OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 17, 2015

Mr. Joel Diers
Legal Counsel
Illinois Department of Corrections
1301 Concordia Court
P.O. Box 19277
Springfield, Illinois 62794-9277

RE: Request for Review – 2014 PAC 32159; IDOC #141022197

Dear [Redacted] and Mr. Diers:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the Illinois Department of Corrections (IDOC) improperly denied October 14, 2014, FOIA request.


On November 13, 2014, this office forwarded a copy of the Request for Review to IDOC and asked it to provide any additional bases for its assertion of the section 7(1)(d)(iv) and section 7(1)(e) exemptions. On November 24, 2014, this office received IDOC's written response maintaining that its denial was proper. On December 8, 2014, this office received [Redacted]
Mr. Joel Diers
April 17, 2015
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written reply asserting that he was the "confidential source" per IDOC's assertion of section 7(1)(d)(iv) and that the employee who was the subject of the investigation "was either retired or fired * * * 4 years ago." (Emphasis omitted.)

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).

In response to this office's letter of inquiry concerning the reasons for its denial of request, IDOC provided the same rationale that this office had deemed insufficient in 2014 PAC 28417, adding only that "the plain language" of section 7(1)(e) "allows for a mere relation to the security of a correctional facility" to render records exempt from disclosure.2

In construing a statute such as FOIA, the primary goal is to ascertain and effectuate the intent of the General Assembly. See Southern Illinoisan, 218 Ill. 2d at 415, 844 N.E.2d at 14. The best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. See, e.g., Citizens Opposing Pollution v. ExxonMobil Coal U.S.A., 2012 IL 111286, ¶23, 962 N.E.2d 956, 964 (2012). However, "where the language used leaves uncertainty as to how it should be interpreted in a particular context, the court can consider the purpose behind the law and the evils the law was designed to remedy." Phoenix Bond & Indemnity Co. v. Pappas, 194 Ill. 2d 99, 106, 741 N.E.2d 248, 252 (2013). "A fundamental principle of statutory construction is to view all provisions of a statutory enactment as a whole. Accordingly, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." Southern Illinoisan, 218 Ill. 2d at 415, 844 N.E.2d at 14. A statute should not be construed in a way that would defeat its purpose "or yield an absurd or unjust result." Phoenix Bond & Indemnity Co., 194 Ill. 2d at 107, 741 N.E.2d at 252.

Section 7(1)(e) of FOIA exempts from disclosure "[r]ecords that relate to or affect the security of correctional institutions and detention facilities." Black's Law Dictionary defines


"relate" to mean: "[t]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." Black's Law Dictionary 1288 (6th ed. 1990). As the definition indicates, the potential applicability of the term "relate" is extremely broad. Because maintaining custody over committed persons is a primary responsibility of IDOC, arguably almost every record that IDOC possesses "relates" to security in some manner. However, such an interpretation would render sections 7(1)(e-5), 7(1)(e-6), and 7(1)(e-7) of FOIA (5 ILCS 140/7(1)(e-5), (1)(e-6), (1)(e-7) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014) superfluous. Accordingly, for purposes of section 7(1)(e), the meaning of "relate" is ambiguous. Thus, section 7(1)(e) must be construed in the broader context of FOIA as a whole and the purposes behind the law.

Section 1 of FOIA (5 ILCS 140/1 (West 2012)) declares that it is "the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees[.]." The Illinois Supreme Court has found that the clear intent of FOIA is "to provide the public with easy access to government information," that FOIA is to be afforded a liberal construction, and that a public body must disclose a requested record "unless one of the narrow statutory exemptions" applies. See Southern Illinoisan, 218 Ill. 2d at 415-17, 844 N.E.2d at 15, citing Illinois Education Ass'n v. Illinois State Board of Education, 204 Ill. 2d 456, 463-64, 791 N.E.2d 522, 527 (2003). Construing section 7(1)(e) in light of the purpose of FOIA and its other provisions, it better comports with FOIA to conclude that section 7(1)(e) applies to records that could jeopardize the security of a correctional institution if disclosed, rather than any records merely pertaining to security in any manner whatsoever. Thus, the Public Access Bureau has consistently determined that section 7(1)(e) applies only when a public body demonstrates that disclosure of a requested record would pose a potential security risk to a correctional facility. See, e.g., Ill. Atty' Gen. PAC Req. Rev. Ltr. 28470, issued May 5, 2014; Ill. Atty' Gen. PAC Req. Rev. Ltr. 24014, issued June 13, 2013; Ill. Atty' Gen. PAC Req. Rev. Ltr. 13731, issued January 16, 2013.

In 2014 PAC 28417, the Public Access Bureau analyzed IDOC's denial of an inmate's FOIA request seeking copies of the same records at issue in this matter. On July 16, 2014, this office concluded that IDOC failed to sustain its burden to withhold the responsive records under section 7(1)(e):

This office has reviewed the Internal Affairs records at issue which pertain to the accusation against a staff member of improper contact with an individual who is not incarcerated.

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While disclosure of records concerning improper social contact within a correctional facility could potentially create security threats, IDOC has not demonstrated how disclosure of records about alleged improper social contact outside of a prison would pose a potential security risk to a correctional facility. Ill. Att'y Gen. PAC Req. Rev. Ltr. 28417, issued July 18, 2014, at 3.

As a result, this office directed IDOC to provide the requester with copies of the responsive records, subject to the redaction of the names and unique identifiers of the individuals who provided information during the underlying investigation pursuant to section 7(1)(d)(iv). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 28417, at 3.

IDOC has not advanced a new argument articulating how the records in question, which concern an incident that did not occur within a prison, would undermine prison security. Therefore, we again conclude that IDOC failed to meet its burden of proving by clear and convincing evidence that the investigation records are exempt from disclosure under section 7(1)(e) of FOIA.

Likewise, IDOC failed to provide any new information to support the assertion that the records are exempt from disclosure in their entireties pursuant to section 7(1)(d)(iv) of FOIA, which applies to 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, investigatory, law enforcement or penal agencies." Our review confirmed that the responsive records do not reveal the identity of a confidential source whose identity would be subject to redaction under section 7(1)(d)(iv). Accordingly, we direct IDOC to provide [redacted] with copies of the investigation records.

