears on his or her public duties. Although the court in Copley Press held that records properly placed in a "personnel file" were per se exempt, and that "[g]iven its plain and ordinary meaning, a 'personnel file' can reasonably be expected to include documents such as a resume or application," the Supreme Court in Stern emphasized that Copley provided little guidance because the appellate court did not "consider whether a document, even if normally maintained in a personnel file, is subject to disclosure because it bears on the public employee's public
duties." *Stern*, 233 Ill. 2d at 409; see also *Gekas*, 393 Ill. App. 3d at 589 (stating that *Copley Press* was distinguishable because it did not involve a "claim by the requester that the information related to a public employer's public duties."). Notably, the court in *Gekas* held that because complaints against a police officer do bear on the officer's public duties, those records were not exempt from disclosure pursuant to former section 7(1)(b). In *Stern*, the Court reached a similar conclusion with respect to the disclosure of a school superintendent's employment contract.

The Village also cited *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, 994 N.E.2d 705 (2013). There, the court considered, among other things, whether records of the "coaches' election for the disbursement of [compensation for] accrued vacation, sick leave, and related documents[ ]" contained in their personnel files were exempt from disclosure pursuant to section 7(1)(c) of FOIA. *State Journal-Register, 2013 IL App (4th) 120881, ¶41, 994 N.E.2d at 716.* The court held that the exemption applied to those records because they were unrelated to the coaches' "alleged misdeeds or public duties. Instead, we conclude this information is of a highly personal nature, contained appropriately in a personnel file, and exempt from disclosure." *State Journal-Register, 2013 IL App (4th) 120881, ¶41, 994 N.E.2d at 716.* The court's decision, however, was limited to the specific records at issue in that case, which were unrelated to the résumé and employment application which Mr. Buell sought.

With regard to whether the resume and employment application "bear on the public duties of a public employee" for purposes of section 7(1)(c), the Village contends that these records "contain personal, historical information about Mr. Bernahl, not information about Mr. Bernahl's current duties and responsibilities as a Village employee or his performance of those duties."11 The Village interprets this phrase too narrowly. The records in question detail the education, training, and experience that qualify Mr. Bernahl to serve as Assistant Director of Public Works and Engineering and which presumably were considered in determining his eligibility for that position in the first instance. Moreover, these are all factors that "bear on" his ability to perform his public duties satisfactorily.

Even assuming that Mr. Bernahl's résumé and application do not bear on his public duties for purposes of section 7(1)(c), the Village has not sustained its burden of demonstrating by clear and convincing evidence that the exemption is applicable. As previously

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Mr. William Buell
Mr. Mark Swenson
November 25, 2014
Page 7

noted, the resolution of a personal privacy exemption claim under section 7(1)(c) requires the balancing of the public's interest in disclosure of specific information against the individual's interest in privacy. See Gibson v. Illinois State Board of Education, 289 Ill. App. 3d 12, 20-21 (1st Dist. 1997). Therefore, to determine whether section 7(1)(c) of FOIA exempts from disclosure the résumé and application of a public employee, the interests of the public in accessing that information must be balanced against the employee's interest in limiting public dissemination of the information. This determination is made by considering and weighing four factors: "(1) the [requester's] interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." National Ass'n of Criminal Defense Lawyers v. Chicago Police Department, 399 Ill. App. 3d 1, 13 (1st Dist. 2010). The exemption is applicable only if the individual's privacy interests outweigh the interests of the public in disclosure. In balancing these interests, the General Assembly's use of the phrase "clearly unwarranted invasion of personal privacy" evinces a "stricter standard to claim exemption" which the government agency possessing the records bears the burden of sustaining. (Emphasis in original.) Schessler v. Department of Conservation, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Mr. Buell's stated interest in disclosure is to determine whether Mr. Bernahl's hiring complied with State laws that require municipal managers to make appointments based on "merit and fitness" (65 ILCS 5/5-3-7 (West 2012)) and that give preference to veterans of the armed forces (330 ILCS 55/0.01 et seq. (West 2012)). Mr. Buell and the general public have an interest in accessing information that demonstrates that the hiring of public employees complies with State law. Further, there is a compelling public interest in disclosure of a public employee's credentials to enable the public to assess the employee's qualifications to perform his or her public duties.

In Core v. United States Postal Service, 730 F.2d 946 (4th Cir. 1984), a federal appeals court considered whether the disclosure of the work experience of five successful applicants for public employment would constitute an unwarranted invasion of personal privacy under Exemption 6 of the federal FOIA (5 U.S.C. § 552(b)(6) (1982)). The requester sought the employees' education and work experience because he believed that "the Service had violated hiring regulations." Core, 730 F.2d at 947. The Postal Service provided the educational qualifications, but asserted that disclosure of the work experience would "result in a clearly unwarranted invasion of privacy because it was inextricably interwoven with the textual

12That exemption applies to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) (1982).
summary of the applications and was so detailed that individual applicants could be identified even if their names were removed from the applications." *Core*, 730 F.2d at 947. The court rejected that argument, stating:

The information they furnished is not derogatory. It is simply the type of information every applicant seeks to bring to the attention of a prospective employer. In short, disclosure of information submitted by the five successful applicants would cause but a slight infringement of their privacy. In contrast, the public has an interest in the competence of people the Service employs and in its adherence to regulations governing hiring. Disclosure will promote these interests. *Core*, 730 F.2d at 948.

See also *Kureczka v. Freedom of Information Commission*, 228 Conn. 271, 280, 636 A.2d 777, 782 (Conn. 1994) (affirming administrative agency's determination that disclosure of employment applications would not constitute an unwarranted invasion of the applicants' privacy rights); *State ex rel. The Plain Dealer Publishing Co. v. Cleveland*, 75 Ohio St. 3d 31, 36, 661 N.E.2d 187, 192 (Ohio 1996), quoting *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1324 (Alaska 1982) ("Disclosing the names and applications of applicants allows interested members of the public, such as the newspapers here, to verify the accuracy of the representations made by the applicants and to seek additional information which may be relevant to the selection process.").

With respect to the third factor, while the records contain personal information concerning Mr. Bernahl's education, training, skills, certifications, awards, employment, salary history, career objectives, and personal references, that information is presented in a favorable manner and is not embarrassing or potentially damaging to Mr. Bernahl's reputation. Moreover, the salary information in the employment application reflects payments of public funds that Mr. Bernahl received exclusively for employment in the public sector. Such information is expressly subject to disclosure pursuant to section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)), which provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." Similarly, the references listed by Mr. Bernahl are public employees, therefore those names may not be withheld under 7(1)(c).
Finally, it is unclear whether some or all of this information could be obtained from other sources, in particular other public entities that previously employed Mr. Bernahl. However, because the Village is Mr. Bernahl’s current employer, it appears likely that the information he provided to the Village is more complete and up to date than similar information that he may have provided to previous employers. Further, obtaining this information could require Mr. Buell to make application to several sources. Taking all of these factors into account, this office concludes the public interest in disclosure of Mr. Bernahl’s résumé and employment application outweighs Mr. Bernahl’s privacy interests therein. Accordingly, the Village has not sustained its burden of demonstrating that these records are exempt from disclosure in their entireties pursuant to section 7(1)(c) of FOIA.

Section 7.5(q) of FOIA

The Village’s responses to the FOIA request and to this office’s inquiry letter do not provide a factual or legal basis for its assertion of section 7.5(q) of FOIA. Section 7.5(q) of FOIA exempts from disclosure “[i]nformation prohibited from being disclosed by the Personnel Record Review Act.” Section 11 of the Personnel Record Review Act (820 ILCS 40/11 (West 2012)) provides that “[t]his Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.” (Emphasis added.) Although section 8 of the Personnel Record Review Act (820 ILCS 40/8 (West 2012)) directs an employer to delete "disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old" prior to releasing personnel record information, the Act does not prohibit the disclosure of any records other than performance evaluations. No provision of the Personnel Record Review Act prohibits a public body from disclosing résumés or employment applications. Accordingly, this office concludes that the Village has not sustained its burden of demonstrating that the records are exempt from disclosure pursuant to section 7.5(q) of FOIA.

Section 7(1)(f) of FOIA

The Village’s response to this office also asserted that Mr. Bernahl’s résumé and employment application were properly withheld pursuant to section 7(1)(f) of FOIA, which exempts from inspection and copying “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.” The section 7(1)(f)
exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made" (*Harwood*, 344 Ill. App. 3d at 248), and is "the equivalent of the 'deliberative process' exemption found in section 552(b)(5) of the federal Freedom of Information Act, which exempts from disclosure interagency and intra-agency predecisional and deliberative material." *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶14, 994 N.E.2d 573, 578 (2013). That exemption "typically does not justify the withholding of purely factual material." *Envirotex Intern., Inc. v. United States Environmental Protection Agency*, 371 F.3d 370, 374 (7th Cir. 2004). Rather, "[o]nly those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld." *Kalven v. City of Chicago*, 2013 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 748 (2013), quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010).

