May 6, 2015

Via electronic mail
Mr. Brian Brueggemann
Assistant City Editor
Belleville News-Democrat
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bbrueggemann@bnd.com

Via electronic mail
Ms. Diane Luitjohan
Freedom of Information Officer, Clinton County
Clinton County Courthouse
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 Carlyle, Illinois 62231-1840
diane.luitjohan@clintonco.illinois.gov

RE: FOIA Request for Review – 2015 PAC 33927

Dear Mr. Brueggemann and Ms. Luitjohan:

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 set forth below, the Public Access Bureau concludes that Clinton County (County) improperly denied Mr. Brian Brueggemann's FOIA request.

On February 27, 2015, Mr. Brueggemann submitted a FOIA request to the Clinton County Coroner (Coroner) seeking "a copy of your reports, including an autopsy and toxicology report, regarding the death of Lana Albert."\footnote{FOIA request submitted by Brian Brueggemann, \textit{Belleville News-Democrat}, to Phillip A. Moss, Clinton County Coroner (February 27, 2015).} On February 28, 2015, the Coroner
initially responded: "After speaking to the states attorney, he has advised me not to release any information at this time due to the fact that all of the hearings are under way." After receiving this response, Mr. Brueggemann filed this Request for Review on March 3, 2015.

On March 4, 2015, the County issued a written response denying the request under sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(vii) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). The County's response stated that "People of the State of Illinois v. Jonathan Nast, Clinton County Case Number: 14-CF-73, is still pending at this time." On March 10, 2015, the County reiterated that denial, and added section 7(1)(d)(iii) (5 ILCS 140/7(1)(d)(iii) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014) as a basis for denying the request.

On March 11, 2015, this office sent a letter to the County requesting a detailed explanation of the legal and factual bases for the asserted exemptions as well as copies of the responsive records for our confidential review. By a letter dated April 1, 2015, the County responded to this office and included the responsive records. The County designated its response as confidential pursuant to section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). In a reply letter dated April 10, 2015, Mr. Brueggemann argued that the County officials had failed to demonstrate that any exemption applied.

**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 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). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997). Bare conclusions without a detailed rationale do not satisfy a public body's burden of explaining how exemptions are applicable. See *Rockford Police Benevolent and Protective Ass'n, Unit No. 6 v. Morrissey, et al.*, 398 Ill. App. 3d 145, 151 (2nd Dist. 2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)).

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

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2 E-mail from Phillip A. Moss, Clinton County Coroner, to Brian Brueggemann, *Belleville News-Democrat* (February 28, 2015).

(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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(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

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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). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *See Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

This office has reviewed the rationale and records provided by the County for our confidential review. The County's claim that disclosure of the records would interfere with or obstruct an ongoing prosecution is unsupported by any specific facts. A public body must demonstrate how disclosure of records would interfere with or obstruct a criminal prosecution or investigation in order to properly withhold records pursuant to section 7(1)(d)(i) or section 7(1)(d)(vii) of FOIA. The Public Access Bureau has consistently concluded that the mere commencement of an investigation or prosecution does not constitute clear and convincing evidence that any records are exempt from disclosure. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 30811, issued November 21, 2014; Ill. Att'y Gen. PAC Req. Rev. Ltr. 26563, issued November 21, 2013; Ill. Att'y Gen. PAC Req. Rev. Ltr. 13661, issued June 6, 2011.*
The County also cited section 7(1)(d)(iii), which permits a public body to withhold records if disclosure would "create a substantial likelihood a person will be deprived of a fair trial." However, that assertion is conclusory. The County has not demonstrated how disclosure of any information in the decedent's autopsy and toxicology reports would create a "substantial likelihood" that the defendant will be deprived of a fair trial. Accordingly, we conclude that the County has not sustained its burden of showing by clear and convincing evidence that the records are exempt from disclosure under sections 7(1)(d)(i), 7(1)(d)(iii), and 7(1)(d)(vii) of FOIA.

The County cited additional reasons for withholding the records in its confidential response to this office. Because those reasons were provided confidentially, we are unable to comment on them in this determination, apart from noting that the County has not provided a detailed factual basis or legal authority to support its assertion that the cited reasons apply to the Coroner or specifically prohibit the disclosure of records responsive to this request. See 5 ILCS 140/7(1)(a) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014 (exempting "[i]nformation specifically prohibited by federal or State law or rules and regulations implementing federal or State law"). Therefore, in accordance with the conclusions set out above, this office requests that the County provide Mr. Brueggemann with copies of the responsive records. The County may properly redact discrete portions of the records that contain "private information" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014).

FOIA 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. 5 ILCS 140/2(c-5) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014, 98-806, effective January 1, 2015.
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 (217) 782-9078. This correspondence serves to close the matter.

Very truly yours,

[Redacted]

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

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cc: Via electronic mail
Mr. Philip A. Moss
Clinton County Coroner
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coroner@clintonco.illinois.gov
March 18, 2015

Ms. Portia C. Kayser
Baker Sterchi Cowden & Rice, LLC
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St. Louis, Missouri 63101

Mr. Sean Murley
Assistant State’s Attorney - FOIA Officer
St. Clair County State's Attorney's Office
10 Public Square, 2nd Floor
Belleville, Illinois 62220

RE: FOIA Request for Review – 2014 PAC 30828

Dear Ms. Kayser and Mr. Murley:

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 set forth below, the Public Access Bureau concludes that the St. Clair County Sheriff's Department (Sheriff's Department) improperly denied Ms. Portia C. Kayser's FOIA request.

On July 15, 2014, Ms. Kayser submitted a FOIA request to the Sheriff's Department seeking "[a]ny and all documents contained in the criminal investigation file of Detective Scott Toth regarding the actions of Ms. Mary K. Reid against [redacted] and [redacted] resulting in charges against Ms. Reid of Misdemeanor Assault. The case number is 14CM0003511." On July 24, 2014, the Sheriff's Department denied the request in its entirety under section 7(1)(d)(i) of FOIA, 5 ILCS 140/7(1)(d)(i) (West 2013 Supp.), as

1Letter from Portia C. Kayser to Major Thomas Knapp, St. Clair County Sheriff's Department (July 15, 2014).
amended by Public Act 98-695, effective July 3, 2014). The Sheriff's Department stated in its response that "[t]hese documents relate to an ongoing prosecution."²

This office received this Request for Review on August 15, 2014. On August 21, 2014, this office sent a letter to the Sheriff's Department requesting a detailed explanation of the legal and factual bases for the assertion of section 7(1)(d)(i) and that the Sheriff's Department note "whether prosecution of this case is still ongoing or pending and to what extent disclosure of the requested records would interfere with that prosecution."³ On September 9, 2014, the Sheriff's Department responded:

It is our position that release of this information prior to trial possesses the potential to adversely affect the outcome of the prosecution. The criminal case involved in this matter is set for jury trial in early October 2014. We only advocate that these documents should be withheld until the criminal case is concluded.⁴

On September 25, 2014, Ms. Kayser replied that the Sheriff's Department's response "does not provide any specific reasons why or how the release of these records would negatively impact the investigation and prosecution of Ms. Reid."⁵

**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 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). The exemptions from disclosure are to be narrowly construed. Lieber v. Board of Trustees of Southern Illinois Univ., 176 Ill. 2d 401, 408 (1997).

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²Letter from Sean Murley, Assistant State's Attorney, [St. Clair County] to Portia C. Kayser (July 24, 2014).


⁴Letter from Sean Murley, Assistant State's Attorney, [St. Clair County], to Assistant Attorney General Timothy O'Brien, Public Access Bureau (September 9, 2014).

⁵Letter from Portia C. Kayser to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (September 25, 2014).
Ms. Portia C. Kayser
Mr. Sean Murley
March 18, 2015
Page 3

The Sheriff’s Department withheld the requested investigatory file under section 7(1)(d)(i) of FOIA, which exempts records to the extent that disclosure would "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." However, "[t]he 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). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. See Day v. City of Chicago, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009). The Public Access Bureau has consistently concluded that the mere commencement of an investigation or prosecution does not constitute clear and convincing evidence that law enforcement records are exempt from disclosure under section 7(1)(d)(i). See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 30811, issued November 21, 2014; Ill. Att'y Gen. PAC Req. Rev. Ltr. 26563, issued November 21, 2013; Ill. Att'y Gen. PAC Req. Rev. Ltr. 13661, issued June 6, 2011.

The Sheriff’s Department's claim that disclosure of the investigatory file requested by Ms. Kayser would interfere with an ongoing prosecution is conclusory and unsupported by any facts. The Sheriff’s Department's responses to Ms. Kayser's FOIA request and to this office merely state that a court case is pending, without providing a detailed factual basis from which this office could conclude that disclosure of the records would interfere with a pending or reasonably contemplated law enforcement proceeding conducted by the Sheriff's Department. Accordingly, we conclude that the Sheriff's Department has not sustained its burden of showing by clear and convincing evidence that the records are exempt from disclosure under section 7(1)(d)(i) of FOIA.

In accordance with the conclusions set out above, this office requests that the Sheriff’s Department provide Ms. Kayser with copies of the responsive records, subject to appropriate redactions under section 7 of FOIA (5 ILCS 140/7 (West 2012), as amended by Public Act 98-695, effective July 3, 2014). If any information is redacted under section 7, the Sheriff's Department must provide a detailed factual basis for asserting the relevant exemption(s). 5 ILCS 140/9 (West 2012).