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 Chicago address listed on the first page of this letter. This letter closes this matter.

Very truly yours,

JOSH JONES
Supervising Attorney
Public Access Bureau
RE: FOIA Request for Review – 2015 PAC 38967

Dear Mr. Benoit:

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 Sangamon County Sheriff's Office (Sheriff's Office) did not improperly deny December 1, 2015, FOIA request.

On that date, submitted a FOIA request to the Sheriff's Office seeking a copy of video footage concerning an incident in the cellblock in which he was housed on November 12, 2015. On December 2, 2015, the Sheriff's Office denied that request pursuant to section 7(1)(e) of FOIA (5 ILCS 140/7(1)(e) (West 2014), as amended by Public Act 99-298, effective August 6, 2015). disputes the denial of his request.

On January 8, 2016, this office sent a copy of the Request for Review to the Sheriff's Office and asked it to provide a copy of the responsive video footage along with a detailed explanation of the factual and legal bases for the Sheriff's Office assertion of section 7(1)(e). On January 21, 2016, the Sheriff's Office furnished those materials. did not reply to the Sheriff's Office's response.
DETERMINATION

FOIA provides that "[a]ll 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).

Section 7(1)(e) of FOIA exempts from disclosure "[r]ecords that relate to or affect the security of correctional institutions and detention facilities." In its response to this office, the Sheriff's Office stated: "By viewing the video, the location of the camera taking the video and its range of view are apparent. * * * The layout of this portion of the jail (including its doors, locks, and camera capabilities) and the method of moving prisoners relates to the jail's security." The response further stated that disclosure of such detailed information about the interior of the jail to the public could undermine the security of the jail.

This office has reviewed the video recording at issue, which captures most – but not all – of the cellblock. Disclosure of the recording would reveal blind spots that inmates could exploit to evade detection of actions that endanger other inmates and/or staff members. The Public Access Bureau has previously determined that disclosure of a similar recording of the dining area of a prison could endanger the security of the prison and therefore was properly withheld under section 7(1)(e). Ill. Att'y Gen. PAC Req. Rev. Ltr. 22817, issued May 22, 2013. Likewise, because disclosure of the video recording at issue in this matter could jeopardize the security of the jail, we conclude that the Sheriff's Office has sustained its burden of demonstrating that the recording is exempt from disclosure pursuant to section 7(1)(e) 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) 814-6756 if you have questions. This letter serves to close this file.

Very truly yours,

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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PUBLIC ACCESS OPINION 13-015
(Request for Review 2013 PAC 24905)

FREEDOM OF INFORMATION ACT:
Statistical Data is Not Exempt from
Disclosure under Section 7(1)(f) of FOIA

Mr. Joe Mahr
Chicago Tribune
3 Westbrook Corporate Center, Suite 800
Westchester, Illinois 60154

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

Dear Mr. Mahr and Sergeant Sutton:

This binding opinion is issued by the Attorney General pursuant to section 9.5(f)
of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons
discussed below, this office concludes that the Illinois State Police (ISP) violated FOIA by
improperly withholding crime report statistics requested by Mr. Joe Mahr.

BACKGROUND

On June 11, 2013, Mr. Mahr, on behalf of the Chicago Tribune, submitted a
FOIA request to ISP seeking "[a]ny and all monthly submissions of Uniform Crime Report
statistics submitted by the City of Harvey (or Harvey Police Department) to ISP, for every month
covering any part of 2012 and 2013, to date."¹ On June 11, 2013, ISP denied the request in its

¹E-mail from Joe Mahr, Chicago Tribune, to FOIA_Officer@isp.state.il.us (June 11, 2013).
entirety citing section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2012)), which exempts from disclosure:

Preliminary 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. ** **

In its response, ISP asserted that the requested data is preliminary in nature because agencies that submit data are permitted to review and verify data previously provided before it is published:

Prior to verification, the data submitted is considered preliminary and may not reflect crimes that have actually occurred or been charged within a jurisdiction. For the year 2012, the verification period is scheduled to begin in October, with the final report to be published by the Illinois State Police in December of 2013. The same process will occur for the year 2013, with data verification occurring in October 2014 and the final report being published in December 2014. At this time, the Illinois State Police has not verified and published reports for the time period you are requesting. It would be irresponsible of the Illinois State Police to publish or cause to be published information about crime in a jurisdiction knowing that the data is preliminary and subject to review at the time the data was provided.  

On June 12, 2013, Mr. Mahr submitted his Request for Review in which he disputed the applicability of section 7(1)(f) by asserting that the data he requested consists exclusively of statistics and contains no opinions. On June 14, 2013, this office forwarded a copy of the Request for Review to ISP and asked it to provide copies of the withheld records together with a detailed explanation of its legal and factual basis for asserting section 7(1)(f).  

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1 Letter from Lieutenant Steve Lyddon, FOIA Officer, Illinois State Police, to Joe Mahr, Chicago Tribune (June 11, 2013).

2 Letter from Lieutenant Steve Lyddon, FOIA Officer, Illinois State Police, to Joe Mahr, Chicago Tribune (June 11, 2013).

3 E-mail from Joe Mahr, Chicago Tribune, to paccess@atg.state.il.us (June 12, 2013).

4 Letter from Matthew C. Regina, Assistant Attorney General, Public Access Bureau, to Lieutenant Steve Lyddon, FOIA Officer, Illinois State Police (June 14, 2013).
On June 20, 2013, ISP responded that the records have "not been confirmed as accurate. * * * These records are preliminary drafts. They are not the final work product."[6]

This office forwarded to Mr. Mahr a copy of ISP's response letter on June 28, 2013.[7] Mr. Mahr replied on July 1, 2013, stating:

ISP is trying to argue that because the data isn't double-checked, there's a chance a figure may be inaccurate, so the public should be denied these records until the collective law enforcement agencies get around to double-checking each figure, which could take another year, and maybe close to two years. The reality is that FOIA has no allowance for agencies to withhold portions of records on the chance that something may be inaccurate. To the contrary, FOIA can be used by citizens to see if information contained in public records could later be proven inaccurate. It is how citizens help judge the effectiveness of government.[8]

On July 15, 2013, ISP provided the Public Access Bureau with a representative sample of the responsive records, which consist of one-page Illinois Uniform Crime Reporting Program forms for each of three months - March 2012, August 2012, and February 2013. The forms set out specific categories of index crime offenses, index crime arrests, and drug crime arrests with spaces for corresponding numbers to be entered by the reporting agency. The only information provided by the City of Harvey to ISP is the numbers entered in the spaces correlating to the several categories of index offenses, index crime arrests, and drug crime arrests.