The Village's response to this office contends that Mr. Bernahl's résumé and employment application fall within the scope of section 7(1)(f) because he provided them to the Village "for the sole purpose of assisting the Village" in its selection of an Assistant Director of Public Works and Engineering and because they were considered by the Village in its deliberative process.15 However, the records contain exclusively factual information concerning Mr. Bernahl's background and qualifications for employment. Further, this factual information is not part of a pre-decisional document that reflects the give and take of the Village's hiring process. Because the employment application and résumé are factual records, this office concludes that the Village has not sustained its burden of demonstrating that all or part of those records are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

**Section 7(1)(b) of FOIA**

Finally, the Village asserts that the records in question "contain many unique personal identifiers of Mr. Bernahl, including Mr. Bernahl's personal home address, home phone number, mobile phone number, personal e-mail address, and signature[,]" which are exempt

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from disclosure pursuant to section 7(1)(b) of FOIA. That exemption applies to "private information," which FOIA defines as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. 5 ILCS 140/2(c-5) (West 2012).

"When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under [section 7], but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." 5 ILCS 140/7(1) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014.) Accordingly, the Village may properly redact the information listed in the above definition, as well as Mr. Bernahl's signature, which uniquely identifies him and therefore constitutes "private information" that is exempt from disclosure pursuant to section 7(1)(b) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) Mr. William Buell submitted an undated FOIA request to the Village of Winnetka seeking Mr. James J. Bernahl's employment application and résumé submitted for the position of Assistant Director of Public Works and Engineering.

2) On August 12, 2014, the Village denied Mr. Buell's request citing as its basis sections 7(1)(c) and 7.5(q) of FOIA.

3) On August 13, 2014, the Public Access Bureau received Mr. Buell's Request for Review of the denial of his request in which he also questioned whether Mr. Bernahl's hiring violated provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1 et seq. (West 2012)) and the Veterans Preference Act (330 ILCS 55/0.01 et seq. (West 2012)).

4) On August 18, 2014, the Public Access Bureau sent a copy of the Request for Review to the Village and asked it to provide copies of the records it had withheld for this office's confidential review, together with a detailed explanation of the factual and legal bases for its assertion that those records are exempt from disclosure under sections 7(1)(c) and 7.5(q) of FOIA.

5) On August 29, 2014, the Village furnished copies of the records and its response. In its response, the Village argued that the records are exempt from disclosure in their entities pursuant to sections 7(1)(c) and 7(1)(f), and that portions of the records are exempt under section 7(1)(b). The Village did not, however, provide a discussion of its reasons for asserting section 7.5(q).

6) On October 10, 2014, the Public Access Bureau properly extended the time in which to issue a binding opinion pursuant to section 9.5(f) of FOIA, to November 25, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Because Mr. Bernahl's employment application and résumé bear on his public duties as the Village's Assistant Director of Public Works and Engineering, those records are not exempt from disclosure under section 7(1)(c) of FOIA.

8) Further, there is a compelling public interest in the disclosure of a public employee's credentials in order to assess his or her qualifications for public employment and to determine whether the hiring complied with applicable laws or rules and regulations. That public interest outweighs a public employee's right to privacy of the information contained in his or her employment application and résumé. Therefore, Mr. Bernahl's employment application and résumé are not exempt from disclosure in their entities under section 7(1)(c) of FOIA.

9) No provision of the Personnel Record Review Act prohibits a public body from disclosing an employment application or résumé.
10) Mr. Bernahl's employment application and résumé consist entirely of factual information and that factual information is not part of a pre-decisional document that reflects the give and take of the Village's hiring process. As a result, the records are not exempt from disclosure pursuant to section 7(1)(f) of FOIA.

11) Pursuant to section 7(1)(b) of FOIA, the Village may properly redact Mr. Bernahl’s signature from the employment application and résumé, as well as “private information” under the definition of that term in section 2(c-5) of FOIA.

Therefore, it is the opinion of the Attorney General that the Village has improperly denied, in part, Mr. Buell's Freedom of Information Act request in violation of the requirements of the Act. Accordingly, the Village is hereby directed to take immediate action to comply with this opinion by providing Mr. Buell with Mr. Bernahl's employment application and résumé, subject to permissible redactions pursuant to section 7(1)(b) of FOIA.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 et seq. (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. William Buell as defendants. See 5 ILCS 140/11.5 (West 2012).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By: [Redacted]
Michael J. Luke
Counsel to the Attorney General

cc: Mr. Peter Friedman
Holland & Knight
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS  

Lisa Madigan  
ATTORNEY GENERAL  

June 27, 2016  

Via electronic mail  
Mr. Stephen E. Eberhardt  
16710 Oak Park Avenue  
Tinley Park, Illinois 60477  
s-eberhardt@sbcglobal.net  

Via electronic mail  
Mr. Arthur Pierce  
FOIA Officer  
Village of Tinley Park  
16250 South Oak Park Avenue  
Tinley Park, Illinois 60477  
apierce@tinleypark.org  

RE: FOIA Request for Review – 2013 PAC 22902  

Dear Mr. Eberhardt and Mr. Pierce:  

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the Village of Tinley Park (Village) did not sustain its burden of demonstrating by clear and convincing evidence that the telephone numbers it redacted in response to Ms. Gloria Villanueva's FOIA request are exempt from disclosure. 

On November 12, 2012, Ms. Gloria Villanueva, on behalf of Citizens to Elect Eberhardt and Weigand, submitted a six-part FOIA request to the Village; part B sought telephone records for certain Village-issued cellular telephones (cell phones) from October 29, 2012, to November 7, 2012. On November 30, 2012, the Village provided Ms. Villanueva – Mr. Stephen E. Eberhardt's wife – with responsive cell phone records but redacted certain phone numbers as well as call dates, times, and locations under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2012)). On December 3, 2012, after Mr. Eberhardt contacted the Village with concerns about its response, the Village provided Mr. Eberhardt with "corrected" cell phone
Mr. Stephen E. Eberhardt  
Mr. Arthur Pierce  
June 27, 2016  
Page 2  

records in which no call dates, times, or locations were redacted.\textsuperscript{1} In his Request for Review, submitted January 13, 2013, Mr. Eberhardt alleged that the Village improperly redacted certain phone numbers and failed to exercise sufficient oversight when it asked employees to redact their own phone records. He noted multiple instances in which a Village employee or official redacted the cell phone number of another Village employee or official.

On January 23, 2013, the Public Access Bureau forwarded a copy of Mr. Eberhardt's Request for Review to the Village and asked it to provide this office with unredacted copies of the responsive records for our confidential review, together with an explanation for its partial denial of the request. On January 31, 2013, this office received those records and the Village's written response. On February 20, 2013, Mr. Eberhardt submitted a reply.

\textbf{DETERMINATION}

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

\textbf{Section 7(1)(b) of FOIA}

Section 7(1)(b) of FOIA exempts from disclosure "private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." The definition of "private information" includes "home or personal telephone numbers." \textit{See} 5 ILCS 140/2(c-5) (West 2012).

In its response to this office, the Village explained that the request encompassed 39 phone numbers, 35 of which were assigned to specific employees and 4 of which were assigned to various positions in the Public Works Department. The Village stated that each employee was asked to review his or her portion of the phone bill and redact any home or personal phone numbers; the Village's FOIA Officer/Deputy Clerk did not review those redactions before transmitting the redacted records to Ms. Villanueva because "she did not know which phone numbers were personal phone numbers and which were not on any given portion of the phone bill. Only the employee who made or received the calls, and presumably recognized the numbers, could tell which phone numbers were personal and which were not."\textsuperscript{2} In reply, Mr.

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\textsuperscript{1}E-mail from Laura Godette, Deputy Clerk, Village of Tinley Park, to Steve [Eberhardt] (December 3, 2012).
\textsuperscript{2}Letter from Klein, Thorpe and Jenkins, Ltd., by Thomas M. Melody, to Matthew M. Sebek, Assistant Attorney General, Public Access Bureau (January 31, 2013), at 2.
\end{flushright}
Eberhardt argued that the names of the parties whose numbers were redacted must be disclosed in order to verify whether the redactions were proper.

This office compared the "corrected" records provided to Ms. Villanueva with the unredacted copies of those records and found that the Village redacted multiple Village cell phone numbers. Numbers for Village-issued cell phones do not constitute "home or personal telephone numbers" within the scope of section 7(1)(b). See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 37999, issued May 31, 2016, at 4 (cell phone numbers issued by public bodies are not exempt from disclosure, nor are other business phone numbers). Accordingly, the Village improperly redacted non-exempt numbers responsive to Mr. Eberhardt's request.