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 (217) 782-9078. This correspondence serves to close the matter.
Very truly yours,

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

30828 f 71 di improper county
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 24, 2015

Cook County Jail
P.O. Box 089002
DIV10-4B-4209-2
Chicago, Illinois 60608

Master Sergeant Kerry Sutton
Legal Counsel
Illinois State Police
801 South 7th Street, Suite 1000-S
Springfield, Illinois 62703

RE: FOIA Request for Review – 2015 PAC 34970

Dear [Redacted] and Master Sergeant Sutton:

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 Illinois State Police (ISP) did not improperly withhold records responsive to [Redacted] April 9, 2015, FOIA request.

[Redacted] submitted a FOIA request seeking certain records pertaining to lab results in case number 13-CR-790801. On April 15, 2015, ISP denied [Redacted] request pursuant to sections 7(1)(d)(i) and 7(1)(d)(iii) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(iii) (West 2014)). On April 27, 2015, this office received [Redacted] Request for Review contesting the denial of his FOIA request.

On June 15, 2015, this office forwarded a copy of [Redacted] Request for Review to ISP and asked it to provide a detailed explanation of the legal and factual bases for the asserted exemptions, together with unredacted copies of the requested records for our confidential review. On June 26, 2015, ISP provided this office with the records and its written
response, which included the addition of section 7(1)(d)(vii) (5 ILCS 140/7(1)(d)(vii) (West 2014)) as a basis for the denial of [redacted] request. [redacted] did not reply to that response.

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); see also Southern Illinoisan v. Illinois Dept. of Public Health, 218 Ill. 2d 390, 415 (2006). Any public body that asserts that a record is exempt from disclosure "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014). 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)(d)(i) of FOIA authorizes the withholding of records to the extent that disclosure would "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." "Factors that are considered in determining that applicability of section 7(1)(d)(i) include the nature of the offense, the stage of the investigation or prosecution, and the sensitivity of the investigatory records." Ill. Att'y Gen. PAC Req. Rev. Ltr. 24479, issued August 19, 2013. In addition, section 7(1)(d)(vii) of FOIA, exempts records to the extent that disclosure would "obstruct an ongoing criminal investigation by the agency that is the recipient of the request."

This office has considered the above-mentioned factors in assessing the available information, including the contents of the records that were withheld by ISP. These records consist of laboratory reports and analysis of evidence involving a very serious crime for which [redacted] has been arrested, and for which the criminal investigation remains ongoing. Based on the circumstances of this case, we have concluded that the disclosure of these reports, at this time, could interfere with and obstruct the agency's ongoing criminal investigation. Accordingly, we conclude that ISP did not improperly withhold records under sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA. Because this office has determined that ISP properly withheld the records requested by [redacted] under sections 7(1)(d)(i) and 7(1)(d)(vii) we need not determine whether the records requested also are exempt under section 7(1)(d)(iii) of FOIA.
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 via mail at the Chicago address listed on the first page of this letter. Thank you.

Very truly yours,

[Redacted]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 10, 2015

Mr. Mark Stevens
Investigative Reporter/Photographer
KWQC-TV 6 News
805 Brady Street
Davenport, Iowa 52803

Mr. Roger L. Strandlund
Califf & Harper, P.C.
506 15th Street, Suite 600
P.O. Box 719
Moline, Illinois 61266

RE: FOIA Request for Review – 2015 PAC 36612

Dear Mr. Stevens and Mr. Strandlund:

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 set forth below, the Public Access Bureau concludes that the Rock Island County Metropolitan Mass Transit District (MetroLINK) improperly denied Mr. Mark Stevens's July 15, 2015, FOIA request.

On that date, Mr. Stevens submitted a FOIA request on behalf of KWQC-TV seeking video footage from a MetroLINK bus relating to an incident occurring on June 30, 2014. On July 22, 2015, MetroLINK denied the request in its entirety, asserting that "[i]t is a matter which is contemplated to potentially interfere or impact active administrative or legal proceedings" and citing section "140/7(d)" of FOIA.\(^1\) On August 5, 2015, this office forwarded a copy of the Request for Review to MetroLINK and requested a copy of the withheld video footage for our confidential review as well as a detailed explanation of the factual and legal bases for the assertion of any subsection of section 7(1)(d) of FOIA (5 ILCS 140/7(1)(d) (West 2014)).

\(^1\)Letter from Jennifer Garrity, FOIA Officer/Manager of Administration, MetroLINK, to Mark Stevens (July 22, 2015).
On August 13, 2015, MetroLINK submitted a written response to our office in which it clarified that it was asserting the video footage was exempt under sections 7(1)(d)(i) and 7(1)(d)(ii) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(ii) (West 2014)). MetroLINK explained that the video captured an incident where a police officer attempted to detain a rider and "[f]ollowing the Rider's exit from the bus, he collided with a plate glass window and suffered injuries." According to MetroLINK, the rider was charged with a felony count of resisting a police officer, and at the time of Mr. Stevens's FOIA request on July 15, 2015, that criminal proceeding was still pending. However, MetroLINK also noted that the criminal proceeding had been dismissed without prejudice in the meantime by the Rock Island County State's Attorney on July 29, 2015. MetroLINK also contended that it was the "equivalent of a law enforcement body" because of its security plan involving various police powers.

After further discussions with an Assistant Attorney General in the Public Access Bureau, MetroLINK provided a supplemental written response on September 18, 2015, together with a copy of the withheld video and a version of the video redacted to place a black box over passengers other than the police office and the rider at issue. MetroLINK noted that one of the third-party passengers appears to be a minor. With respect to the redacted version, MetroLINK described it as:

being identical to the non-redacted version, the difference being a black box covering the faces of the two individuals, one of which is the potential minor individual. This redaction in no way interferes with the ability to view the incident between the Rock Island police officer and the passenger. ** MetroLINK is of the belief that this redaction strikes an adequate balance between providing Mr. Stevens, with the video recording he has requested and protecting privacy interests.**

MetroLINK also provided with its supplemental response the affidavit of the Rock Island County State's Attorney, who described the pending criminal proceeding, and stated that in his view

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"other public dissemination of the video recording/evidence would be potentially detrimental to the fairness aspect (applicable to all parties) of the ongoing criminal proceedings."

We forwarded both written responses to Mr. Stevens; he did not 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 2014); 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 2014). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997). Bare conclusions without a detailed rationale do not satisfy a public body's burden of explaining how exemptions are applicable. See *Rockford Police Benevolent and Protective Ass'n, Unit No. 6 v. Morrissey, et al.*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education.*, 204 Ill. 2d 456, 464 (2003)).

**Sections 7(1)(d)(i) and 7(1)(d)(ii) of FOIA**

Sections 7(1)(d)(i) and 7(1)(d)(ii) 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;

(ii) interfere with active administrative enforcement proceedings conducted by the public body 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

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5Affidavit of John L. McGehee, ¶ 8.
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 (2d Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. See Day v. City of Chicago, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

MetroLINK asserted that the video was exempt under sections 7(1)(d)(i) and 7(1)(d)(ii) when it first received the request because of ongoing criminal proceedings conducted by the Rock Island County State's Attorney. A public body must demonstrate how disclosure of records would interfere with or obstruct pending law enforcement proceedings or active administrative enforcement proceedings in order to properly withhold records pursuant to section 7(1)(d)(i) or section 7(1)(d)(ii). Moreover, regardless of whether MetroLINK could be classified as a "law enforcement agency," those sections apply to proceedings conducted by the public body that is the recipient of the request, and MetroLINK has not asserted that it was conducting the proceedings at issue. Accordingly, we conclude that MetroLINK improperly withheld the video under sections 7(1)(d)(i) and 7(1)(d)(ii) of FOIA.

Redacted Video Footage

MetroLINK contends that the redacted video it has supplied with its supplemental response will satisfy the request while protecting the privacy interests of the uninvolved passengers, one of whom may be a minor. Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2014)) 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 exemption defines "[u]nwaranted 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."

We have reviewed the un-redacted responsive video as well as MetroLINK's redacted version of the video. As described by MetroLINK, one of the third-party passengers may be a minor, and the redacted video fully depicts an incident that is a matter of public interest. We have previously approved the redaction of video footage to remove the images of students uninvolved with a cafeteria altercation under section 7(1)(c) of FOIA. See III. Att'y Gen. PAC Req. al6618, issued March 21, 2011. This office also has consistently determined that information identifying third parties whose names incidentally appear in police reports but who had no direct involvement in the underlying incident may be properly redacted under section 7(1)(c). Accord III. Att'y Gen. PAC Req. Rev. Ltr. 34822, issued June 13, 2015, at 4. Similarly, we conclude that the responsive video footage here may be properly redacted under section
7(1)(c) of FOIA to protect the identities of any minors or third parties who were not involved in the altercation between the rider and the police officer.

Therefore, in accordance with the conclusions set out above, this office directs MetroLINK to provide Mr. Stevens with a copy of the redacted version of the video that it previously provided to this office. 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 (217) 782-9078. This correspondence serves to close the matter.