On August 7, 2013, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.[9]

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[8] E-mail from Joe Mahr, Chicago Tribune, to Matthew Rogina (July 1, 2013).
ANALYSIS

Because 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)), exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997). Section 1 of FOIA (5 ILCS 140/1 (West 2012)) provides:

"[I]t is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest."

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Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle[.] (Emphasis added.)

Thus, FOIA requires a narrow interpretation of the language of exemptions that permit the withholding of records.

Section 7(1)(f) of FOIA is intended to protect the deliberative process and to encourage frank and open discussion among agency employees before a decision is made. *Harwood vs. McDonough* (2003), 344 Ill. App. 3d 242, 248, citing *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51, 95 S. Ct. 1504, 1516-17 (1975). Section 7(1)(f) is the equivalent of the federal Freedom of Information Act's "deliberative process" provision (5 U.S.C. § 552(b)(5) (West 2012)), which exempts inter- and intra-agency predecisional and deliberative material from disclosure. *Harwood*, 344 Ill. App. 3d at 247. The Illinois Appellate Court has stated that "purely factual material" is not exempt from disclosure.
under section 7(l)(f) unless the factual material is "inextricably intertwined" with predecisional discussions. Watkins v. McCarthy, 2012 IL App (1st) 100632, ¶ 36, 980 N.E.2d 733 (quoting Enviro Tech International, Inc., 371 F.3d 370, 374-75 (7th Cir. 2004)). Although ISP states that the statistics could eventually be revised for accuracy, there is no suggestion that revising the data involves a deliberative process as such.

In similar circumstances, federal courts have concluded that statistical data is outside the scope of the federal FOIA's "deliberative process" exemption.\(^\text{10}\) For example, in Assembly of State of California v. Department of Commerce, 968 F.2d 916 (9th Cir. 1992), the State Assembly challenged the Department of Commerce's denial of its request for computer tapes containing statistically adjusted census data pursuant to the "deliberative process" exemption. The federal appeals court agreed with the trial court that the numerical data was purely factual, and because the disclosure of factual data would not divulge the reasoning process behind the ultimate decision not to adjust the census data, the tapes were not exempt under the "deliberative process" exemption. The Department of Commerce also argued, as ISP does here, that it should not be required to release the tapes because the data might not be accurate and could confuse the public. Accepting that the numerical data were estimates and might not be accurate, the appeals court nonetheless concluded that "inaccuracy is not a basis for a FOIA exemption" and that "it is not among FOIA's functions to control the use of disclosed information." Assembly of State of California, 968 F.2d at 923.

Likewise, in Petroleum Information Corp. v. U.S. Dept. of Interior, 976 F.2d 1429, 1431 (D.C. Cir., 1992), a federal appellate court considered whether the deliberative process exemption applied to portions of a database, called the Legal Land Description (LLD) file. The database contained "geopolitical information about land, such as its location, the relevant political units and administering agency, survey data, and acreage[ ]" which had been converted into a "series of numeral descriptions." 976 F.2d at 1431. The court emphasized that the scope of the exemption is limited to records that "bear on the formulation or exercise of agency policy-oriented judgment." (Emphasis in original.) Petroleum Information Corp., 976 F.2d at 1435. The federal agency in possession of the data asserted that its disclosure would reveal corrections the agency made to original data transferred to the LLD as well as the agency's deliberations concerning a planned data bank which would consolidate data and other elements

\(^{10}\) Illinois courts have recognized that because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the federal law, "while not controlling, are relevant and helpful precedents in construing the Illinois FOIA." Margolis v. Directors, Illinois Dep. of Revenue, 180 Ill. App. 3d 1084, 1087, appeal denied, 126 Ill. 2d 560 (1989).
in the LLD with related information. Petroleum Information Corp., 976 F.2d at 1436. In finding that the records were not deliberative in nature, the court noted that the data was derived from publicly available documents and dismissed the agency's concerns about corrections to the data and its accuracy: "The Bureau, moreover, does not convincingly explain why its concerns with public confusion and harming its own reputation could not be allayed by conspicuously warning FOIA requesters that the LLD file is as yet unofficial and that the Bureau disclaims responsibility for any errors or gaps." Petroleum Information Corp., 976 F.2d at 1437. Further, the court held that disclosure of the data would not reveal any agency decision-making or reasoning because the file merely transferred "information contained in public source documents, albeit with corrections where the documents are inaccurate or in conflict, or additions when records are incomplete. The objective, in sum, is not so much to select and edit as to reorganize and repackage a mass of dispersed public information." Petroleum Information Corp., 976 F.2d at 1438.

Here, the disclosure of the statistical data submitted by the City of Harvey would not reveal any information about ISP's decision-making process in compiling the Uniform Crime Report. Section 7(1)(f) protects communications in which public employees express opinions in the course of formulating actions or policies; the Illinois Uniform Crime Reporting Program forms contain factual data derived from public source documents, such as police records. Disclosing this statistical data would not provide insight into ISP's deliberative process or discourage ISP employees from engaging in discourse aimed at effectuating a course of action. Rather, the statistics merely represent the number of criminal offenses and arrests that the City of Harvey reported to ISP over a given period. ISP's apparent concern that disclosure of unconfirmed data may cause confusion can be allayed by providing the information to the requester with the caveat that the data has not been verified. Simply because the data may be subject to review and possible revision does not make that data itself preliminary or deliberative communications within the scope of section 7(1)(f).