As a practical matter, no one but the employee or official whose phone records are at issue may have knowledge of whether certain phone numbers are home or personal numbers. Accordingly, when a public body seeks to redact home or personal phone numbers from requested phone records, it is incumbent on the public body's FOIA officer to direct each employee and official whose phone records are at issue to identify only home and personal phone numbers for redaction, explaining that business cell phone numbers do not qualify. Asking the employees and officials to inform the FOIA officer about the nature of the numbers they have identified for redaction (i.e., spouse's cell phone, friend's cell phone, constituent's home number, etc.) may assist the public body in meeting its burden of demonstrating by clear and convincing evidence that the numbers fall within the scope of section 7(1)(b).

In this instance, the Village did not provide this office with evidence sufficient to conclude that any of the numbers the Village redacted are exempt from disclosure. Therefore, this office asks the Village to issue a supplemental response to Mr. Eberhardt disclosing unredacted copies of the responsive phone records.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

JOSH JONES
Supervising Attorney
Public Access Bureau

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Mr. Stephen E. Eberhardt
Mr. Arthur Pierce
June 27, 2016
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cc: Via electronic mail
Mr. Thomas M. Melody
Klein, Thorpe and Jenkins, Limited
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
tmmelody@ktjlaw.com
March 26, 2014

Via Electronic Mail
Ms. Cheryl Williams
Vice President/Liaison
University Hill Community Council

Ms. Brigett R. Bevan
Freedom of Information Officer
Chicago Transit Authority
567 West Lake Street
Chicago, Illinois 60661-1498

RE: FOIA Request for Review – 2013 PAC 23125

Dear Ms. Williams and Ms. Bevan:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Transit Authority's (CTA) response to Ms. Cheryl Williams' FOIA request complied with the requirements of FOIA with the exception of redactions of e-mails addresses of businesses and organizations.

On January 5, 2013, Ms. Cheryl Williams submitted a FOIA request to the Chicago Transit Authority (CTA) requesting the sign-in list and "recorded documents" from the Red Line South community meeting at Kennedy King College. On January 28, 2013, CTA provided the sign-in list with information redacted pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2012)); CTA also asserted that it did not possess any responsive recorded documents. Ms. Williams' Request for Review disputed that response.

On June 14, 2013, Ms. Bridgett R. Bevan, Freedom of Information Officer for CTA, confirmed by e-mail, with an Assistant Attorney General in the Public Access Bureau, that CTA possesses neither recorded documents, nor any additional records pertaining to the

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FOIA request submitted by Cheryl Williams to Chicago Transit Authority (January 5, 2013).
community meeting. In particular, the response stated that the "community meeting was not a public hearing ***, so there was no recording made of the meeting. As such, there are no 'recorded documents' related to this meeting, which could include, for example, a recording or a transcript of the meeting."²

**DETERMINATION**

The requirements of FOIA apply to public records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2012). CTA has confirmed that it does not possess any recorded documents pertaining to the community meeting because CTA did not record the meeting. This office has not received any facts indicating that CTA does possess such records. Based on the available information, we conclude that CTA's response to Ms. Williams' request for "recorded documents" complied with the requirements of FOIA.

With respect to the sign-in-sheets, section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

> [U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Based on this office's review of the records, the redactions mostly consist of home addresses and personal e-mail addresses that are exempt from disclosure under the plain language of the above definition. However, CTA also appears to have redacted e-mail addresses and street addresses for certain organizations as well as business. Such information does not constitute "private information" within the scope of section 7(1)(b). Ill. Att'y Gen. PAC Req. Rev. Ltr. 19650, issued August 31, 2012, at 3 (a business e-mail address does not constitute private information under section 7(1)(b)). Therefore, we request that CTA provide Ms. Williams with copies of the sign-in sheets that include business and organization e-mail addresses and street addresses.

²E-mail from Brigett R. Bevan, Freedom of Information Officer, Chicago Transit Authority, to Dushyanth Reddivari (June 14, 2013).
Ms. Cheryl Williams
Ms. Brigett R. Bevan
March 26, 2014
Page 3

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-5206. This letter shall serve to close this matter.

Very truly yours,

DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

23125 f 71b ex proper/improper 3d response complete mun
Mr. Joseph F. Lulves  
Assistant State's Attorney  
Office of the Kane County State's Attorney  
Kane County Courthouse  
100 South Third Street, 4th Floor  
Geneva, Illinois 60134  

RE: FOIA Request for Review – 2014 PAC 30238  

Dear [REDACTED] and Mr. Lulves:  

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the Kane County State's Attorney's Office (State's Attorney's Office) improperly redacted and withheld portions of the records responsive to [REDACTED] June 11, 2014, FOIA request.  

On June 11, 2014, [REDACTED] submitted a FOIA request to the State's Attorney's Office seeking records related to three Village of Hampshire Police Department reports: Nos. 11-04208, 12-01594, and 10-02041. On June 25, 2014, the State's Attorney's Office provided responsive records but withheld certain information citing sections 7(1)(a), 7(1)(b), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(d)(iv) (West 2013 Supp.)). Further, with respect to e-mails concerning these investigations, the State's Attorney's Office's response noted that "Assistant State's Attorney [Aimee] Snow left employment with the State's Attorney's Office. We are working with Kane County IT to recover the emails you have requested, and will forward those as soon as we receive them from Kane Count[y] IT."  

forwarded a copy of Request for Review to the State's Attorney's Office and asked for copies of the withheld records for our confidential review together with a detailed explanation of the factual and legal bases for the asserted exemptions.

On August 11, 2014, [redacted] provided this office with a copy of the August 5, 2014, supplemental response by the State's Attorney's Office stating that it would be unduly burdensome to produce the requested e-mails involving Ms. Snow because they are stored on tape recovery systems and retrieving them would not be cost effective. The State's Attorney's Office provided a price listing for a data recovery firm's services and recommended that [redacted] direct his request to the Hampshire Police Department. [redacted] replied by disputing the supplemental response. On August 14, 2014, the State's Attorney's Office responded to this office's July 31, 2014, letter of inquiry, providing copies of both the redacted and unredacted records for our confidential review but declining to further explain the grounds for its partial denial of [redacted] request. [redacted] did not submit a written reply.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012); see also Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

Section 7(1)(a)

Orders to Expunge

The State's Attorney's Office did not produce any records concerning Hampshire Police report No. 10-02041 citing section 7(1)(a) of FOIA, which allows a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law[.]" Specifically, the State's Attorney's Office asserted that "[a]ll information concerning Hampshire Police report #10-02041 is barred from production by court order dated December 19, 2013, which specifically ordered expungement." 1 Additionally, the State's Attorney's Office's August 14, 2014, response to this office stated that an order of expungement had been entered in Kane County Circuit Court Case No. 12-CF-33 and 12-CF-208, which involved Hampshire Police report Nos. 11-04208 and 10-02041.

1Letter from Joseph F. Lulves, Assistant State's Attorney, Office of the Kane County State's Attorney, to [redacted] (June 25, 2014), at 1.
Section 5.2(b)(1) of the Criminal Identification Act (20 ILCS 2630/5.2(b)(1) (West 2013 Supp.)) describes expungement as a process by which "[a] petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest" when certain conditions are satisfied. Pursuant to section 5.2(a)(1)(E) of the Criminal Identification Act (20 ILCS 2630/5.2(a)(1)(E) (West 2013 Supp.)), "[e]xpunge' means to physically destroy the records or return them to the petitioner and to obliterate the petitioner's name from any official index or public record, or both." Further, section 5.2(d)(9)(A)(iii) of the Criminal Identification Act (20 ILCS 2630/5.2(d)(9)(A)(iii) (West 2013 Supp.)) provides that upon entry of an order to expunge, "the court, the Department of State Police, or the agency receiving such inquiry, shall reply as it does in response to inquiries when no records ever existed."

The State's Attorney's Office submitted copies of the orders to expunge the arrest records in case Nos. 12-CF-208 and 12-CF-33 for this office's review. The court's expungement orders restrict the Clerk of the Circuit Court, the Illinois State Police, and the arresting authority from disseminating the underlying arrest records, providing:

"In response to an inquiry for such records from anyone not authorized by law to access such records, the Arresting Authority, the Department of State Police and the Clerk of the Circuit Court receiving such inquiry shall reply as it does in response to inquiries when no records ever existed."

Absent from the expungement orders is any reference to the dissemination of information by the State's Attorney's Office. The orders do not expressly prohibit the State's Attorney's Office from disclosing records relating to the cases pursuant to a FOIA request. Moreover, the orders expressly apply only to arrest records. The State's Attorney's Office declined to provide this office with any explanation for its assertion that all of the records concerning these cases are encompassed by the expungement order. Accordingly, the State's Attorney's Office has failed to sustain its burden of demonstrating by clear and convincing evidence that documents in the possession of the State's Attorney's Office associated with Hampshire Police Report Nos. 10-02041 and 11-04208 are exempt from disclosure under section 7(1)(a) of FOIA.