Very truly yours,

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

36612 f 71di 71dii improper reg auth
November 6, 2015

Via electronic mail
Mr. Jacob P. Goldstein
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Via electronic mail
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Chicago Police Department
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Ryan.Nelligan@chicagopolice.org

RE: FOIA Request for Review – 2015 PAC 35850

Dear Mr. Goldstein and Mr. Nelligan:

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 set forth below, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly denied Mr. Zusha Elinson's May 5, 2015, FOIA request.

On that date, Mr. Elinson submitted a FOIA request on behalf of the Wall Street Journal seeking the police report related to the shooting of Laquan McDonald, which took place on October 29, 2014, and any video recordings of this shooting captured on police cruiser dashboard cameras. On May 11, 2015, CPD denied the request in its entirety citing sections 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(ii), (1)(d)(iii), (1)(d)(iv) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014).
On June 18, 2015, Mr. Jacob Goldstein filed this Request for Review on behalf of Mr. Elinson and the Wall Street Journal. On June 26, 2015, this office forwarded a copy of the Request for Review to CPD and requested a copy of the withheld records for our confidential review, as well as a detailed explanation of the factual and legal bases for the assertion of sections 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA. On September 24, 2015, CPD provided a written response, and reiterated that the records were exempt under sections 7(1)(d)(ii) and 7(1)(d)(iii):

The Independent [Police] Review Authority (IPRA) investigation is still ongoing. Also, the Department of Justice has begun a Grand Jury investigation into this shooting and the Federal Bureau of Investigations [sic] is reviewing this incident. Therefore, the request for dashcam video, reports, and other reports concerning this particular incident are denied.¹

CPD did not provide the responsive records for our confidential review as required by section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2014)). On September 25, 2015, an Assistant Attorney General in the Public Access Bureau inquired via e-mail whether CPD would provide copies of the responsive records to this office as requested. In an e-mail and a telephone conversation later that day, a representative of CPD stated that CPD would not provide copies of any records to this office for review.

On September 25, 2015, this office also forwarded a copy of CPD’s response to Mr. Goldstein. He replied on September 26, 2015, that:

[T]he Police Department cannot invoke Exemption 7(1)(d)(ii) by citing investigations by the IPRA, DOJ and FBI. And in any event, the Police Department fails to offer any even plausible basis for a determination that disclosure would interfere with any such proceedings or prejudice any hearing or trial, especially when so many details have already been widely publicized and any hearing officer or trier of fact could be properly instructed to decide the matter on the evidence.²

¹Letter from Ryan Nelligan, Office of Legal Affairs, Chicago Police Department, to Neil Olson, Assistant Attorney General, Office of the Attorney General (September 24, 2015).

²E-mail from Jacob Goldstein, Assistant General Counsel, Dow Jones & Company, Inc., to Neil Olson (September 26, 2015).
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 2014); 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 2014). The exemptions from disclosure are to be narrowly construed. Lieber v. Board of Trustees of Southern Illinois Univ., 176 Ill. 2d 401, 408 (1997). Bare conclusions without a detailed rationale do not satisfy a public body's burden of explaining the applicability of cited exemptions. See Rockford Police Benevolent and Protective Ass'n, Unit No. 6 v. Morrissey, et al., 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing Illinois Education Ass'n v. Illinois State Board of Education., 204 Ill. 2d 456, 464 (2003)).

As a preliminary matter, section 9.5(c) of FOIA provides that "[w]ithin 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor." (Emphasis added.) CPD has stated that it will not comply with this office's June 25, 2015, request for copies of the responsive records to permit a confidential review by this office. CPD's refusal to provide the requested records, notwithstanding the clear and unambiguous mandate of section 9.5(c), violates FOIA and has obstructed this office's ability to conduct a thorough and complete review of this matter. Accordingly, we must address CPD's denial without the benefit of any insight that those records might have provided.

Sections 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA

Sections 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d)(iv) 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:

* * *

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;
(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(iv) 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 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 (2d Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. See Day v. City of Chicago, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009).

CPD has asserted the records are exempt under section 7(1)(d)(ii) because several other agencies are investigating the incident at issue. A public body must demonstrate how the disclosure of records would interfere with or obstruct an active administrative enforcement proceeding in order to properly withhold records pursuant to section 7(1)(d)(ii). Moreover, section 7(1)(d)(ii) applies only to administrative enforcement proceedings conducted by the public body that is the recipient of the request, not to investigations conducted by agencies other than CPD. Unless the IPRA review is considered to be an internal CPD investigation, which it does not appear to be, then the pendency of investigations by agencies other than CPD is irrelevant to the issue of the applicability of section 7(1)(d)(ii).

CPD also cited section 7(1)(d)(iii) in its denial. Section 7(1)(d)(iii) permits a public body to withhold records if their disclosure would "create a substantial likelihood a person will be deprived of a fair trial or an impartial hearing." However, that assertion is unsubstantiated. CPD has not demonstrated how disclosure of any of the information in the police reports or dashcam videos at issue would create a "substantial likelihood" that a person will be deprived of a fair trial or impartial hearing.

Lastly, although CPD did not reiterate this assertion in its response to this office, its response to the FOIA request asserted that the records were exempt under section 7(1)(d)(iv). Without the benefit of the responsive records for our confidential review, we are unable to conclude that any information contained in the records would unavoidably identify a confidential source or a person providing information to CPD. Accordingly, we conclude that CPD has not
Mr. Jacob P. Goldstein  
Mr. Ryan Nelligan  
November 6, 2015  
Page 5

sustained its burden of showing by clear and convincing evidence that the records are exempt from disclosure under sections 7(1)(d)(ii), 7(1)(d)(iii), or 7(1)(d)(iv) of FOIA.

In accordance with the conclusions set out above, this office requests that CPD promptly provide Mr. Elinson with copies of the records responsive to his request. Pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014), as amended by Public Act 99-298, effective August 5, 2015), CPD may properly redact discrete portions of any records that contain "private information" as defined in the Act.  

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 (217) 782-9078. This correspondence serves to close the matter.

Very truly yours,

NEIL P. OLSON  
Assistant Attorney General  
Public Access Bureau

cc:  Via electronic mail  
Mr. Zusha Elinson  
*Wall Street Journal*  
zusha.elinson@wsj.com

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3FOIA 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. 5 ILCS 140/2(c-5) (West 2014).
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 24, 2015

Via electronic mail

Via electronic mail
Mr. Lenoard "Jamie" Snyder
Assistant City Attorney
City of Carbondale
200 South Illinois Avenue
P.O. Box 2047
Carbondale, Illinois 62902
jsnyder@ci.carbondale.il.us

RE: FOIA Request for Review – 2014 PAC 28652

Dear [redacted] and Mr. Snyder:

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 Carbondale Police Department (Department) improperly withheld records responsive to [redacted] on January 22, 2014, FOIA request.

On that date, [redacted] submitted a FOIA request to the Department seeking all records pertaining to the death of his daughter. On January 30, 2014, the Department denied the request as an unduly burdensome repeated request pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012)), stating that there were no new documents since the Department's June 4, 2013, response to a prior FOIA request from [redacted] On March 27, 2014, [redacted] submitted this Request for Review alleging that he had not been provided with all of the responsive records and that some of the Department's redactions (in response to his prior request) were improper.

On April 1, 2014, this office forwarded a copy of the Request for Review to the Department and asked it to describe how it confirmed that all of the responsive records in its
Mr. Lenoard "Jamie" Snyder
July 24, 2015
Page 2

possession were previously provided to [Redacted]. This office also asked the Department to
provide 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 2013 Supp.)). On May 13, 2014, the Department provided this office with call logs and
photographs of the scene of [Redacted] death, but not the other records we requested. The
Department also provided a written response asserting that: (1) "any further release of
information would have the effect of interfering with the investigation being conducted by the
Illinois State Police and the Illinois Appellate Prosecutor's Office" citing section 7(1)(d)(vii) (5
ILCS 140/7(1)(d)(vii) (West 2013 Supp.)); (2) "the release of the photos and any further
documents would not only interfere with the investigation ** * could prevent a suspect, if
someone is charged, and the State from receiving a fair and impartial trial" citing section
7(1)(d)(iii) (5 ILCS 140/7(1)(d)(iii) (West 2013 Supp.)); and (3) "the release of the photographs
of the victim's body are of a graphic nature and to release them would be unnecessary invasion
of personal privacy[,]" which this office interprets as the assertion of section 7(1)(c) (5 ILCS
140/7(1)(c) (West 2013 Supp.)). On May 22, 2014, [Redacted] replied that the privacy interest
in information concerning his daughter rests with him as the executor of her estate, citing

On February 10, 2015, this office sent a second letter of inquiry to the
Department, again requesting: (1) unredacted copies of the records responsive to [Redacted]
prior FOIA request of May 28, 2013; (2) copies of the records responsive to that FOIA request
in the form they were provided to [Redacted], i.e. with redactions; (3) an explanation of whether
there are any records responsive to [Redacted] January 22, 2014, request that were not
encompassed by his May 28, 2013, request; and (4) a description of the search the Department
conducted upon receipt of [Redacted] January 22, 2014, request. The Department did not
respond despite repeated requests by this office. On June 29, 2015, this office issued a
determination in [Redacted], Request for Review of the response by the Illinois State Police
(ISP) to his request for records concerning the death of his daughter, which found that ISP
improperly withheld information on the basis of [Redacted] personal privacy. See Ill. Att'y
Gen. PAC Req. Rev. Ltr. 28651, issued June 29, 2015, at 7. On July 6, 2015, this office
provided a copy of that determination to the Department and asked if it would reconsider
disclosing records to [Redacted] in light of the fact that its basis for denying some of the records
had been determined to be clearly invalid. However, in a letter dated July 7, 2015, the
Department provided a written response maintaining that its denial was proper, along with
additional responsive records for this office's confidential review. On July 22, 2015, [Redacted]
replied that the Department had not met its burden to withhold responsive information.