FINDINGS AND CONCLUSIONS

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

1) On June 11, 2013, Mr. Joe Mahr submitted a FOIA request to ISP seeking "[a]ny and all monthly submissions of Uniform Crime Report statistics submitted by the City of Harvey (or Harvey Police Department) to ISP, for every month covering any part of 2012 and 2013, to date."
2) On June 11, 2013, ISP denied the request in its entirety citing section 7(1)(f) of FOIA, which exempts from disclosure preliminary records in which opinions are expressed or policies or actions are formulated.

3) On June 12, 2013, Mr. Mahr submitted a Request for Review of ISP's denial of his FOIA request, asserting that the data is factual and numerical and not exempt under section 7(1)(f). The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).

4) On June 14, 2013, this office forwarded a copy of the Request for Review to ISP and asked it to explain the legal and factual basis for its assertion of section 7(1)(f) and to provide a copy of the responsive records for review.

5) On June 20, 2013, ISP provided the Public Access Bureau with an explanation of its reasoning for asserting section 7(1)(f); on July 15, 2013, ISP provided this office with a representative sample of the statistical data that Mr. Mahr requested.

6) On August 7, 2013, the Public Access Counselor extended the time to issue a binding opinion by 30 business days, to September 24, 2013. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 7(1)(f) of FOIA does not exempt purely factual information from disclosure. The records Mr. Mahr requested contain statistical information concerning incidents of crimes in the City of Harvey. The records do not touch upon any aspect of any deliberative process relating to the compilation or publication of the Uniform Crime Report. Consequently, ISP improperly denied Mr. Mahr's FOIA request pursuant to section 7(1)(f) of FOIA.

Therefore, it is the opinion of the Attorney General that the ISP has, in violation of the requirements of the Freedom of Information Act, improperly denied Mr. Mahr's FOIA request. Accordingly, ISP is directed to take immediate and appropriate action to comply with this opinion by providing the monthly Uniform Crime Report statistics submitted to it by the City of Harvey for 2012 and 2013, as requested by Mr. Mahr.

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

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 25, 2011

Officer Christopher Bove #8230
Assistant FOIA Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

PUBLIC ACCESS OPINION No. 11-002
(Request for Review 2010 PAC 11568)

FREEDOM OF INFORMATION ACT:
Disclosure of Number of Police Officers Assigned to Districts

Dear Officer Bove:

This binding opinion is issued pursuant to Section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f), added by Public Act 96-542, effective January 1, 2010).

Background

On October 25, 2010, Joseph Mahr, a reporter with the Chicago Tribune (Tribune) submitted a FOIA request to the Department which sought records that contain the current sum of the number of sworn officers assigned to each district. On November 1, 2010, the Department denied this FOIA request, citing the Section 7(1)(v) (5 ILCS 140/7(1)(v)) exemption. On December 28, 2010, this Office received the Tribune's Request for Review. On January 7, 2011, we notified the Department that we would require additional information in order to determine whether the Department’s response complied with FOIA. Since that time, we have received a written response from the Department (including a partially redacted affidavit of Deputy Superintendent Ernest T. Brown, dated January 25, 2011) as well as additional correspondence from the Tribune, all of which we have considered in making a determination regarding this matter.

Section 1.2 of FOIA (5 ILCS 140/1.2) provides that “[a]ll records in the custody or possession of a public body are presumed to be open to inspection and copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” Therefore, in the context of a Request for Review, the
issue is whether the public body has proved by clear and convincing evidence that the information it has withheld is exempt from disclosure under Section 7 of FOIA. As set forth more fully below, we find that the Department has not met its burden of demonstrating that the records responsive to Mr. Mahr’s FOIA Request are exempt under FOIA.

The Department asserts that the requested records are exempt under Section 7(1)(v) of FOIA, which exempts from inspection and copying the following:

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community’s population or systems, facilities or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

In its initial response to Mr. Mahr’s FOIA request, the Department asserted:

The information that you are requesting pertains to the mobilization and deployment of Chicago Police Department personnel. . . . It can be reasonably expected that the information that you have requested could be used to undermine the effectiveness of the City’s security measures or the safety of the personnel who implement them. This would then constitute a clear and present danger to the health and safety of the community.

In its Request for Review, the Tribune states that “[d]isclosing how many of the CPD’s approximately 13,000 sworn officers are assigned to each of 25 districts cannot possibly limit the effectiveness of security measures.” Moreover, it states that the Department misconstrues Section 7(1)(v) which, “[b]y its terms, . . . is limited to situations where destruction or contamination of facilities would cause a clear and present danger to public health.”

In response to our request for additional information, the Department also argues that, because the Tribune seeks “details pertaining to the mobilization or deployment of personnel”, the requested records are exempt per se under Section 7(1)(v). It argues further that, even if the requested records are not deemed exempt per se, those records fall within what the Department characterizes as “the first portion of the definition” in Section 7(1)(v). Deputy Superintendent Brown’s affidavit, submitted with this response, avers in part that:

Although the number of sworn police officers is a generally static number for each of the 25 districts, the CPD Command Staff make decisions on deployment of resources, i.e., additional sworn police officers, that may be detailed or assigned to target a certain district and/or beat of a district in response to a large event, a series of violent incidents or other such threat to the public within that area.
In reply, the *Tribune* states that the Department’s response effectively “attempts to read the second sentence of [Section] 7(1)(v) as if it were not qualified by the first sentence” and that the proper reading of Section 7(1)(v) dictates that “[t]he second sentence does not even enter the analysis if, as is the situation here, the criteria set forth in the first sentence are not met.” It also notes that it “does not seek the analysis behind staffing decisions—simply the number of sworn officers per district.”