Report No. 10-02041 (and any information contained in other reports) relating specifically to case No. 12-CF-208, however, concerns a person other than [Redacted]. The court, through the issuance of its expungement order, has determined that those documents are not [Redacted].

2 People v. McCoy, Docket No. 12-CF-208 (Circuit Court, Kane County, December 19, 2013) (order granting expungement, ¶D); People v. [Redacted], Docket No. 12-CF-33 (Circuit Court, Kane County, July 16, 2014) (order granting expungement, ¶D).
should generally be withheld from the public. Although the expungement order does not expressly apply to the State's Attorney, we conclude that under these circumstances, the disclosure of the police report by the State's Attorney's Office would constitute an unwarranted invasion of the subject's personal privacy. Accordingly, the denial of the report would be permissible under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.)), which exempts from disclosure "information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Accordingly, to protect the privacy interests of the subject, we will treat the denial as having been made under section 7(1)(c). Because the report relating to case No. 12-CF-33 (Report No. 11-04208) concerns the requester, its disclosure to the requester would not be precluded by section 7(1)(c).

**Attorney Work Product**

The State's Attorney's Office stated that it redacted internal work product under Illinois Supreme Court Rules 201(b) (Ill. S. Ct. R. 201(b) (effective July 30, 2014)) and 412(j) (Ill. S. Ct. R. 412(j) (effective March 1, 2001)), which are State rules under section 7(1)(a) of FOIA. The parameters of the Illinois attorney work product doctrine are set forth in Rule 201(b)(2) (Ill. S. Ct. R. 201(b)(2) (effective July 30, 2014)), which provides: "[M]aterial prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." Attorney work product is limited to records which "reveal the shaping process by which the attorney has arranged the available evidence" for trial. *Monier v. Chamberlain*, 35 Ill. 2d 351, 359-60 (1966). A record must be created in anticipation of litigation to constitute work product. *See Dalen v. Ozite Corp.*, 230 Ill. App. 3d 18, 27 (2nd Dist. 1992).

Our confidential review of the redacted and withheld materials confirmed that the majority of the attorney notes, memoranda, and e-mails that were withheld concern attorney theories, mental impressions, and litigation plans. However, several of the withheld e-mails are brief messages relating to correspondence or requests from [redacted] and do not contain theories, mental impressions, or litigation plans. In addition, the State's Attorney's Office redacted one e-mail from a defense attorney which does not constitute work product. Unredacted copies of these messages should be provided to [redacted]. Otherwise, the attorney work product in the responsive records was properly redacted under section 7(1)(a) of FOIA.
Grand Jury Information

The State's Attorney's Office also withheld a grand jury transcript and related documents pursuant to section 7(1)(a) of FOIA based on section 112-6 Code of Criminal Procedure (725 ILCS 5/112-6 (West 2012)), which provides, in pertinent part:

(b) Matters other than the deliberations and vote of any grand juror shall not be disclosed by the State's Attorney, except as otherwise provided for in subsection (c). ***

(c)(1) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury, other than its deliberations and the vote of any grand juror, may be made to:

a. a State's Attorney for use in the performance of such State's Attorney's duty; and

b. such government personnel as are deemed necessary by the State's Attorney in the performance of such State's Attorney's duty to enforce State criminal law. (Emphasis added.)

***

(3) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury may also be made when the court, preliminary to or in connection with a judicial proceeding, directs such in the interests of justice or when a law so directs. 725 ILCS 5/112-6(b), (c)(1), (c)(3) (West 2012).

Pursuant to section 112-6(b) of the Criminal Code, the State's Attorney's Office is specifically prohibited from disclosing the grand jury transcript or other documents that might disclose confidential matters relating to grand jury proceedings. Thus, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the grand jury records are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

LEADS Data

The State's Attorney's Office also redacted information obtained from the Law Enforcement Agencies Data System (LEADS) pursuant to section 7(1)(a) of FOIA. 20 Ill.
Admin. Code 1240.80(d) (2014), last amended at 23 Ill. Reg. 7521, effective June 18, 1999), provides that "LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information."

The Public Access Bureau has previously determined that information generated from the LEADS database is exempt from disclosure pursuant to section 7(1)(a) of FOIA based on 20 Ill. Admin. Code 1240.80(d). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 12865, issued June 2, 2011. Because dissemination of LEADS data to the general public is specifically prohibited by an administrative rule implementing State law, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the LEADS information in the responsive records is exempt from disclosure under section 7(1)(a) of FOIA.

Section 7(1)(b)

The State's Attorney's Office also redacted portions of the records under section 7(1)(b) of FOIA, which exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Having determined that the report concerning case No. 12-CF-208 (10-02041) is exempt from disclosure, the following comments pertain to documents concerning police Report Nos. 11-04208 and 12-01594.

This office concludes that the State's Attorney's Office properly redacted social security numbers, home telephone numbers, home addresses, driver's license numbers, and personal bank account numbers pursuant to section 7(1)(b). In addition, the Public Access Bureau has consistently determined that disclosure of an individual’s date of birth would constitute a clearly unwarranted invasion of personal privacy and, therefore, is exempt from disclosure under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.)). See, e.g., Ill. Att'y Gen. PAC Pre-Auth. all15760, issued August 2, 2011.
However, a review of the responsive records also revealed that the State's Attorney's Office redacted gender information, business e-mail addresses, business telephone numbers, a business' insurance policy number and claim number, a check number and check routing number for a check issued by a business, a Federal Employer Identification Number (FEIN), and a Vehicle Identification Number (VIN). Business telephone numbers and business e-mail addresses are not unique identifiers under the definition set forth in section 2(c-5) of FOIA, which expressly defines private information to include personal telephone numbers and e-mail addresses. Likewise, the FEIN number, the check number and similar financial business information, and the insurance information concern businesses rather than individuals and, therefore, do not constitute "personal financial information" that is exempt from disclosure pursuant to section 7(1)(b) of FOIA. Nor is a person's gender a "unique identifier." This office has determined that disclosing a person's gender generally does not constitute an unwarranted invasion of personal privacy. See, e.g., Ill'y Gen. PAC Req. Rev. Ltr. 18274, issued March 27, 2012. Finally, because VIN numbers uniquely identify vehicles rather than individuals, VIN numbers are not exempt under either section 7(1)(b) or 7(1)(c) of FOIA. See, e.g., Ill'y Gen. PAC Req. Rev. Ltr. 6236, issued March 22, 2010. Because the information discussed above is not exempt under sections 7(1)(b) or 7(1)(c) of FOIA, we request that the State's Attorney's Office disclose this information in the records provided.

Section 7(1)(d)(iv)

The State's Attorney's Office also redacted or withheld names and other identifying information citing section 7(1)(d)(iv) of FOIA. Section 7(1)(d)(iv) allows a public body to withhold records that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[,]" This provision allows police departments to protect the anonymity of persons who provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department).

Our review of the responsive records indicates that the State's Attorney's Office redacted information that would unavoidably disclose the identities of persons who filed complaints with or voluntarily provided information to a law enforcement agency. has indicated in telephone conversations with an Assistant Attorney General in the Public Access Bureau that he knows the identities of the individuals in question; however, a requester's independent knowledge of an informant's or a complainant's identity does not render section 7(1)(d)(iv) inapplicable. See, e.g., Ill'y Gen. PAC Req. Rev. Ltr. 23372, issued August 21, 2013, at 3. Because disclosure of the information redacted pursuant to section 7(1)(d)(iv) would unavoidably disclose the identities of persons who filed complaints with or provided information
to a law enforcement agency, we conclude that the Department did not improperly redact that information under section 7(1)(d)(iv) of FOIA.

Section 3(g)

With respect to the State's Attorney's Office's assertion that producing the e-mails of a former Assistant State's Attorney would be unduly burdensome, section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)) provides:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Additionally, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. * * * A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g). (Emphasis added.)

submitted his FOIA request to the State's Attorney's Office by e-mail on June 11, 2014. The State's Attorney's Office responded on June 25, 2014, indicating that it was working with the Kane County information technology staff to recover emails from former
Mr. Joseph F. Lulves  
April 15, 2015  
Page 9

Assistant State's Attorney Snow, and would provide them as soon it received them. On August 5, 2014, the State's Attorney's Office provided a supplemental response asserting that retrieval of the requested e-mails from the county's tape recovery systems would be unduly burdensome.