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1 Letter from Lenoard "Jamie" Snyder, Assistant City Attorney, Carbondale, to Timothy O'Brien,
Assistant Attorney General, Public Access Bureau (April 24, 2014), at 1.
On July 23, 2015, an attorney in the Public Access Bureau contacted Assistant City Attorney Leonard "Jamie" Snyder by telephone to clarify whether the Department was conducting a criminal investigation at the time of January 22, 2014, request; Mr. Snyder confirmed that the Department was no longer conducting an investigation at that time, nor is it currently.

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).

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 the Department properly treated January 22, 2014, FOIA request as an unduly burdensome repeated request, it is necessary to assess whether the Department previously provided or properly denied all of the records responsive to May 28, 2013, request.

In that matter, requested all police reports concerning his daughter's death. The Department provided him with certain responsive records, but redacted and withheld information and records pursuant to sections 7(1)(b) (5 ILCS 140/7(1)(b) (West 2012)) and 7(1)(c) of FOIA, including photographs of the scene of death. We must now analyze whether the records requested were provided or properly redacted or withheld in that matter.
Section 7(1)(c) of FOIA

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

[personal 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 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).

The Department did not identify what information it had redacted and withheld pursuant to section 7(1)(c). In its correspondence with this office in this matter, the Department has clarified that the records it withheld pursuant to section 7(1)(c) are photographs of the scene of death, although the Department did not state whose privacy it believes would be invaded by their disclosure. 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 cited and other cases, the Attorney General has concluded "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, theavailable information, was not married, and her father, the requester, is the executor of her estate. Thus, while no longer has a personal privacy interest, does have a personal privacy interest in her personal information. As emphasized above, though, an individual may consent to the disclosure of information in which the individual has a personal privacy interest. Here, FOIA request clearly constituted his written consent to the Department disclosing to him personal information concerning his deceased daughter. The Department has not articulated a legal rationale that justifies withholding personal information concerning from her father, including her death-scene images. Therefore, the Department violated FOIA by withholding information concerning from the requester pursuant to section 7(1)(c).

As set forth above, the Department did not provide or properly deny all of the records responsive to May 28, 2013, FOIA request. Therefore, the Department's denial of his January 22, 2014, FOIA request as a repeated request violated section 3(g) of FOIA. We now turn to the remaining bases the Department asserted to withhold responsive information.

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

Sections 7(1)(d)(iii) 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:

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing; [or]

* * *

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

2On February 28, 2015, 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.

3We note that providing personal information concerning to the requester does not mean that the Department must provide the same information to other requesters who are unrelated to . has consented to the disclosure of personal information concerning to him, not to others. has requested that the Department not release further personal information concerning to the general public.
By its plain language, section 7(1)(d)(vii) applies only to an investigation conducted by the public body that received the request. The Department has acknowledged that it was not conducting an investigation of [redacted] death at the time of [redacted]: January 22, 2014, request, and that it is not conducting one now. Accordingly, the Department did not sustain its burden of demonstrating that the records are exempt from disclosure pursuant to section 7(1)(d)(vii) of FOIA.

As to its assertion of section 7(1)(d)(iii), the Department stated:

Further release of reports, documentation and photographs would have the potential of diluting any possible testimony if released to the general public. [redacted] has made it a policy to release those items he believes proves his daughter was murdered. Pictures, statements and reports taken out of context will have an impact on future juries and witness statements. * * * The jury pool in Jackson County is small and this matter has received substantial local and national media attention.4

replied:

The assertion that Mr. Snyder makes about my providing records to the public that haven't already been made public by the investigating bodies is erroneous. The Illinois State Police and Carbondale Police Department provided local media with crime scene photos, witness statements with names, and many other unredacted records well before I received them[.] [Citations.]5

The Department's argument about [redacted] releasing information is unpersuasive. Any records in the public domain concerning [redacted] death are there because public bodies disclosed them. Indeed, on April 16, 2015, ISP's Legal Counsel informed an attorney in the Public Access Bureau that ISP had disclosed all of the responsive records (with redactions) except the postmortem photographs to the Carbondale Times, which reported on them on that date. Unquestionably, [redacted] has been vocal about his belief that his daughter was murdered. However, no individual has ever been taken into custody in connection with [redacted] death, and there is no indication that anyone will be. The Department stated: "the

4Letter from Lenoard "Jamie" Snyder, Assistant City Attorney, Carbondale, to Joshua Jones, [Supervising Attorney], Public Access Bureau (July 7, 2015), at 1-2.

Appellate Prosecutor, Ed Parkinson has determined at this time there is insufficient evidence to charge anyone in connection with [redacted] death; however, he did indicate that the case would remain open for further investigation as new evidence is found. Even if the case technically remains open, the notion that an individual conceivably still could be arrested and prosecuted in connection with [redacted] death is too tenuous to prove that disclosure of the withheld information will create a substantial likelihood that a person will be deprived of a fair trial. Accordingly, the Department failed to sustain its burden of demonstrating by clear and convincing evidence that section 7(1)(d)(iii) exempts from disclosure responsive information.

CONCLUSION

For the reasons set forth above, we conclude that the Department violated FOIA by failing to sustain its burden of demonstrating by clear and convincing evidence that it previously provided or properly denied the responsive records and that all of the undisclosed responsive information is exempt under sections 7(1)(c), 7(1)(d)(iii), and 7(1)(d)(vii). We direct the Department to provide [redacted] with copies of the responsive information, subject only to the redaction of "private information" as defined in FOIA pursuant to section 7(1)(b), 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 personal 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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4Letter from Leonard "Jamie" Snyder, Assistant City Attorney, Carbondale, to Joshua Jones, (Supervising Attorney), Public Access Bureau (July 7, 2015), at 1.

7We note that disclosing the witness statements collected by Officer Lockinour on March 24, 2012, with the witnesses' identifying information redacted would not constitute a clearly unwarranted invasion of privacy. Additionally, the memoranda concerning an employee's administrative leave cannot be withheld pursuant to section 7(1)(c) because they bear on the employee's public duties.
The Honorable Jonathan C. Wright
Logan County State's Attorney
Logan County State's Attorney's Office
Logan County Courthouse – Room 31
601 Broadway Street
Lincoln, Illinois 62656

RE: FOIA Request for Review – 2015 PAC 36758

Dear [redacted] and Mr. Wright:

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 discussed below, this office concludes that the Logan County State's Attorney's Office (State's Attorney's Office) improperly denied [redacted] on July 31, 2015, FOIA request in its entirety, but may withhold certain responsive records.

On that date, [redacted] submitted a FOIA request to the State's Attorney's Office seeking all information regarding case number 2015-CF-81, including a letter sent to the State's Attorney's Office between July 15, 2015, and July 23, 2015, from Illinois Department of Corrections (IDOC) Parole Division Supervisor Jeff Hart. On August 4, 2015, the State's Attorney's Office denied that request in its entirety pursuant to section 7(1)(d)(iii) of FOIA (5 ILCS 140/7(1)(d)(iii) (West 2014)). On August 6, 2015, this office received [redacted] Request for Review of that denial.

On August 18, 2015, this office sent a copy of [redacted] Request for Review to the State's Attorney's Office and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation of its legal and factual bases for withholding them. On August 31, 2015, this office received those records and the State's Attorney's Office's written response, which also cited Illinois Rules of
The Honorable Jonathan C. Wright  
September 30, 2015  
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Professional Conduct 3.6(a) and 3.6(d) as grounds for withholding the records. [Redacted] did not submit a written reply.

ANALYSIS

"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 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).

Rules of Professional Conduct

Section 3.6(a) of the Illinois Rules of Professional Conduct of 2010 provides:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter.

Additionally, section 3.6(d) of the Illinois Rules of Professional Conduct of 2010 provides: "No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a)." Notably, Rule 3.6 also acknowledges a legitimate public interest in disclosure of law enforcement records:

It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in
matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy. (Emphasis added.) Ill. R. Prof. Conduct 3.6, Committee Comment 1 (adopted July 1, 2009).

Because there is no exemption containing or referencing Rules 3.6(a) and 3.6(d) in FOIA, this office construes the State's Attorney's Office's reliance on those rules as asserting section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2014)), which exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." (Emphasis added.) See, e.g., Better Government Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 815-16 (4th Dist. 2008) (under section 7(1)(a), "an exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated - that is, such a proposed disclosure must be specifically prohibited").