**Analysis**

As noted above, Section 7(1)(v) exempts from disclosure:

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community’s population or systems, facilities or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

By its terms, this exemption applies to particular types of “vulnerability assessments, security measures, and response policies or plans”, namely those that are “designed to identify, prevent, or respond to potential attacks upon a community’s population or systems, facilities or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community” and only in circumstances where “disclosure could reasonably be expected to jeopardize the effectiveness of [these] measures or the safety of the personnel who implement them or the public” protected by these measures. This exemption is applicable to assessments, measures, policies and plans designed to address those potential attacks targeted at the destruction or contamination of a community’s population or infrastructure. Contrary to the Department’s contention, the second sentence of this exemption does not modify the nature of the information made exempt under the first sentence. Thus, the second sentence does not generally exempt “details pertaining to the mobilization or deployment of personnel or equipment”. Rather, it only exempts such information to the extent disclosure “would constitute a clear and present danger to the health or safety of the community”, and “only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the [particular types of measures identified in the first sentence of the definition] or the safety of the personnel who implement them or the public.”

**Findings and Conclusions**

After full review and giving due consideration to the positions of the parties, the Attorney General finds that:
1) *The Chicago Tribune*’s Request for Review was timely filed and otherwise complies with the requirements of Section 9.5(a) of the Freedom of Information Act (5 ILCS 140/9.5(a)). Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the requested records.

2) The Chicago Police Department possesses records responsive to the *Tribune*’s request but has asserted that the records constitute “vulnerability assessments, security measures, [or] response policies or plans” that are exempt from disclosure pursuant to Section 7(1)(v) of the Freedom of Information Act.

3) The Department has failed to sustain its burden of demonstrating that the records in question constitute “vulnerability assessments, security measures, [or] response policies or plans” as described in the first sentence of Section 7(1)(v). Further, the Department has failed to demonstrate how the disclosure of records containing the current sum of the number of sworn officers assigned to each district could “reasonably be expected to jeopardize the effectiveness of [any security] measures or the safety of the personnel who implement them or the public.”

4) Accordingly, records of the Chicago Police Department containing the current sum of the number of sworn officers assigned to each district are not exempt from disclosure under Section 7(1)(v) of the Freedom of Information Act.

Therefore, it is the opinion of the Attorney General that the Chicago Police Department has violated FOIA by improperly denying *The Chicago Tribune*’s request for records containing the current sum of the number of sworn officers assigned to each police district. The Department is required to provide copies of the requested records to Mr. Mahr pursuant to his October 25, 2010 request. Under Section 9.5(f) of FOIA, the Department must either immediately comply with this binding opinion or initiate administrative review under Section 11.5 of FOIA.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 4/3-101 et seq. An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of the decision naming the Attorney General of Illinois and Mr. Joseph Mahr as defendants. *See* 5 ILCS 140/11.5.

Sincerely,

LISA MADIGAN  
ATTORNEY GENERAL

By: [Redacted]  
Michael J. Luke  
Senior Assistant Attorney General  
Chief, Public Access and Opinions  
Division
cc: Mr. Joseph Mahr
Chicago Tribune
Via e-mail to:
jmahr@tribune.com

Mr. Brendan Healey
Senior Counsel/Media & Promotions
Chicago Tribune
Via e-mail to:
bhealey@tribune.com

11568 rfr f pb ex improper pd
November 20, 2015

Via electronic mail
Mr. Frank Main
Staff Reporter
Chicago Sun-Times
4350 North Orleans, 10th Floor
Chicago, Illinois 60654
fmain@suntimes.com

Via electronic mail
Mr. Marc Augustave
Senior Counsel
City of Chicago Law Department
30 North LaSalle Street, Suite 1720
Chicago, Illinois 60602
Marc.Augustave@cityofchicago.org

RE: FOIA Request for Review – 2015 PAC 37516

Dear Mr. Main and Mr. Augustave:

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 City of Chicago Office of Emergency Management and Communications (OEMC) improperly withheld records responsive to Ms. Fran Spielman's August 26, 2015, FOIA request.

On that date, Ms. Spielman, on behalf of the Chicago Sun-Times, submitted a FOIA request to the OEMC seeking: (1) a district-by-district comparison of 911 calls received from May, 2011 to the present; (2) a district-by-district comparison of "radio assignments pending call events" from May, 2011 to the present; and (3) the average response times for priority one, two, and three calls to the 911 center from May, 2011 to the present. On September 11, 2015, the OEMC produced records responsive to the first part of the request, but denied the second and third parts of the request under section 7(1)(v) of FOIA (5 ILCS 140/7(1)(v) (West...
2014), as amended by Public Act 99-298, effective August 6, 2015), which exempts from disclosure certain information related to security.

On September 16, 2015, Mr. Frank Main, on behalf of Ms. Spielman and the Chicago Sun-Times, filed this Request for Review. On September 22, 2015, this office forwarded a copy of the Request for Review to the OEMC and requested a copy of the withheld records for our confidential review together with a detailed explanation of the factual and legal bases for the assertion of section 7(1)(v) of FOIA. On October 7, 2015, the OEMC provided the requested records and asserted in its written response:

The records which Ms. Spielman seeks pertain to deployment strategies and availability of police resources. They are "security measures" and response policies and plans that are "designed to identify, prevent, or respond to potential attacks [on] a community's population or systems, facilities, or installations" and the release of Radio Assignments Pending (RAP) events "would constitute a clear and present danger to the health or safety of the community" by allowing those with criminal intent to exploit vulnerabilities by determining patterns of resource availability for purposes of planning criminal actions against the community's population or systems, facilities, or installations during the times when resources might be unavailable (i.e., during RAP conditions)."¹

The OEMC also stated that responsive records for computer-aided dispatch information would only be available back to August 2011, not May 2011, as requested, because the retention period for the records is four years; it attached a copy of the applicable record retention schedule.

On October 9, 2015, this office forwarded a copy of the OEMC's response letter to Mr. Main. He replied on October 18, 2015 that "OEMC has presented no specific evidence that providing summary information about 'radio assignments pending call event' would present any specific threat to law enforcement or the public. On the contrary, the information requested is in the public interest."²

¹Letter from Mark Augustave, Senior Counsel, Chicago Law Department, to Neil P. Olson, Assistant Attorney General, Public Access Bureau (October 7, 2015), at 2.