Based on the available information, the State's Attorney failed to issue a complete response, extend its time for response, or obtain an agreement in writing with [redacted] to further extend the response within 5 business days after receiving the request on June 11, 2014. Because the State's Attorney failed to issue a timely response to [redacted] FOIA request, section 3(d) of FOIA expressly precludes the State's Attorney from treating any portion of the request as unduly burdensome under section 3(g). Therefore, we direct the State's Attorney to provide [redacted] with copies of the responsive e-mails, subject to permissible redactions under section 7 of FOIA. Because the State's Attorney's Office did not provide a timely response to that portion of the request, section 3(d) precludes the State's Attorney's Office from imposing a fee for these copies.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (217) 782-1699 if you have questions or would like to discuss this matter. This letter serves to close this matter.

Very truly yours,

[Redacted]

BENJAMIN REED  
Assistant Attorney General  
Public Access Bureau

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3 Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)) provides that the "person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties."
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 3, 2015

Ms. Jean Swee
Williams & Swee, Ltd.
2011 Fox Creek Road
Bloomington, Illinois 61701

Mr. Brian Day
Corporate Counsel
Town of Normal
11 Uptown Circle
P.O. Box 589
Normal, Illinois 61761

RE: FOIA Request for Review – 2015 PAC 36246

Dear Ms. Swee and Mr. Day:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the following reasons discussed below, this office concludes that the Town of Normal (Town) did not improperly respond to Ms. Jean Swee's July 2, 2015, FOIA request, with the exception of redacting information relating to a business.

On the above date, Ms. Swee submitted a FOIA request to the Town for the accident report regarding a collision between a passenger vehicle and a garbage truck. On July 7, 2015, the Town partially denied the request by providing the accident report, but redacting addresses, driver's license numbers, dates of birth, and license plate numbers from the report pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014)). On July 10, 2015, Ms. Swee filed this Request for Review asking our office to review those redactions.

This office forwarded the Request for Review to the Town and asked it to provide a detailed explanation of the applicability of the asserted exemption along with a copy of the unredacted report for our confidential review. On July 23, 2015, the Town responded with its explanation and the requested report for our review. On July 28, 2015, we forwarded a copy of the Town's response to Ms. Swee. She replied on August 24, 2015, and noted that there did not
appear any on-going criminal investigation that would warrant withholding of information under section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2014)).

DETERMINATION

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Section 1.2 of FOIA provides that "[a]ll records in the custody or possession 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 (West 2014). "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 5 ILCS 140/3(a) (West 2014).

Section 7(1)(b) of FOIA

Under section 7(1)(b), "[p]rivate information" is exempted from disclosure "unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)), in turn defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Emphasis added).

The Town redacted driver's license numbers, personal telephone numbers, home addresses, and personal license plate numbers from the accident report. Under the plain language of sections 2(c-5) and 7(1)(b), the Town was permitted to redact this information. Although Ms. Swee contends that information could not be withheld under section 7(1)(d)(iv) of FOIA, the Town did not assert that exemption. However, the Town also redacted the license plate number of the garbage truck. Because that license plate related to a business vehicle rather than a personal vehicle, it is not a "personal" license plate within the scope of the above definition of "private information." See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 23125, issued March 26, 2014, at 2 (public body improperly redacted business addresses from a meeting's sign-in sheet).

Accordingly, we conclude that the Town properly redacted "private information" under section 7(1)(b), with the exception of the license plate of the business vehicle.

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1The Town acknowledged that it had improperly redacted the business address of the disposal company, and produced a copy of the accident report with that address un-redacted to Ms. Swee on July 23, 2015.
Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts disclosure of the "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c) (West 2014). This exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2014).

The Town redacted individuals' dates of birth. The Public Access Bureau has consistently determined that an individual's date of birth is highly personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req Rev. Ltr. 26594, issued September 29, 2014; Ill. Att'y Gen. PAC Req Rev. Ltr. 20376, issued August 31, 2012. Accordingly, the Town was permitted to redact dates of birth on the accident report under section 7(1)(c).

In accordance with the conclusions in this letter, we request that the Town produce a copy of the accident report disclosing the business vehicle license plate at issue. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address listed on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,

NEIL P. OLSON  
Assistant Attorney General  
Public Access Bureau

36246 f 71b proper improper 71c proper mun
March 30, 2015

Via electronic mail
Mr. Joseph Hosey

joseph.hosey@patch.com

Via electronic mail
Ms. Erin C. Moriarty
Storino, Ramello & Durkin
9501 West Devon Avenue
Rosemont, Illinois 60018
emoriarty@srd-law.com

RE: FOIA Request for Review – 2014 PAC 28860

Dear Mr. Hosey and Ms. Moriarty:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the City of Elmhurst (City) improperly denied Mr. Joseph Hosey's FOIA request in its entirety.

On April 3, 2014, Mr. Hosey submitted a FOIA request to the City seeking "Elmhurst Police Department reports 14-11978 and 11980, unredacted and in their entirety."1 On April 10, 2014, the City produced the reports but extensively redacted information pursuant to sections 7(1)(b), 7(1)(c), 7(1)(d)(iv), and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv), (1)(d)(vii) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). The redacted records revealed only the date, time, location, the physical descriptions of witnesses, and responding officers for two suspected burglaries. Mr. Hosey's Request for

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1E-mail from Joseph Hosey to FOIA Officer, City of Elmhurst (April 3, 2014).
Review contests the City's response, and states, "As you can see, the requested reports were nearly entirely redacted. There is so much blacked out it is comical, and I believe it is a violation of the Act." \(^2\)

This office forwarded the Request for Review to the City and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the legal and factual basis for the asserted exemptions. On May 7, 2014, the City provided the requested records, together with an explanation of its asserted exemptions. In particular, with respect to its explanation for the assertion of section 7(1)(d)(vii), the City provided certain portions confidentially, which detailed information on the status of the criminal investigation related to the requested police reports. The City also stated that it redacted the names of the persons who filed the burglary complaints and who provided information to the police department under section 7(1)(d)(iv), and birthdates under section 7(1)(c). As to section 7(1)(b), the City explained that it redacted unique identifiers, specifically driver's license numbers, the "star numbers" of the police officers (which it construed to be "employee identification numbers"), home and personal telephone numbers, and home addresses. On May 12, 2014, this office forwarded the City's response to Mr. Hosey; he did not reply.

**DETERMINATION**

All public records in the possession or custody of a public body "are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2012); see also Southern Illinoisan v. Illinois Dept. of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

**Section 7(1)(d)(vii) of FOIA**

Section 7(1)(d)(vii) of FOIA exempts from disclosure "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would * * * obstruct an ongoing criminal investigation by the agency that is the recipient of the request."

The City explained that the majority of the information was redacted pursuant to section 7(1)(d)(vii). This office has reviewed the unredacted records and considered the confidential explanation provided by the City. The redacted information includes information that could obstruct an ongoing criminal investigation if disclosed, such as witness statements.

\(^2\)E-mail from Joseph Hosey to Public Access Bureau (April 10, 2014).
about possible leads or suspects, the collection and preservation of evidence, and investigative findings. However, the redacted information also includes more general information such as the amount of money stolen, the nature and extent of the damage on the premises, and witness statements that do not appear to lead to any suspects or evidence.

Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014) provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure * * * but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copy." (Emphasis added.) While most if not all of the information redacted from the reports relates to an ongoing criminal investigation, the City's response to this office does not provide clear and convincing from which we could conclude that disclosure of the general information described above would obstruct that criminal investigation. Accordingly, this office concludes that the City has not sustained its burden of demonstrating that all the information redacted from the records is exempt from disclosure under section 7(1)(d)(vii) of FOIA.

Section 7(1)(d)(iv) of FOIA

Section 7(1)(d)(iv) exempts from disclosure "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would * * * unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]" The disclosure of the names of the persons filing the criminal complaints and others providing information to the police plainly would disclose their identity. Therefore, the City's redaction of the names of complainants and others providing information was permissible under section 7(d)(iv) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The Public Access Bureau has consistently determined that an individual's date of birth is highly personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 20376, issued August 31, 2012. Therefore, the City's redaction of dates of birth was permissible under section 7(1)(c) of FOIA.
Section 7(1)(b) of FOIA

Section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012), as amended by Public Acts 98-1129, effective December 3, 2014; 98-806, effective January 1, 2015) defines "private information" as:

- Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

As set forth in section 2(c-5), home and personal telephone numbers and home addresses are "private information" that may be redacted under section 7(1)(b) of FOIA. However, the City also redacted the "star numbers" of police officers because it construed those to be "employee identification numbers." This office has previously distinguished police badge numbers from employee identification numbers and determined that badge numbers are not exempt from disclosure under section 7(1)(b) of FOIA. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 11755, issued January 20, 2011, at 2. See also Ill. Att'y Gen. PAC Req. Rev. Ltr. 8011, issued September 29, 2010, at 2 (police badge numbers bear on public duties and disclosure would not constitute a clearly unwarranted invasion of personal privacy under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2010)). Accordingly, the "star" or badge numbers of the involved police officers should be disclosed.