Sections 3.6(a) and 3.6(d) of the Illinois Rules of Professional Conduct of 2010 prohibit prosecutors from making statements outside of court that could threaten the fairness of a pending adjudication. We are unaware of any authority which concludes that providing a FOIA requester with records constitutes an extrajudicial statement. Indeed, "FOIA is consistent with the Rules of Professional Conduct because Section 7(1)(d)(iii) of FOIA exempts records if their disclosure would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing." Ill. Att'y Gen. PAC Req. Rev. Ltr. 10319, issued January 18, 2011. Thus, these rules do not prohibit the State's Attorney's Office from providing a FOIA requester with records concerning her son's criminal case. Because the Rules of Professional Conduct the State's Attorney's Office cited do not specifically prohibit the State's Attorney's Office from providing the requester with the responsive records, the State's Attorney's Office failed to sustain its burden of demonstrating by clear and convincing evidence that the rules exempt the responsive records from disclosure pursuant to section 7(1)(a) of FOIA.

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

Section 7(1)(d)(iii) of FOIA exempts 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:

* * *
create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing[.]

In response to [redacted] FOIA request, the State's Attorney's Office asserted that disclosing responsive records to [redacted] would create a substantial likelihood that her son would be deprived of a fair trial because [redacted] had "previously taken steps" to have her son's cases "brought to public attention and scrutiny," specifically referencing her July 6, 2015, e-mail to the members of the Logan County Board (Board). In response to this office's inquiry, the State's Attorney's Office asserted that [redacted] on July 6, 2015, e-mail to the Board makes "clear that [redacted] is attempting to use public opinion to affect the outcome of [her son's] pending cases." The State's Attorney's Office further asserted:

[redacted] has disseminated publicly what information she does possess about [her son's] pending criminal cases. It is a reasonable inference that [redacted] would publicly disseminate additional information about [her son's] pending criminal cases. In a county of relatively small population (approximately 30,000), public dissemination of details of the pending criminal cases has the potential to spread very quickly through traditional media and/or social media. Such dissemination could affect [her son's] right to a fair and impartial jury in his pending criminal cases — if any go to trial.

The State's Attorney's Office has not set forth facts from which we could conclude that disclosing the responsive records to [redacted] would have created a substantial likelihood that her son would be deprived of a fair trial. This office has reviewed [redacted] July 6, 2015, e-mail to the Board, which states that she is a concerned mother seeking assistance for her son. The available information indicates that [redacted] submitted the request at issue as part of her efforts to ensure that her son's case was handled fairly, not to deprive him of a fair trial. The State's Attorney's Office has not established how disclosure of any particular information could have jeopardized a defendant's ability to receive a fair trial.

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1Letter from Jonathan C. Wright, Logan County State's Attorney, to [redacted] (August 4, 2015).


The Honorable Jonathan C. Wright
September 30, 2015
Page 5

Accordingly, we conclude that the State's Attorney's Office has not demonstrated that the records are exempt from disclosure in their entirities pursuant to section 7(1)(d)(iii) of FOIA.

However, because disclosure of some of the withheld records would impact a third party that is not represented in this Request for Review, we note that section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2014)) 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 applies to "...inter- and intra-agency predecisional and deliberative material." Harwood v. McDonough, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). Accordingly, pursuant to section 7(1)(f), the State's Attorney's Office may withhold predecisional, deliberative communications with another public body.

We conclude that the State's Attorney's Office did not sustain its burden to withhold the records responsive to [REDACTED] request under the exemptions it asserted, but may withhold predecisional deliberative communications pursuant to section 7(1)(f). We request that the State's Attorney's Office provide [REDACTED] with the remaining responsive records, to the extent that their disclosure is not specifically prohibited by another provision of State or Federal law.

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 (312) 814-8413 or jjones@atg.state.il.us. This letter serves to close this matter.

Very truly yours,

JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

36758 f 71a improper 71diii improper sao
March 5, 2014

Mr. Ralph M. Price
General Counsel
Chicago Police Department
3510 South Michigan Avenue, 5th Floor
Chicago, Illinois 60653

RE: FOIA Request for Review – 2013 PAC 23394

Dear [redacted] and Mr. Price:

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)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly denied certain parts of [redacted] request.

BACKGROUND

On January 15, 2013, [redacted] sent CPD a FOIA request seeking:

documents involving People vs. [redacted] Cook County
Criminal Case Number: 05CR22105 RD#HL-520474, including, but not limited to 'all police reports, police summary reports, supplemental reports, progress reports, investigative reports of any kind (or) nature, notes, memoranda, crime scene reports, crime scene photographs, canvas reports, witness statements, accused statements, forensic reports, lab reports, test results, booking reports, line-up photo[]s, line-up waivers, line-up reports, recorded
Mr. Ralph Price  
March 5, 2014  
Page 2

interviews, or any other document prepared during the police investigation process of the above case.

CPD responded to [redacted] on January 23, 2013, by providing 50 pages of responsive records and by indicating that another 21 pages and 12 photographs were available upon receipt of $15.15 in reproduction costs. CPD redacted or withheld information under sections 7(1)(b), 7(1)(c), 7(1)(d)(iv), 7(1)(d)(vi), and 7(1)(f) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv), (1)(d)(vi) (1)(f) (West 2012)). This office received [redacted] Request for Review on February 15, 2013, and requested further information from CPD.

On March 20, 2013, CPD supplied this office with a three-page response together with copies of the records in question. CPD withheld seven photographs of the deceased gunshot victim under section 7(1)(c) of FOIA, on the grounds that the graphic photographs would be an unwarranted invasion of the victim's family's privacy. CPD also stated it redacted dates of birth and the employer information of a surviving victim and witnesses.

Citing 7(1)(d)(iv), CPD also redacted the names, addresses, and other identifying information of witnesses who provided information to police. CPD also redacted these individuals' identifying information under section 7(1)(d)(vi), asserting that disclosure of the information would endanger the lives of these witnesses and the surviving victim should such information be released to [redacted].

Finally, CPD withheld a number of handwritten and typed "general progress reports" under section 7(1)(f) because "these records * * * contain notes and recommendations relating to the course of the Department's investigation and possible filing of charges." Other records were withheld but not addressed in CPD's response. Records labeled "Clear Data Warehouse Incident Check From the Crimes Tables," "Supervisory Homicide Audit Review," and a document that appears to be an autopsy report were not addressed in CPD's response but are presumed to have been withheld under 7(1)(f) as well.

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1Letter from [redacted] to Freedom of Information Officer, Records Inquiry Section, Unit 163, Chicago Police Department, (January 15, 2013).

2Home addresses had also been redacted under section 7(1)(b) of FOIA, but [redacted] indicated in his Request for Review he was not challenging any redactions of private information under 7(1)(b).

3Letter from Terrence Collins, Office of Legal Affairs, Chicago Police Department, to Rob Olmstead, Assistant Attorney General, Office of the Attorney General, at 3 (March 20, 2013).
DETERMINATION

Section 7(1)(f)

Section 7(1)(f) of FOIA 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." 5 ILCS 140/7(1)(f) (West 2012). 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. "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." Parmelee v. Camparone, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. 1998). When a record contains both preliminary recommendations and factual material, the factual material is not covered by the deliberative process privilege and, therefore, must be disclosed.4 Parmelee, 1998 WL 704181, at *2; see also III. Att'y Gen. PAC Req. Rev. Ltr. 20347, issued January 10, 2013, at 3 (requiring release of factual portion of General Progress Reports that could be segregated from opinions and recommendations).

This office has reviewed the General Progress Reports, which primarily contain factual information provided by witnesses. Indeed, the handwritten General Progress Reports mirror much of the typed information already released to [REDACTED]. Accordingly, this office concludes that CPD has not sustained its burden of demonstrating that these reports are exempt from disclosure in their entirety under section 7(1)(f) of FOIA. We request that CPD release the reports to [REDACTED] after redacting opinions, recommendations, and other information that may be appropriately withheld under section 7 of FOIA (5 ILCS 140/7 (West 2012)).

The Supervisory Homicide Audit Review consists exclusively of preliminary opinions concerning the status of the case and recommendations for further action. Therefore, we conclude that CPD properly withheld those records under section 7(1)(f).

The CLEAR Data Warehouse Incident Check does not contain any opinions, impressions or recommendations. Similarly, the Cook County Medical Examiner's report contains entirely factual information and laboratory reports. Such records do not constitute pre-decisional deliberative material. Accordingly, we conclude that CPD has not sustained its

4Illinois courts have recognized that because Illinois' 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. Directors, Ill. Dept' of Revenue, 180 Ill. App. 3d 1084, 1087 (1989).
burden of demonstrating that those records are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Sections 7(1)(d)(iv), 7(1)(d)(vi)

Section 7(1)(d)(iv) exempts information that would "unavoidably disclose the identity of ** persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies." 5 ILCS 140/7(1)(d)(iv) (West 2012). The Redacted has alleged that CPD redacted the names of witnesses who testified at his trial. This office has asked CPD whether any of the individuals whose names were redacted testified at Redacted trial, to which CPD responded that "the Department does not maintain records regarding criminal proceedings and witness testimony."