²E-mail from Frank Main, Staff Reporter, Chicago Sun-Times, to Neil Olson, Assistant Attorney General, Public Access Bureau (October 18, 2015).
DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014). FOIA requires that "each public body shall make available to any person for inspection and copying all public records, except as otherwise provided in Section 7 of this Act." 5 ILCS 140/3(a) (West 2014).

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

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

Under the plain language of section 7(1)(v), this exemption applies to records that are "vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks[]." The OEMC has not demonstrated that factual information concerning the availability of cars and the time that it took to respond to 911 calls in the past are themselves "security measures" or other information designed to protect against potential attacks. The OEMC primarily asserts that the records "pertain to deployment strategies and availability of police resources," but the records themselves do not describe any security strategy designed or implemented by the OEMC (or any other City of Chicago agency) as a result of the statistics. Similarly, with respect to the availability of police resources, this office determined in a binding opinion that records that contain the total number of sworn police officers assigned to each police district in Chicago were not exempt under section 7(1)(v). See Ill. Att'y Gen. Pub. Acc. Op. No. 11-002, issued February 25, 2011. Accordingly, we conclude that the OEMC has not demonstrated by clear and convincing evidence that the requested records are exempt from disclosure under section 7(1)(v) of FOIA.
In accordance with the conclusions in this letter, we request that the OEMC disclose the responsive records that it currently maintains to the Chicago Sun-Times. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau
Ms. Tia Mathew  
Assistant Corporation Counsel  
City of Chicago Department of Law  
30 North LaSalle Street, Suite 1720  
Chicago, Illinois 60602

RE: FOIA Request for Review – 2016 PAC 41200

Dear [ redacted ] and Ms. Mathew:

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 City of Chicago Office of Emergency Management and Communications (OEMC) improperly withheld video footage responsive to [ redacted ] March 12, 2016, FOIA request.

On that date, [ redacted ] submitted a FOIA request to the OEMC seeking video surveillance footage taken from a camera located on the southwest corner of Grand and Halstead, from 2:00 p.m. to 3:30 p.m. on March 10, 2016. On April 1, 2016, the OEMC denied the request under section 7(1)(v) of FOIA (5 ILCS 140/7(1)(v) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016).

On April 15, 2016, this office sent a copy of this Request for Review to the OEMC and requested that it provide a copy of the withheld video footage and a detailed explanation of the factual and legal bases for the assertion of section 7(1)(v) of FOIA. On April 22, 2016, the OEMC provided a written response and the video footage at issue. This office forwarded a copy of the OEMC’s response to [ redacted ] on April 28, 2016; he did not reply.
DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014). FOIA requires that "each public body shall make available to any person for inspection and copying all public records, except as otherwise provided in Section 7 of this Act." 5 ILCS 140/3(a) (West 2014).

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

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

This office has previously addressed the applicability of section 7(1)(v) to the video footage from outdoor surveillance cameras installed by the City of Chicago for detection of and response to terrorist attacks. In that prior matter, the OEMC asserted that "release of this footage could result in potential attacks in the downtown area because it would reveal the positioning and direction of the camera's movement." Ill. Att'y Gen. PAC Req. Rev. Ltr. 16027, issued December 5, 2011, at 2. This office concluded that the OEMC had failed to provide a specific basis that disclosure of the outdoor surveillance footage would jeopardize the overall effectiveness of security measures, the safety of emergency response personnel, or the public, and therefore had not met its burden of demonstrating the footage was exempt under section 7(1)(v). See Ill. Att'y Gen. PAC Req. Rev. Ltr. 16027, at 4.

In this matter, the OEMC similarly asserts that "[i]f the footage of these cameras is released, the public would become aware of what areas and images are capable of being
captured by the [Operation Virtual Shield] cameras and make the cameras ineffective."
1 The OEMC elaborates that disclosure of footage from these cameras would allow criminals to strategize their criminal activity to avoid detection by knowing, for instance, what sections of the City were under surveillance. However, the OEMC fails to describe how disclosure of footage of a public street intersection from a single camera for a discrete period of time would jeopardize the overall effectiveness of this system or the safety of the public. Accordingly, this office concludes that the OEMC has not met its burden of demonstrating the video footage is exempt from disclosure under section 7(1)(v).

In accordance with the conclusions in this letter, we request that the OEMC disclose the responsive video footage to [redacted] The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

[Redacted]

NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

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1Letter from Tia Mathew, Assistant Corporation Counsel, City of Chicago Department of Law, to Neil P. Olson, Assistant Attorney General, Office of the Illinois Attorney General (April 22, 2016), at 2.
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 2, 2015

Via electronic mail

Via electronic mail
Mr. Thomas P. Hardy
Executive Director and
Chief Records Officer
University of Illinois
108 Henry Administration Building
506 South Wright Street, MC-370
Urbana, Illinois 61801
foia@uillinois.edu

RE: FOIA Request for Review – 2011 PAC 17237

Dear [Redacted] and Mr. Hardy:

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 University of Illinois (University) improperly denied August 23, 2011, FOIA requests.

On that date [Redacted] submitted two FOIA requests to the University seeking records concerning the names and work schedules for all University police officers working on March 22, 2010, and August 18, 2011. On August 30, 2011, the University denied request pursuant to section 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(vi) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011) and section 7.5(k) of FOIA (5 ILS 140/7.5(k) (West 2010), as amended by Public Acts 97-80, effective July 5, 2011; 97-333, effective August 12, 2011; 97-342, effective August 12, 2011).
On October 26, 2011, this office received a Request for Review contesting denial of his FOIA requests. On November 4, 2011, this office forwarded a copy of the Request for Review to the University and requested that it provide a detailed legal and factual explanation for the asserted exemptions. On December 23, 2011, this office received the University’s response, which the University provided confidentially.

ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2010). The exemptions from disclosure are to be narrowly construed. See Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 407 (1997).