In accordance with the conclusions set out above, this office requests that the City provide Mr. Hosey with copies of portions of the records that contain police badge numbers and information concerning the burglaries that does not detail evidence collected from processing the crime scene, disclose investigative findings, or reveal substantive portions of witness statements that could lead to the identification of suspects.\(^3\)

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\(^3\)To assist the City, we are providing it with copies of the records at issue with proper redactions highlighted in accordance with this determination letter.
Mr. Joseph Hosey  
Ms. Erin C. Moriarty  
March 30, 2015  
Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

[Name Redacted]
NEIL P. OLSON  
Assistant Attorney General  
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 15, 2015

Mr. Joseph F. Lulves
Assistant State’s Attorney
Office of the Kane County State’s Attorney
Kane County Courthouse
100 South Third Street, 4th Floor
Geneva, Illinois 60134

RE: FOIA Request for Review – 2014 PAC 30238

Dear [Redacted] and Mr. Lulves:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the Kane County State’s Attorney’s Office (State’s Attorney’s Office) improperly redacted and withheld portions of the records responsive to [Redacted] June 11, 2014, FOIA request.

On June 11, 2014, [Redacted] submitted a FOIA request to the State’s Attorney’s Office seeking records related to three Village of Hampshire Police Department reports: Nos. 11-04208, 12-01594, and 10-02041. On June 25, 2014, the State’s Attorney’s Office provided responsive records but withheld certain information citing sections 7(1)(a), 7(1)(b), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(d)(iv) (West 2013 Supp.)). Further, with respect to e-mails concerning these investigations, the State’s Attorney’s Office’s response noted that "Assistant State’s Attorney [Aimee] Snow left employment with the State’s Attorney’s Office. We are working with Kane County IT to recover the emails you have requested, and will forward those as soon as we receive them from Kane Count[y] IT."

On July 2, 2014, [Redacted] submitted a Request for Review to this office, disputing the State’s Attorney’s Office’s bases for its partial denial. On July 31, 2014, this office
forwarded a copy of Request for Review to the State's Attorney's Office and asked for copies of the withheld records for our confidential review together with a detailed explanation of the factual and legal bases for the asserted exemptions.

On August 11, 2014, provided this office with a copy of the August 5, 2014, supplemental response by the State's Attorney's Office stating that it would be unduly burdensome to produce the requested e-mails involving Ms. Snow because they are stored on tape recovery systems and retrieving them would not be cost effective. The State's Attorney's Office provided a price listing for a data recovery firm's services and recommended that direct his request to the Hampshire Police Department. replied by disputing the supplemental response. On August 14, 2014, the State's Attorney's Office responded to this office's July 31, 2014, letter of inquiry, providing copies of both the redacted and unredacted records for our confidential review but declining to further explain the grounds for its partial denial of request. did not submit a written reply.

**DETERMINATION**

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012); see also Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

**Section 7(1)(a)**

**Orders to Expunge**

The State's Attorney's Office did not produce any records concerning Hampshire Police report No. 10-02041 citing section 7(1)(a) of FOIA, which allows a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law[.]" Specifically, the State's Attorney's Office asserted that "[a]ll information concerning Hampshire Police report #10-02041 is barred from production by court order dated December 19, 2013, which specifically ordered expungement." Additionally, the State's Attorney's Office's August 14, 2014, response to this office stated that an order of expungement had been entered in Kane County Circuit Court Case No. 12-CF-33 and 12-CF-208, which involved Hampshire Police report Nos. 11-04208 and 10-02041.

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1Letter from Joseph F. Lulves, Assistant State's Attorney, Office of the Kane County State's Attorney, to (June 25, 2014), at 1.
Section 5.2(b)(1) of the Criminal Identification Act (20 ILCS 2630/5.2(b)(1) (West 2013 Supp.)) describes expungement as a process by which "[a] petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest" when certain conditions are satisfied. Pursuant to section 5.2(a)(1)(E) of the Criminal Identification Act (20 ILCS 2630/5.2(a)(1)(E) (West 2013 Supp.)), "[e]xpunge' means to physically destroy the records or return them to the petitioner and to obliterate the petitioner's name from any official index or public record, or both." Further, section 5.2(d)(9)(A)(iii) of the Criminal Identification Act (20 ILCS 2630/5.2(d)(9)(A)(iii) (West 2013 Supp.)) provides that upon entry of an order to expunge, "the court, the Department [of State Police], or the agency receiving such inquiry, shall reply as it does in response to inquiries when no records ever existed."

The State's Attorney's Office submitted copies of the orders to expunge the arrest records in case Nos. 12-CF-208 and 12-CF-33 for this office's review. The court's expungement orders restrict the Clerk of the Circuit Court, the Illinois State Police, and the arresting authority from disseminating the underlying arrest records, providing:

[In response to an inquiry for such records from anyone not authorized by law to access such records, the Arresting Authority, the Department of State Police and the Clerk of the Circuit Court receiving such inquiry shall reply as it does in response to inquiries when no records ever existed.]²

Absent from the expungement orders is any reference to the dissemination of information by the State's Attorney's Office. The orders do not expressly prohibit the State's Attorney's Office from disclosing records relating to the cases pursuant to a FOIA request. Moreover, the orders expressly apply only to arrest records. The State's Attorney's Office declined to provide this office with any explanation for its assertion that all of the records concerning these cases are encompassed by the expungement order. Accordingly, the State's Attorney's Office has failed to sustain its burden of demonstrating by clear and convincing evidence that documents in the possession of the State's Attorney's Office associated with Hampshire Police Report Nos. 10-02041 and 11-04208 are exempt from disclosure under section 7(1)(a) of FOIA.

Report No. 10-02041 (and any information contained in other reports) relating specifically to case No. 12-CF-208, however, concerns a person other than The court, through the issuance of its expungement order, has determined that those documents

² People v. McCoy, Docket No. 12-CF-208 (Circuit Court, Kane County, December 19, 2013) (order granting expungement, ¶D); People v. Docket No. 12-CF-33 (Circuit Court, Kane County, July 16, 2014) (order granting expungement, ¶D).
should generally be withheld from the public. Although the expungement order does not expressly apply to the State's Attorney, we conclude that under these circumstances, the disclosure of the police report by the State's Attorney's Office would constitute an unwarranted invasion of the subject's personal privacy. Accordingly, the denial of the report would be permissible under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.), which exempts from disclosure "information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Accordingly, to protect the privacy interests of the subject, we will treat the denial as having been made under section 7(1)(c). Because the report relating to case No. 12-CF-33 (Report No. 11-04208) concerns the requester, its disclosure to the requester would not be precluded by section 7(1)(c).

**Attorney Work Product**

The State's Attorney's Office stated that it redacted internal work product under Illinois Supreme Court Rules 201(b) (Ill. S. Ct. R. 201(b) (effective July 30, 2014)) and 412(j) (Ill. S. Ct. R. 412(j) (effective March 1, 2001)), which are State rules under section 7(1)(a) of FOIA. The parameters of the Illinois attorney work product doctrine are set forth in Rule 201(b)(2) (Ill. S. Ct. R. 201(b)(2) (effective July 30, 2014)), which provides: "[m]aterial prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." Attorney work product is limited to records which "reveal the shaping process by which the attorney has arranged the available evidence" for trial. *Monier v. Chamberlain*, 35 Ill. 2d 351, 359-60 (1966). A record must be created in anticipation of litigation to constitute work product. *See Dalen v. Ozite Corp.*, 230 Ill. App. 3d 18, 27 (2nd Dist. 1992).

Our confidential review of the redacted and withheld materials confirmed that the majority of the attorney notes, memoranda, and e-mails that were withheld concern attorney theories, mental impressions, and litigation plans. However, several of the withheld e-mails are brief messages relating to correspondence or requests from and do not contain theories, mental impressions, or litigation plans. In addition, the State's Attorney's Office redacted one e-mail from a defense attorney which does not constitute work product. Unredacted copies of these messages should be provided to Otherwise, the attorney work product in the responsive records was properly redacted under section 7(1)(a) of FOIA.
Grand Jury Information

The State's Attorney's Office also withheld a grand jury transcript and related documents pursuant to section 7(1)(a) of FOIA based on section 112-6 Code of Criminal Procedure (725 ILCS 5/112-6 (West 2012)), which provides, in pertinent part:

(b) Matters other than the deliberations and vote of any grand juror shall not be disclosed by the State's Attorney, except as otherwise provided for in subsection (c). ***

(c)(1) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury, other than its deliberations and the vote of any grand juror, may be made to:

a. a State's Attorney for use in the performance of such State's Attorney's duty; and

b. such government personnel as are deemed necessary by the State's Attorney in the performance of such State's Attorney's duty to enforce State criminal law. (Emphasis added.) ***

(3) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury may also be made when the court, preliminary to or in connection with a judicial proceeding, directs such in the interests of justice or when a law so directs. 725 ILCS 5/112-6(b), (c)(1), (c)(3) (West 2012).