The Public Access Bureau has previously determined that the section 7(1)(d)(iv) exemption "is limited to confidential information that was not revealed in [court] proceedings * * * and information that identifies witnesses who provided statements to police but did not testify." See Ill. Att'y Gen. PAC Req. Rev. Ltr. 16633, issued March 29, 2013, at 2. Nothing in section 7(1)(d)(iv), however, either expressly or impliedly requires a law enforcement agency to ascertain whether otherwise exempt information in its possession has been disclosed in judicial proceedings. Thus, to the extent that it does not possess records reflecting whether a specific individual testified during a judicial proceeding relating to the requested records, CPD is not obligated to seek that information. Therefore, in the absence of records indicating that a confidential source testified in court, CPD may redact information furnished by confidential sources and also information that would identify individuals who provided statements to police, including names, social security numbers, ages, birth dates, telephone numbers, places of work, addresses and other information that specifically identifies witnesses' residences.

Section 7(1)(c)

Section 7(1)(c) allows a public body to withhold "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." 5 ILCS 140/7(1)(c) (West

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5See section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)), which 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."
2012). CPD withheld victims' and witnesses' dates of birth, which this office has repeatedly found to be permissible under section 7(1)(c). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 24652, issued June 24, 2013, at 2. CPD also redacted employment information concerning the surviving victim. The assertion of section 7(1)(c) exemption is evaluated on a case-by-case basis. Chicago Journeymen Plumbers' Local Union 130, U.A. v. Dept of Pub. Health, 327 Ill. App. 3d 192, 196 (2001). In this instance, the surviving victim's right to privacy outweighs any legitimate public interest in disclosure of the victim's employment information. Therefore, CPD properly redacted that information under section 7(1)(c).

Additionally, CPD's properly withheld seven postmortem photographs of the victim pursuant to section 7(1)(c). This office has repeatedly determined that release of graphic postmortem photographs would be an unwarranted invasion the privacy of the surviving family members of the victim. See Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5. [redacted] argues the display of those photographs in court renders such photographs subject to release. This office disagrees. The photographs were merely displayed, not copied and distributed, in court. Unlike the identity of a witness, a photograph cannot be mentally stored and reproduced by those who witnessed them. Despite their display in court, the photographs remain exempt from disclosure 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. This letter will serve to close this file. Please contact me at (312) 814-6756 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 7, 2014

Big Muddy River Correctional Center
251 North Illinois Highway 37
Ina, Illinois 62846

Ms. Rosalee Dodson
Assistant Corporation Counsel
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61701

RE: FOIA Request for Review – 2013 PAC 26558

Dear [Redacted] and Ms. Dodson:

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)). For the reasons that follow, the Public Access Bureau concludes that the response by the City of Bloomington (City) to [Redacted] FOIA request was proper, in part, and improper, in part.


On October 24, 2013, this office forwarded a copy of the Request for Review to the City and asked it to provide a detailed legal and factual basis for its assertion of the section 7(1)(b) and 7(1)(d)(iv) exemptions, along with un-redacted copies of the responsive records for our confidential review. On November 1, 2013, the City provided that information; [Redacted] did not reply to the City's response.
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)(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) 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.

The City redacted social security numbers, home telephone numbers, home addresses, and a driver's license number, all of which are defined as private information under the plain language of section 2(c-5). Accordingly, the City properly redacted that information pursuant to section 7(1)(b).

Next, section 7(1)(d)(iv) of FOIA exempts from disclosure information 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 voluntarily provide them with information. See, e.g., Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 200-01 (2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department).

The City redacted the names, home addresses, and home phone numbers of persons who provided the Bloomington Police Department with information, including two victims, and a victim's mother. Information that identifies the victims and the victim's mother is clearly exempt from disclosure under section 7(1)(d)(iv), as they are private individuals who stepped forward to provide information to a law enforcement agency. However, that rationale
does not apply to the redacted names of a child advocate and Department of Children and Family Services (DCFS) investigator who provided information to police in their official capacities as child welfare officials. Construing section 7(1)(d)(iv) to apply to individuals who provide information for a law enforcement investigation pursuant to their duties as public servants would yield absurd result, and statutes should be construed to avoid absurdity. See, e.g., People v. Hanna, 207 Ill. 2d 486, 498-500 (2003) ("[W]here a plain or literal reading of a statute produces absurd results, the literal reading should yield"). The General Assembly intended section 7(1)(d)(iv) to protect the confidentiality of private persons who volunteer information to police and not to individuals who act under an official duty. Additionally, names are not "unique identifiers" and therefore do not constitute "private information" that is exempt from disclosure under section 7(1)(b) of FOIA. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 17116, issued July 30, 2012. Accordingly, we request that the City disclose the names of the child advocate and DCFS investigator.

The City also redacted dates of birth and the names of two private individuals who do not appear to have provided information to police. While the City did not cite section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013), that provision exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 7(1)(c) 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."

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. Disclosure of the names of third parties who have no involvement in an underlying incident but who appear incidentally in police reports also would constitute an unwarranted invasion of personal privacy. Ill. Att'y Gen. PAC Pre-Auth. a114713, issued June 22, 2011. Therefore, those individuals' names as well as all dates of birth are exempt from disclosure pursuant to section 7(1)(c) of FOIA.
The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-1679 if you have any questions. This letter shall serve to close this matter.

Very truly yours,

JOSH JONES
Assistant Attorney General
Public Access Bureau

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Via Electronic Mail and U.S. Mail
Ms. Mandy Bentley
Freedom of Information Officer
Illinois Department of Corrections
Mandy.Bentley@doc.illinois.gov

Ms. Kathy Robinson
Research Librarian
The American Federation of State, County and Municipal Employees
Council 31
615 S. 2nd Street
P.O. Box 2328
Springfield, Illinois 62705

RE: FOIA Request for Review – 2011 PAC 12887

Dear Ms. Bentley and Ms. Robinson:

The Public Access Counselor has received a Request for Review submitted by Ms. Kathy Robinson on behalf of the American Federation of State, County and Municipal Employees (AFSCME) Council 31. Ms. Robinson seeks review of the denial by the Illinois Department of Corrections (IDOC) of her FOIA request seeking copies of any investigations and 434 incident reports involving Mr. Don Baker from October 3, 2010, to the present.

This office initiated further inquiry of the matter on April 5, 2011. IDOC responded to our letter on April 19, 2011, and asserted that certain information contained in the records is exempt pursuant to section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2010)), which exempts from inspection and copying information 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."
DETERMINATION

This office has previously concluded that the names of employees who furnish information during the course of an administrative investigation are exempt pursuant to section 7(1)(d)(iv). See 2010 PAC 5752 and 5753 (Ill. Att’y Gen. PAC Req. Rev. Ltr. 5752, 5753, issued April 20, 2011, at 4). In those matters, we concluded that names of police officers that provided information during the course of a disciplinary investigation were exempt from disclosure pursuant to section 7(1)(d)(iv). Because the responsive records in this matter include the names of employees who provided information during the course of an administrative investigation, the same determination is applicable in this review.

Based on our review of IDOC’s response, we conclude that IDOC properly asserted section 7(1)(d)(iv) to withhold disclosure of employee names, and that no further inquiry is warranted. If you have any questions, you may contact me at (312) 814-5383. This correspondence shall serve to close the file.

Very truly yours,

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

12887 F RFR pb ex proper sa

Via Electronic Mail

cc: Mr. Joel Diers
Illinois Department of Corrections
Joel.Diers@doc.illinois.gov
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 6, 2015

[Redacted] (will receive letter only)

Via electronic mail
Ms. Angela Fyans-Jimenez
Deputy Corporation Counsel
City of Bloomington
109 East Olive
P.O. Box 3157
Bloomington, Illinois 61702
legal@cityblm.org

Re: FOIA Request for Review – 2015 PAC 34304

Dear [Redacted] and Ms. Fyans-Jimenez:

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 set forth below, this office concludes that the City of Bloomington (City) improperly withheld information responsive to [Redacted] March 16, 2015, FOIA request.

On that date, [Redacted] submitted a FOIA request to the City seeking police report #201400069. On March 20, 2015, the City provided some records and withheld the remainder of the report pursuant to sections 7(1)(c), 7(1)(d)(iv), and 7(1)(d)(v) of FOIA (5 ILCS 140/7(1)(c), (1)(d)(iv), (1)(d)(v) (West 2014)). On March 23, 2015, [Redacted] submitted a Request for Review to this office contesting the City's response to her FOIA request. In her Request for Review, she clarified that she is only seeking specific information about the incident and the arrestee: "He states he called an escort service and when he arrived at a motel he knocked on the room door and police were inside. * * * All I want to know is if he was picked up on the street * * * OR if his version is true[.]"¹

¹Correspondence from [Redacted] to the Public Access Bureau (March 20, 2015).

500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (217) 785-2771 • Fax: (217) 782-7046
100 West Randolph Street, Chicago, Illinois, 60601 • (312) 814-3000 • TTY: (312) 814-3374 • Fax: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529-6416
Ms. Angela Fyans-Jimenez  
July 6, 2015  
Page 2

On April 3, 2015, this office sent a copy of the Request for Review to the City and asked it to provide unredacted copies of the responsive records for our confidential review and a detailed explanation of the factual and legal bases for withholding the responsive records. On April 9, 2015, the City provided those records along with its written response to this office. This response was forwarded to [REDACTED] who did not 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 2014); see also Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 415 (2006). FOIA requires a public body to conduct a "reasonable search tailored to the nature of a particular request." Campbell v. U.S. Department of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998). 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). Furthermore, section 9(a) of FOIA (5 ILCS 140/9(a) (West 2014)), requires that a public body denying a request for public records provide "a detailed factual basis for the application of any exemption claimed."