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

Section 7(1)(d)(vi) of FOIA exempts records in the possession of a law enforcement agency such as University police, but only to the extent that disclosure would "endanger the life or physical safety of law enforcement personnel or any other person[.]" The University response to the FOIA request asserted that the release of the requested records "would reveal officer identification information as well as staffing levels of the University Police Department, the disclosure of which could endanger the life or physical safety of law enforcement personnel and other persons."1

Although the identities of public officials are generally a matter of public record, this office has previously determined that the identities of police officers may be properly withheld when particular circumstances warrant confidentiality. See, e.g., Ill. Att’y Gen. PAC Req. Rev. Ltr. 25181, issued August 21, 2013 (names of undercover officers are exempt under section 7(1)(d)(vi)). However, this office has reviewed the withheld records as well as the University’s confidential response to the Request for Review and is unable to conclude based on this information that the release of the officers’ names and past work schedules would jeopardize the physical safety of University police officers. Nevertheless, to the extent that any of the officers listed on the past work schedules were working undercover, the release of the names and work schedules of those officers could endanger their life or physical safety and therefore were properly withheld by the University. Accordingly, with the exception of any undercover officers, this office concludes that the University has not met its burden of

1Letter from Robin Kaler, Associate Chancellor and Public Records Officer, University of Illinois at Urbana-Champaign, to (August 30, 2011).
demonstrating by clear and convincing evidence that names and past work schedules are exempt from disclosure under section 7(1)(d)(vi) of FOIA.

Section 7.5(k) of FOIA

Section 7.5(k) of FOIA exempts "[l]aw enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code." Section 11-212 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-212 (West 2010)) requires the Illinois Department of Transportation to produce an annual traffic stop statistical study report using data compiled by law enforcement agencies. The purpose of the report is to analyze statistical disparities between traffic stops of minority drivers and non-minority drivers. See 625 ILCS 5/11-212(e) (West 2010). Section 11-212(f) of the Vehicle Code (625 ILCS 5/11-212(e) (West 2010)) provides that "[a]ny law enforcement officer identification information or driver identification information that is compiled by any law enforcement agency or the Illinois Department of Transportation pursuant to this Act for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying[.]"

The University asserted that section 7.5(k) of FOIA exempts the names of University police officers because names constitute identification information. However, section 11-212(f) of the Vehicle Code states that only law enforcement identification information compiled by a law enforcement agency for the purposes of complying with section 11-212 is confidential and exempt under FOIA. The University has not asserted that the withheld records were compiled for the purposes of fulfilling its obligations under section 11-212 of the Vehicle Code, and there is no indication that they were. Accordingly, this office concludes that the University failed to meet its burden of demonstrating by clear and convincing evidence that the withheld records are exempt from disclosure under section 7.5(k) of FOIA.
In accordance with the conclusions expressed in this letter, this office requests that the University disclose copies of the work schedules with only undercover officers' names and work schedules redacted, if any. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,

[Redacted]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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RE: FOIA Request for Review – 2011 PAC 13661

Dear Ms. Gosslear and [redacted]:

On April 16, 2011, the Public Access Counselor received from [redacted] a Request for Review of the City of Oak Brook Terrace Police Department’s (Department) denial of a Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq. (West 2009 Supp.)) request submitted to the Department on April 2, 2011, seeking a copy of a "dashboard camcorder video." [redacted] Request challenges the Department's assertion of section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010), which exempts from inspection and copying information that 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."

In a letter dated April 28, 2011, we requested that the Department provide us with an explanation of its application of the section 7(1)(d)(i) exemption. On May 10, 2011, we received a response from Attorney Barbara Gosslear of Spiroff & Gosslear, on behalf of the Department, and a copy of the video that the Department intends to withhold from disclosure.
Ms. Barbara Gosslear and [redacted]
June 6, 2011
Page 2

DETERMINATION

[redacted] seeks a copy of a "dashboard camcorder video" relating to the March 25, 2011, arrest of [redacted] daughter. According to Ms. Gosslear, [redacted] was arrested and charged with driving under the influence of alcohol. The matter is pending in DuPage County Circuit Court. [redacted] was also ticketed for three traffic citations as a result of this arrest. In the response letter, Ms. Gosslear argues that the video is also exempt pursuant to section 7(1)(c) of FOIA, which exempts from inspection and copying "[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" and section 11-212(f) of the Illinois Vehicle Code (the Vehicle Code) (625 ILCS 5/11-212(f) (West Supp. 2009), as amended by Public Act 96-658, effective January 1, 2010).

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

Ms. Gosslear argues that law enforcement's investigative privilege is intended to protect law enforcement efforts from the harm that might result from public investigation. FOIA, however, is consistent with this privilege in that it exempts from disclosure law enforcement records to the extent that their release could interfere with contemplated or actual investigatory proceedings.

The mere commencement of a prosecution does not preclude the disclosure of law enforcement records. See 2010 PAC 6939 (Ill. Att'y Gen. PAC Req. Rev. Ltr. 6939, issued March 24, 2011). In this matter, the video does not reveal information that would be likely to harm the State's prosecution of the defendant if the video were disclosed. Moreover, even if [redacted] is considered a member of the public unaffiliated with the proceeding, that fact would not exempt the video from disclosure pursuant to section 7(1)(d)(i), or any other exemption in FOIA. Based on this analysis, we have determined that disclosure of the videotape would not interfere with the any actual or contemplated investigation and is not, therefore, exempt under section 7(1)(d)(i).

Section 7(1)(c) of FOIA

Ms. Gosslear next argues that the privacy interests of the defendant prevent disclosure of the videotape. An individual who has been arrested and charged with a criminal offense does not have a cognizable privacy interest under FOIA. See 5 ILCS 140/2.15 (West 2009 Supp.). Consequently, the video may not be withheld pursuant to section 7(1)(c).
The Vehicle Code

Finally, the City argues that the Vehicle Code prohibits release of the videotape because it contains identifying driver information. Section 11-212(f) of the Vehicle Code states:

Any law enforcement officer identification information or driver identification information that is compiled by any law enforcement agency or the Illinois Department of Transportation pursuant to this Act for the purposes of [compiling the traffic stop statistical study] of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the information shall not be transmitted to anyone except as needed to comply with this Section. This Section shall not exempt those materials that, prior to the effective date of this amendatory Act of the 93rd General Assembly, were available under the Freedom of Information Act. (Emphasis added.) 625 ILCS 5/11-212(f) (West 2009 Supp.), as amended by Public Act 96-658, effective January 1, 2010.