Pursuant to section 112-6(b) of the Criminal Code, the State's Attorney's Office is specifically prohibited from disclosing the grand jury transcript or other documents that might disclose confidential matters relating to grand jury proceedings. Thus, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the grand jury records are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

LEADS Data

The State's Attorney's Office also redacted information obtained from the Law Enforcement Agencies Data System (LEADS) pursuant to section 7(1)(a) of FOIA. 20 Ill.
Admin. Code 1240.80(d) (2014), last amended at 23 Ill. Reg. 7521, effective June 18, 1999), provides that "LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information."

The Public Access Bureau has previously determined that information generated from the LEADS database is exempt from disclosure pursuant to section 7(1)(a) of FOIA based on 20 Ill. Admin. Code 1240.80(d). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 12865, issued June 2, 2011. Because dissemination of LEADS data to the general public is specifically prohibited by an administrative rule implementing State law, we conclude that the State's Attorney's Office has sustained its burden of demonstrating that the LEADS information in the responsive records is exempt from disclosure under section 7(1)(a) of FOIA.

Section 7(1)(b)

The State's Attorney's Office also redacted portions of the records under section 7(1)(b) of FOIA, which exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Having determined that the report concerning case No. 12-CF-208 (10-02041) is exempt from disclosure, the following comments pertain to documents concerning police Report Nos. 11-04208 and 12-01594.

This office concludes that the State's Attorney's Office properly redacted social security numbers, home telephone numbers, home addresses, driver's license numbers, and personal bank account numbers pursuant to section 7(1)(b). In addition, the Public Access Bureau has consistently determined that disclosure of an individual's date of birth would constitute a clearly unwarranted invasion of personal privacy and, therefore, is exempt from disclosure under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2013 Supp.)). See, e.g., Ill. Att'y Gen. PAC Pre-Auth. all15760, issued August 2, 2011.
However, a review of the responsive records also revealed that the State's Attorney's Office redacted gender information, business e-mail addresses, business telephone numbers, a business' insurance policy number and claim number, a check number and check routing number for a check issued by a business, a Federal Employer Identification Number (FEIN), and a Vehicle Identification Number (VIN). Business telephone numbers and business e-mail addresses are not unique identifiers under the definition set forth in section 2(c-5) of FOIA, which expressly defines private information to include personal telephone numbers and e-mail addresses. Likewise, the FEIN number, the check number and similar financial business information, and the insurance information concern businesses rather than individuals and, therefore, do not constitute "personal financial information" that is exempt from disclosure pursuant to section 7(1)(b) of FOIA. Nor is a person's gender a "unique identifier." This office has determined that disclosing a person's gender generally does not constitute an unwarranted invasion of personal privacy. See, e.g., Ill'y Att'ly Gen. PAC Req. Rev. Ltr. 18274, issued March 27, 2012. Finally, because VIN numbers uniquely identify vehicles rather than individuals, VIN numbers are not exempt under either section 7(1)(b) or 7(1)(c) of FOIA. See, e.g., Ill'y Att'ly Gen. PAC Req. Rev. Ltr. 6236, issued March 22, 2010. Because the information discussed above is not exempt under sections 7(1)(b) or 7(1)(c) of FOIA, we request that the State's Attorney's Office disclose this information in the records provided to ____________.

Section 7(1)(d)(iv)

The State's Attorney's Office also redacted or withheld names and other identifying information citing section 7(1)(d)(iv) of FOIA. Section 7(1)(d)(iv) allows a public body to withhold records that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[,]" This provision allows police departments to protect the anonymity of persons who provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department).

Our review of the responsive records indicates that the State's Attorney's Office redacted information that would unavoidably disclose the identities of persons who filed complaints with or voluntarily provided information to a law enforcement agency. ____________ has indicated in telephone conversations with an Assistant Attorney General in the Public Access Bureau that he knows the identities of the individuals in question; however, a requester's independent knowledge of an informant's or a complainant's identity does not render section 7(1)(d)(iv) inapplicable. See, e.g., Ill'y Att'ly Gen. PAC Req. Rev. Ltr. 23372, issued August 21, 2013, at 3. Because disclosure of the information redacted pursuant to section 7(1)(d)(iv) would unavoidably disclose the identities of persons who filed complaints with or provided information
to a law enforcement agency, we conclude that the Department did not improperly redact that information under section 7(1)(d)(iv) of FOIA.

Section 3(g)

With respect to the State's Attorney's Office's assertion that producing the e-mails of a former Assistant State's Attorney would be unduly burdensome, section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)) provides:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Additionally, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2012)) provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. *** A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g). (Emphasis added.)

Mr. Luves submitted his FOIA request to the State's Attorney's Office by e-mail on June 11, 2014. The State's Attorney's Office responded on June 25, 2014, indicating that it was working with the Kane County information technology staff to recover emails from former
Assistant State's Attorney Snow, and would provide them as soon it received them. On August 5, 2014, the State's Attorney's Office provided a supplemental response asserting that retrieval of the requested e-mails from the county's tape recovery systems would be unduly burdensome.

Based on the available information, the State's Attorney failed to issue a complete response, extend its time for response, or obtain an agreement in writing with [REDACTED] to further extend the response within 5 business days after receiving the request on June 11, 2014. Because the State's Attorney failed to issue a timely response to [REDACTED] FOIA request, section 3(d) of FOIA expressly precludes the State's Attorney from treating any portion of the request as unduly burdensome under section 3(g). Therefore, we direct the State's Attorney to provide [REDACTED] with copies of the responsive e-mails, subject to permissible redactions under section 7 of FOIA. Because the State's Attorney's Office did not provide a timely response to that portion of the request, section 3(d) precludes the State's Attorney's Office from imposing a fee for these copies.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (217) 782-1699 if you have questions or would like to discuss this matter. This letter serves to close this matter.

Very truly yours,

BENJAMIN REED
Assistant Attorney General
Public Access Bureau

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3 Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)) provides that the "person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties."
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 29, 2015

Via electronic mail

Via electronic mail
Master Sergeant Kerry Sutton
Legal Counsel
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
kerry_sutton@isp.state.il.us

RE: FOIA Request for Review – 2014 PAC 28651

Dear [Redacted] and Master Sergeant Sutton:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the Illinois State Police (ISP) improperly withheld records responsive to [Redacted] January 22, 2014, FOIA request.

On that date, [Redacted] submitted a FOIA request to ISP via e-mail seeking all records pertaining to the death of his daughter [Redacted] including audio and video recordings. On January 29, 2014, ISP responded: "All documents we have in our possession were provided to you in 2013 PAC 25068 (FOIR #13-0592)."1 This office construes ISP's response as asserting that [Redacted] request was an unduly burdensome repeated request pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)). On March 27, 2014, [Redacted] submitted a Request for Review to this office alleging that he had not been provided with all of the responsive records and that some of ISP's redactions (in response to his prior request) were improper.

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1Letter from Lieutenant Steve Lyndon, FOIA Officer, to [Redacted] (January 29, 2014).
On April 1, 2014, this office forwarded a copy of the Request for Review to ISP and asked it to describe how it confirmed that all of the responsive records in its possession were previously provided to [redacted]. This office also asked ISP to provide this office with unredacted copies of the records it had previously provided to [redacted] for our confidential review, together with a detailed explanation of its legal and factual bases for withholding information pursuant to the exemptions set forth in section 7 of FOIA (5 ILCS 140/7 (West 2014)). On April 8, 2014, ISP responded that because [redacted] did not contest ISP's redactions within 60 days after its July 15, 2013, partial denial, his present Request for Review is untimely. ISP also asserted:

[A]fter the documents were provided in July of 2013, the Jackson County State's Attorney's office announced that a special prosecutor was being appointed to re-examine the case file to determine if charges were warranted. The Illinois State's Attorneys Appellate Prosecutor's Office was appointed and, at this time, no decision has been made. At the Appellate Prosecutor's direction, additional interviews and investigations are being conducted. To provide any additional information at this point would interfere with the pending law enforcement proceeding and obstruct an ongoing investigation and, as such, is being denied pursuant to 5 ILCS 140/7(1)(d)(i) and (d)(vii).²

ISP did not provide this office with the records we requested. On April 19, 2014, [redacted] replied that he still sought the responsive records.