The specific information sought by [REDACTED] in this Request for Review appears to have been withheld under section 7(1)(d)(v) of FOIA, which exempts from disclosure records "created in the course of administrative enforcement proceedings" that "disclose unique or specialized investigative techniques other than those generally used and known * * * and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request.[]"

The City asserts that disclosure of some of the information in the responsive police reports relates to the use of investigative techniques that, if disclosed, would prevent the City's officers from using them effectively. However, such assertion is conclusory. Although the withheld records contain information relating to the use of investigative techniques, the City has not demonstrated that disclosing the limited information that [REDACTED] seeks would reveal any unique or specialized investigative techniques. Further, it is unclear how disclosure of information indicating whether or not the arrestee called an escort service and the location of his arrest would result in demonstrable harm to the City. Accordingly, this office concludes that the City has not sustained its burden of demonstrating that the discrete information sought by [REDACTED] is exempt from disclosure under section 7(1)(d)(v) of FOIA.

Based on the above conclusions, this office requests that the City provide the information sought by [REDACTED] which can be found in the highlighted portion of page 1 of the narrative supplemental report, which we have enclosed only for the Department. Because
Ms. Angela Fyans-Jimenez
July 6, 2015
Page 3

Only disputed the denial of that specific information, the Department may redact any additional information from this record.

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 on the first page of this letter. This letter serves to close this matter.

Very truly yours,

BENJAMIN REED
Assistant Attorney General
Public Access Bureau

34304 f 71dv improper pd

Attachment
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 21, 2010

Mr. Lisa Weitekamp
Illinois Department of Corrections
1301 Concordia Court
Post Office Box 19277
Springfield, Illinois 62794-9277

Post Office Box 7711
Centralia, Illinois 62810

RE: Request for Review – 2010 PAC 7909

Dear Ms. Weitekamp and [redacted]

We have received and reviewed a Request for Review of a Freedom of Information Act (FOIA) request submitted to the Illinois Department of Corrections (IDOC) on April 15, 2010, by [redacted].

[redacted] filed a FOIA request with IDOC seeking copies of the following: the results of polygraph tests administered by the Illinois State Police Crime Lab related to an altercation between [redacted] and Sgt. Stephen Langheim; and an incident report, including photos of [redacted] injuries, filed May 12, 2009, concerning an incident between an inmate and Sgt. Langheim. IDOC responded April 28, 2010, denying the request under the exemptions contained within Sections 7(1)(d)(iv), 7(1)(d)(v), and 7(1)(e) of FOIA. [redacted] filed a request for review with our Office June 11, 2010.

Our Office issued a letter of further inquiry on June 17, 2010. In that letter, we requested that IDOC provide a detailed explanation of its asserted exemptions. We also requested that IDOC provide our Office with the polygraph results, the responsive incident report, and copies of the photographs of [redacted] injuries.

In a reply dated June 29, 2010, IDOC stated the following:

- Release of the requested incident report would disclose witnesses to the incident, which could subject them to retaliation if their statements were viewed as supporting staffs’
version of events. Therefore, IDOC believes the information is exempt from disclosure under Section 7(1)(d)(iv) of FOIA;

- Release of the requested incident report could lead to retribution against staff and inmates, or it could encourage copycat grievances that would require further investigation and divert resources from institutional safety. Therefore, IDOC believes the incident report is exempt from disclosure under Section 7(1)(e) of FOIA; and

- Release of the requested polygraph results would disclose the IDOC’s use of polygraph tests, a unique investigative technique for IDOC. Therefore, IDOC believes the polygraph results are exempt from disclosure under Section 7(1)(d)(v) of FOIA.

IDOC provided the requested documents for our review.

Section 7(1)(d)(iv) of FOIA exempts from inspection and copying documents 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.” 5 ILCS 140/7(1)(d)(iv).

Section 7(1)(d)(v) of FOIA exempts from inspect and copying documents that would “disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request.” 5 ILCS 140/7(1)(d)(v).

Section 7(1)(e) of FOIA exempts from inspect and copying documents “that relate to or affect the security of correctional institutions and detention facilities.” 5 ILCS 140/7(1)(e).

**Determinations**

It is the determination of this Office that IDOC has met the burden required to assert that some of the requested information is exempt from disclosure under Section 7(1)(d)(iv), but has failed to meet that burden with respect to exemptions under Sections (7)(1)(d)(v) and 7(1)(e) of FOIA.

With regard to the incident report, IDOC asserts that the report contains the names of individuals who provided information to IDOC investigators, and that those individuals might be subject to retaliation if the report is released. To properly assert the Section 7(1)(d)(iv) exemption, IDOC is not required to show that a witness might suffer injury; it is sufficient that the report contains information that would make the witness identifiable. Such information is contained in the report in the form of witness names and identification numbers. However, such information also is easily redacted from the report. Section 7(1) of FOIA provides that, when a document contains both exempt and non-exempt information, the public body may redact the exempt information and “shall make the remaining information available for inspection and copying.” 5 ILCS 140/7(1). Therefore, IDOC may redact witnesses’ names and identification numbers but may not withhold the entire incident report.

IDOC also asserts that the release of the report could result in retribution to staff members and inmates, as well as copycat grievances that would divert resources away from institutional safety, and therefore, the report is exempt from disclosure under Section 7(1)(e) of FOIA. IDOC has not, however, sufficiently explained its basis for asserting that the release of these documents could result in violence at any of its facilities, and its suggestion that release of the report might
in some way spur copycat grievances, without more, is insufficient to justify withholding the documents under the Section 7(1)(e) exemption. Therefore, IDOC may not withhold the incident report in toto pursuant to Section 7(1)(e) of FOIA.

With regard to the polygraph results, IDOC asserts that polygraph tests are exempt from disclosure under Section 7(1)(d)(v) of FOIA because the polygraph is a unique investigative tool for IDOC, and releasing the reports would compromise the usefulness of future polygraph tests. Even assuming that the polygraph could be considered a novel investigative tool, notwithstanding its use as such for decades, our review of the polygraph reports indicates that they simply describe the examiner's belief regarding whether the test subject answered certain questions truthfully. The reports do not provide any information on how the polygraph test was administered or how the process works. Therefore, IDOC has failed to show that the disclosure of the test results would reveal specific information regarding such examinations that would cause demonstrable harm to the agency. Therefore, IDOC may not withhold the polygraph tests results.

In accordance with this letter, IDOC must release the requested documents. If you have any questions, please call our Office at 312-814-5383. This letter shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By: Matthew C. Rogina
Assistant Public Access Counselor
January 23, 2014

Mr. Nicholas G. Grapsas, Ltd.
Attorney at Law
1622 Colonial Parkway
Suite LA
Inverness, Illinois 60067

Deputy Chief Christopher Mannino
Park Forest Police Department
200 Lakewood Boulevard
Park Forest, Illinois 60466

RE: FOIA Request for Review – 2013 PAC 26630

Dear Mr. Grapsas and Deputy Chief Mannino:

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)). For the reasons that follow, the Public Access Bureau concludes that the Park Forest Police Department (Department) improperly denied, in part, Mr. Nicholas G. Grapsas's October 4, 2013, FOIA request.

On that date, Mr. Grapsas submitted a four-part FOIA request to the Department. The first three parts pertained to the Department's use of bean bag projectiles and tasers, while the fourth part sought:

[any and all documents, including roll call, log sheets and work schedules reflecting the assignments of all police and civilian personnel on duty on July 26 and 27, 2013, and their units of assignments. Please note: this request does not seek documents which are in investigatory report form or are derived from personnel records, but specific duty assignments encompassed by the referenced dates.]

Letter from Nicholas G. Grapsas, Ltd., to Mike McNamara, Deputy Chief of Police, Park Forest Police Department (October 4, 2013).
On October 15, 2013, the Department granted the request, in part, and denied it, in part. With respect to part 4 of Mr. Grapsas' request, the Department provided Mr. Grapsas with certain responsive records, including "Equipment Sign Out sheets, [a] patrol schedule, and roll call, or 'Watch Commander' book entries from the dates requested"², but redacted "the names of police and civilian personnel"³ from those documents pursuant to section 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(vi) (West 2012)).

On October 25, 2013, the Public Access Bureau received the above-captioned Request for Review contesting the Department's partial denial of part 4 of Mr. Grapsas's request. On November 1, 2013, this office forwarded a copy of the Request for Review to the Department and asked it to provide a detailed legal and factual basis for its assertion that disclosure of police officers' names would endanger the life or physical safety of law enforcement personnel or any other person under the section 7(1)(d)(vi) exemption.

On November 15, 2013, the Department responded that the redaction of names was justified because of threats against certain police officers in the aftermath of an incident that occurred on July 26 and 27, 2013. The following is a condensed version of the Department's account of that incident.