On April 10, 2015, this office sent a second letter of inquiry to ISP again requesting unredacted copies of the responsive records for our confidential review. On April 27, 2015, ISP provided this office with some of those records and a supplemental written response asserting that its January 29, 2014, response to [redacted] was proper because "all information available at that time had previously been provided to [redacted] pursuant to his prior FOIA request and because a special prosecutor was conducting an investigation at that time."³ ISP also asserted: "The special prosecutor's review ended with the declination of criminal charges. Based on this declination, ISP has provided all non-exempt documents responsive to this investigation


to other requesters and would be willing to provide [them] to [OBSCURED] as well if requested.4
Lastly, in support of its assertion of sections 7(1)(b) and 7(1)(c) in response to [OBSCURED] prior request, ISP stated:

[T]here are multiple portions of the file that are exempt pursuant to 7(1)(b) and 7(1)(c) of the Illinois Freedom of Information Act. These documents included graphic photos of the crime scene and autopsy which are clearly exempt per the AG's opinions found in the Law Enforcement FOIA guide provided by the Public Access Counselor's office.5

ISP then cited several PAC determinations about withholding graphic photographs and National Archives and Records Administration v. Favish, 541 U.S. 157, 124 S. Ct. 1570 (2004), without further explication. On May 9, 2015, [OBSCURED] replied that ISP had not met its burden to withhold responsive information.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012). "Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request [and] the reasons for the denial, including a detailed factual basis for the application of any exemption claimed[.]" (Emphasis added.) 5 ILCS 140/9(a) (West 2012). Additionally, section 9(b) of FOIA (5 ILCS 140/9(b) (West 2012)) provides: "[w]hen a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority." (Emphasis added.) In order to meet its burden of proof, a public body asserting a FOIA exemption "must provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.) Illinois Education Ass'n v. Illinois State Board of Education, 204 Ill. 2d 456, 464; 791 N.E.2d 522, 527 (2003) (citing Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 537 (2nd Dist. 1989)).

Section 3(g) of FOIA

Section 3(g) of FOIA provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body.[..] * * *

Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision. (Emphasis added.)

Under the plain language of section 3(g), a public body may only deny a request as an unduly burdensome repeated request if it has previously provided the requester with the responsive records or properly denied a prior, unchanged request. Thus, in order for this office to determine whether ISP properly treated [redacted] January 22, 2014, FOIA request as an unduly burdensome repeated request, it is necessary to assess whether ISP previously provided or properly denied all of the responsive records in 2013 PAC 25068.

In that matter [redacted] submitted a Request for Review of ISP's denial in full of his April 9, 2013, FOIA request under sections 2.15(c), 7(1)(d)(i), and 7(1)(d)(vii) of FOIA (5 ILCS 140/2.15(c) (West 2012); 5 ILCS 140/7(1)(d)(i), (1)(d)(vii) (West 2012)); ISP responded on July 15, 2013, by withdrawing its assertion of those exemptions, stating that the Jackson County State's Attorney's Office had determined that no charges would be filed and that the case was closed. Instead, ISP provided [redacted] with responsive records with redactions under sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2012)). ISP's explanation for its assertion of section 7(1)(c) provided, in full:

Personal information which would clearly constitute an unwarranted invasion of personal privacy, including, but not limited to dates of birth, home addresses, and telephone numbers will be redacted. Some additional information has been withheld including, but not limited to an autopsy report and [redacted] personal journals.6

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6Letter from Sergeant Kerry Sutton, Legal Counsel, to [redacted] (July 15, 2013).
Master Sergeant Kerry Sutton
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Because ISP withdrew its complete denial and provided [redacted] with responsive records, on July 24, 2013, this office closed 2013 PAC 25068. We must now analyze whether the records [redacted] requested were provided or properly redacted or withheld in that matter.

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Based on our confidential review, ISP properly redacted information that falls within the plain language of the definition of "private information" in section 2(c-5) of FOIA: social security numbers, driver's license numbers, home addresses, and home telephone numbers. In addition, the Public Access Bureau has consistently determined that signatures are exempt from disclosure under section 7(1)(b) because they are "unique identifiers." See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 20376, issued August 31, 2012, at 2. However, ISP also redacted the serial numbers of inanimate objects, including a firearm and a computer. Because serial numbers identify objects, not individuals, they do not constitute "unique identifiers" within the meaning of the "private information" exemption. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 30238, issued April 15, 2015, at 7 (vehicle identification number not exempt because it identified a vehicle, not an individual). Thus, ISP improperly redacted numbers that identify objects from the responsive records, and it should disclose that information to [redacted].

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure:

[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.

'Unwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any

7Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.
legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. (Emphasis added.)

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (1994).

ISP asserted that it redacted dates of birth pursuant to section 7(1)(c). The Public Access Bureau has consistently determined that the disclosure of an individual's date of birth would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 23896, issued July 28, 2014. Therefore, ISP properly redacted dates of birth.

The only other information ISP provided to [REDACTED] and to this office in connection with its assertion of section 7(1)(c) is that it withheld graphic photos of the crime scene and autopsy, the autopsy report, and [REDACTED] personal journals. In other words, ISP only asserted that it withheld information to protect [REDACTED] personal privacy. However, an individual's personal privacy interest ceases to exist upon death. See Ill. Att'y Gen. Pub. Acc. Op. No. 12-012, issued August 14, 2012, at 9. Yet, in a binding opinion based on the *National Archives* case ISP cited and other cases, the Attorney General has advised "that a decedent's surviving family members do possess a separate personal privacy interest in 'their close relative's death-scene images' and similar records." Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5-6 (citing *National Archives*, 541 U.S. at 170, 124 S. Ct. at 1579).

Based on the available information, [REDACTED] was not married, and her father, the requester, is the executor of her estate.\(^8\) Thus, while [REDACTED] no longer has a personal privacy interest, [REDACTED] does have a personal privacy interest in her personal information.

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\(^8\) On May 1, 2015, ISP asserted to an attorney in the Public Access Bureau by e-mail that [REDACTED] January 22, 2014, request did not mention that he is the executor of any estate and that "[i]there has [sic] certainly been no documents provided to ISP indicating as such." E-mail from M/Sgt. Kerry Sutton, Legal Counsel, to AAG Jones (May 1, 2015). The attorney responded that [REDACTED] Request for Review in 2013 PAC 25068, which was forwarded to ISP on July 8, 2013, stated: "I believe that since I am the father and the executor of her estate I should have the right to see what investigation has been done[.]" E-mail from [REDACTED] to Public Access Counselor, Office of the Attorney General (June 25, 2013). Additionally, on February 28, 2015, [REDACTED] provided this office with a document filed with the Circuit Court of the First Judicial Circuit on October 25, 2012, which states that he had been appointed Independent Administrator of his daughter's estate.
As emphasized above, though, an individual may consent to the disclosure of information in which the individual has a personal privacy interest. Here, [redacted] FOIA request clearly constituted his written consent to the disclosure of personal information concerning his deceased daughter to him. ISP has not articulated a legal rationale that justifies withholding personal information concerning [redacted] from her father, including her death-scene and autopsy images. Therefore, ISP violated FOIA by withholding information concerning [redacted] from the requester pursuant to section 7(1)(c).  

As set forth above, ISP did not provide or properly deny all of the records responsive to [redacted] FOIA request in 2013 PAC 25068. Therefore, ISP's denial of his January 22, 2014, FOIA request as a repeated request violated section 3(g) of FOIA.

Sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA

Sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA exempt from disclosure:

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

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(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

"The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 536 (2nd Dist. 1989). "Simply saying there is an 'ongoing criminal investigation because the case has not been cleared,' with little additional

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9We note that providing personal information concerning [redacted] to the requester does not mean that ISP must provide the same information to other requesters who are unrelated to [redacted] has consented to the disclosure of personal information concerning [redacted] to him, not to others. [redacted] has requested that ISP not release further personal information concerning [redacted] to the general public.
Master Sergeant Kerry Sutton  
June 29, 2015  
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explanation, is not 'objective indicia' sufficient to show the ongoing investigation exemption applies." Day v. City of Chicago, 388 Ill. App. 3d 70, 76 (1st Dist. 2009) (quoting Illinois Education Association v. Illinois State Board of Education, 204 Ill. 2d 456, 470 (2003)).

ISP’s assertion of sections 7(1)(d)(i) and 7(1)(d)(vii) was conclusory. ISP did not provide this office with any information as to how disclosure of the responsive records to [redacted] would have interfered with a pending law enforcement proceeding or obstructed an ongoing investigation. In the absence of objective indicia sufficient to show that any investigatory exemptions applied, ISP failed to sustain its burden to withhold information under sections 7(1)(d)(i) and 7(1)(d)(vii).

CONCLUSION

For the reasons set forth above, we conclude that ISP violated FOIA by failing to sustain its burden of demonstrating by clear and convincing evidence that it previously provided or properly denied some of the responsive records and that the remainder were exempt under sections 7(1)(d)(i) and 7(1)(d)(vii). We direct ISP to provide [redacted] with copies of all of the responsive records, subject only to the redaction of birth dates and "private information" as defined in FOIA, and the information, if any, concerning witnesses and suspects that is not already a matter of public record, to the extent that its disclosure would constitute a clearly unwarranted invasion of privacy pursuant to section 7(1)(c).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

JOSHUA M. JONES  
Supervising Attorney  
Public Access Bureau

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