On July 26, 2013, Department officers were dispatched to an assisted living facility to assist with a combative 95 year old resident. The resident was threatening people with a metal cane and a two-foot metal shoe horn, and would not comply with the officers' commands. When the resident brandished a 12 inch knife, the officers tased him. When that failed to subdue him, the officers fired "less lethal bean bag rounds"⁴ at him, causing him to drop the weapon. He was taken into custody and transported to the hospital, where he died at approximately 2:30 a.m. on July 27, 2013.

The Department stated that following the incident, multiple posts on social media outlets threatened harm to the involved officers. The Department provided screenshots of several such posts, including one which states: "Find the pigs responsible. Go into their homes and taze [sic] them to the ground then bean bag them to death. No courts, no jury, no mercy for

²Letter from Deputy Chief Christopher Mannino to Nicholas G. Grapsas, Ltd. (October 15, 2013).
these scumholes."5 The Department added that it "also received a number of direct threats over the telephone in which the callers used a lot of profanity and referred to the involved officers as 'murderers.'"6 Lastly, the Department analogized these circumstances to those of Lucas v. Prisoner Review Board, 2013 Ill. App. 2d 110698 (2d Dist. 2013), a case that involved safety concerns under section 7(1)(d)(vi) of FOIA. The Department asserted that disclosure of police officers' names in these circumstances entailed a real and serious safety concern due to the threats that had been made, as was addressed in Lucas.

On December 4, 2013, this office received Mr. Grapsas's reply alleging that the Department had failed to meet its burden of proof to justify withholding the police officers' names.

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)(vi) exempts from inspection and copying information that would "endanger the life or physical safety of law enforcement personnel or any other person." The Public Access Bureau has concluded that information identifying undercover officers is generally exempt from disclosure under this exemption. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 25181, issued August 21, 2013; Ill. Att'y Gen. PAC Req. Rev. Ltr. 24652, issued June 24, 2013; Ill. Att'y Gen. PAC Req. Rev. Ltr. 16827, issued June 5, 2012; see also Dandridge v. Cook County, 2013 WL 3421834, at *6 (N.D. Ill. July 8, 2013) ("[P]ursuant to FOIA exemptions, it is not improper for a police department to withhold the names of officers involved in undercover drug investigations"). In contrast, however, the Public Access Bureau has also determined that information identifying non-undercover police officers is ordinarily not exempt from disclosure under section 7(1)(d)(vi). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 8011, issued September 29, 2010. That Request for Review concerned the denial by the University of Illinois of a request for the names, badge numbers, and photographs of all University of Illinois Police Department (UIPD) employees pursuant to section 7(1)(d)(vi). This office concluded:

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6Letter from Elizabeth A. Ekl to Josh Jones, Office of the Attorney General, at 3 (November 15, 2013).
Despite the safety risk that comes with being a police officer, these UIPD employees, comprising mostly police officers, regularly wear their names and badge numbers on their clothing while on duty. In addition, photographic depictions of police officers engaged in a variety of duties are a common occurrence in the media. As such, the University has failed to establish, with clear and convincing evidence, that the disclosure of the requested information would endanger the life and safety of these officers beyond the risk that otherwise comes with the job.

This office has also rejected the assertion of the section 7(1)(d)(vi) exemption to withhold photographs of officers who were accused of undue force, abuse, or cover-ups. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 18842, issued April 16, 2013.

There is a strong public interest in information that sheds light on the manner in which law enforcement officials perform their public duties. Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7; see also Wiggins v. Burge, 173 F.R.D. 226, 229 (N.D. Ill. 1997) (ordering disclosure of documents pertaining to allegations of police torture in part because the "[p]erformance of police duties and investigations of their performance is a matter of great public importance"); Coursey v. Greater Niles Township Publishing Corp., 40 Ill. 2d 257, 265 (1968) ("It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an 'on the street' level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions"). Moreover, when police officers discharge their weapons and/or inflict physical harm upon civilians, the degree of public interest is heightened. See, e.g., State ex rel. Journal/Sentinel v. Arreola, 207 Wis. 2d 496, 515-16 (1996) (requiring disclosure of police officers' names pursuant to a FOIA request for "use of deadly force" reports because "]t]he public has a compelling interest in monitoring the use of deadly force by police officers and such interest outweighs the police officers' expectation of privacy with regard to discharging their weapons while working as police officers").

Unquestionably, there is also a strong public interest in protecting the safety of law enforcement officers. However, the Department has failed to demonstrate that the disclosure of the requested records to Mr. Grapsas will "endanger the life or physical safety of law enforcement personnel" beyond the risks that are inherent in police work. Facing threats, at times violent, is an unfortunate aspect of public service for many public officials, whether engaged in the enforcement of the law or not. Despite such threats, the public's ability to identify its public officials fosters transparency, efficiency, and accountability.
That police officers are public officials is one of several significant factors distinguishing the circumstances of this Request for Review from those of *Lucas v. Prisoner Review Board*. In *Lucas*, an inmate imprisoned for predatory sexual assault of a child submitted a FOIA request to the Prisoner Review Board (PRB) seeking a copy of a letter written by the fiancé of his victim objecting to his parole. PRB denied that request under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2010)), which exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law," because section 1610.30(b)(1)(B) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code § 1610.30(b)(1)(B) (2013), last amended at 9 Ill. Reg. 16257, effective October 10, 1985) prohibits an inmate from accessing evidence in his parole file when it would "[s]ubject any person to the actual risk of physical harm." The Court held that under the circumstances, which included the victim's fear that Lucas would use her name and address to track her down after his release, PRB properly withheld the victim's and/or letter writer's name and address. In contrast, the subjects of Mr. Grapsas's request are public officials, and he seeks only their names and duty assignments on specific dates, not their home addresses or other private information that could be used to target them. Therefore, *Lucas* is inapposite.

Accordingly, this office concludes that section 7(1)(d)(vi) of FOIA does not exempt the Department from disclosing information containing the names and duty assignments of police officers and civilian employees who were on duty on July 26 and 27, 2013, and who were not engaged in undercover activity. The Department is directed to release the responsive records to Mr. Grapsas.

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 address listed on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,

[Signature]

JOSH JONES
Assistant Attorney General
Public Access Bureau

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cc: Ms. Elizabeth A. Ekl
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 21, 2013

P.O. Box 089002
Chicago, Illinois 60608

Mr. Ralph Price
General Counsel
Chicago Police Department
3510 S. Michigan Avenue, 5th Floor
Chicago, Illinois 60653

RE: FOIA Request for Review – 2013 PAC 25181

Dear and Mr. Price:

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 2012)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) may properly redact information under sections 7(1)(b), 7(1)(d)(iv) and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (1)(d)(iv), (1)(d)(vi) (West 2012)) from the records it is providing to  but must either disclose certain other information or assert a valid basis for redacting it.

On May 24, 2013, requested a copy of his arrest report, supplementary report, event inquiry, and radio transmissions transcript. On May 29, 2013, CPD provided with his arrest information and denied the remainder of his request under section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2012)). claimed that CPD improperly withheld responsive records.

On July 16, 2013, the Public Access Bureau forwarded a copy of the Request for Review to CPD and asked it to provide a detailed factual basis for the assertion of the section 7(1)(d)(i) exemption, together with an unredacted copy of the responsive records. On July 26, 2013, CPD responded by withdrawing its partial denial under section 7(1)(d)(i), and by stating that it would provide with a copy of his arrest report and supplementary report, subject to redactions under sections 7(1)(b), 7(1)(d)(iv) and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2012)).
140/7(1)(b), 7(1)(d)(iv), 7(1)(d)(vi) (West 2012)). CPD also provided this office an unredacted copy of the responsive records for our confidential review.

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)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2012)) 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." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as "unique identifiers, including a person's * * * employee identification number * * * home or personal telephone numbers * * * home address and personal license plates[.]") CPD redacted employee identification numbers, home telephone numbers, home addresses, and personal license plate numbers, which are defined as private information under the plain language of section 2(c-5). Accordingly, CPD properly redacted information from the responsive records pursuant to section 7(1)(b).

Section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2012)) exempts from inspection and copying information 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 (2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department). CPD redacted the name, home address, and home phone number of a witness as well as the victim's age, job title, and place of employment. Because disclosure of that information would unavoidably identify individuals who provided information to police, these redactions are proper pursuant to section 7(1)(d)(iv) of FOIA.

Section 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(vi) (West 2012)) exempts from inspection and copying information that would "endanger the life or physical safety of law enforcement personnel or any other person." CPD redacted the names of undercover officers and their corresponding beat numbers under this provision. Disclosure of such identifying information would jeopardize the physical safety of undercover officers. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 24652, issued June 24, 2013; Ill. Att'y Gen. PAC Req. Rev. Ltr. 16827, issued
June 5, 2012. Accordingly, CPD properly redacted that information pursuant to section 7(1)(d)(vi) of FOIA.

CPD also redacted a description of stolen materials, but did not provide a basis for doing so. These items do not constitute "private information" under the section 7(1)(b) exemption, nor is it apparent that their disclosure would unavoidably disclose the identity of a person who provided information to law enforcement or endanger the safety of any individual. Accordingly, we request that CPD disclose this information, or, in the alternative, provide [redacted] with a detailed legal and factual basis for redacting it.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-1679 if you have any questions. This letter shall serve to close this matter.

Very truly yours,

JOSH JONES
Assistant Attorney General
Public Access Bureau

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