Section 11-212(f) permits the disclosure of identifying information that would otherwise be subject to disclosure under FOIA. Accordingly, FOIA supersedes the confidentiality requirements of section 5/11-212(f) for law enforcement records such as the video sought by...[redacted]

CONCLUSION

We ask the Department to respond immediately to [redacted] request in accordance with the requirements of FOIA. The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (312) 814-5383.

Very truly yours,

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau
Officer of the Attorney General
State of Illinois

Lisa Madigan
Attorney General

June 10, 2016

Via electronic mail

RE: FOIA Requests for Review – 2016 PAC 42182

Dear [Redacted],

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2014)). For the reasons set forth below, we have determined that no further action on this matter is warranted.

On May 27, 2016, you sent a FOIA request to the Illinois State Police (ISP) seeking "information as to the 'law enforcement agency' that has an objection to my Conceal and Carry Application." On June 1, 2016, ISP denied your request pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016) citing section 20(h) of the Firearm Concealed Carry Act (430 ILCS 66/20(h) (West 2014)), which states "records of the [Concealed Carry Licensing] Board shall not be subject to the Freedom of Information Act." ISP also denied your request pursuant to section 7.5(v) of FOIA (5 ILCS 140/7.5(v) (West 2014), as amended by Public Acts 99-78, effective July 20, 2015; 99-298, effective August 6, 2015; 99-352, effective January 1, 2016). On June 1, 2016, this office received your Request for Review contesting the denial of your FOIA request.

Section 7.5(v) exempts from disclosure:

Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act;

1FOIA request from [Redacted] to the Illinois State Police (May 27, 2016).
and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act. (Emphasis added.)

Where statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). Your FOIA request sought information concerning the law enforcement agency that objected to your application to carry a concealed handgun. Because the plain language of section 7.5(v) of FOIA permits a public body to withhold law enforcement objections to a license applicant, this office concludes that ISP did not improperly deny your FOIA request. Accordingly, we have determined that no further action is warranted as to this matter.

If you have any questions, please contact me at the Springfield address on the bottom of the first page of this letter. This file is closed.

Very truly yours,

[Signature]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

42182 f no fi war sa

cc: *Via electronic mail*
Master Sergeant Kerry Sutton
Freedom of Information Officer
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
kerry.sutton@isp.state.il.us
March 19, 2015

Via electronic mail
Mr. John O'Connor
State Capitol Building Pressroom
Suite 13G Basement
Springfield, Illinois 62706
joconnor@ap.org

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

RE: FOIA Request for Review – 2013 PAC 26360

Dear Mr. O'Connor and 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 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that the Illinois State Police (ISP) improperly denied Mr. John O'Connor's September 10, 2013, FOIA request.

On that date, Mr. O'Connor submitted a FOIA request to ISP seeking copies of police reports, briefings submitted to federal authorities, transcripts of witness interviews, and photos related to the disappearance and death of Maria Ridulph in 1957. On October 4, 2013, ISP denied that request in its entirety pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 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." ISP cited various provisions of the Juvenile Court Act (JCA) (705 ILCS 405/1-1 et seq. (West 2012)) and section 3 of the Privacy
of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/3 (West 2012)). In his Request for Review, Mr. O'Connor asserted that none of those provisions apply to the records in question.

On October 11, 2013, the Public Access Bureau sent a copy of the Request for Review to ISP and asked it to provide us with unredacted copies of the responsive records for our confidential review, and a detailed explanation for the asserted exemption. On October 21, 2103, ISP furnished samples of the withheld records and a written response stating that "it is our position that because the entire case centers around a minor victim, the records are exempt by Illinois statute. The minor victim in this case was 8 years old at the time of the offense. To reiterate, the records requested by Mr. O'Connor are prohibited from release[.][1]

DETERMINATION

FOIA provides that "all records in the custody or possession of a public body" are 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).

Juvenile Court Act of 1987

ISP's response to the FOIA request asserted that the requested records are exempt from disclosure in their entireties pursuant to the following provisions of the JCA:

The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court.

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Law enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor. 705 ILCS 405/1-7(c), (E) (West 2012), as amended by Public Act 97-1150, effective January 25, 2013.

ISP also cited sections 1-8(A) ("Inspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted to" certain parties that do not include the news media) and 1-8(B) ("A minor who is the victim in a juvenile proceeding shall be provided the same confidentiality regarding disclosure of identity as the minor who is the subject of record["]) (705 ILCS 405/1-8(A), (B) (West 2012) as amended by Public Act 97-1150, effective January 25, 2013) as well as section 5-905(1) of the JCA (705 ILCS 405/5-905(1) ("Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 18th birthday shall be restricted to" certain parties that do not include the news media for use in discharging their official duties.)

In response to an unrelated FOIA request in 2012, ISP withheld investigatory records concerning the shooting death of a minor pursuant to some of the same provisions of the JCA that it asserted in this matter. The requester in the prior matter filed a Request for Review (2012 PAC 19602), and the Attorney General issued a binding opinion which analyzed sections 1-7(A), 1-7(c), and 1-7(E) of the JCA and concluded that:

ISP discounts that the plain language of the JCA demonstrates an intent to safeguard the privacy of a juvenile who has been arrested and is the subject of a juvenile court proceeding and ultimately, to rehabilitate that juvenile. In this instance, the minor was not arrested or taken into custody. There is no basis in the language of the statutes cited that would apply the confidentiality provisions of the JCA to records concerning the death of a minor who was neither taken into custody nor the subject of a juvenile court proceeding. Ill. Att'y Gen. Pub. Acc. Op. No. 12-012, issued August 14, 2012, at 7.

Similarly, sections 1-8(B), and 5-905(1) of the JCA are limited to records that identify minor victims in juvenile proceedings, and minors who have been arrested or taken into custody,
respectively. By their plain language, these provisions do not apply to records concerning crimes committed by adults against minors.

The records in question concern a deceased minor, and there is no indication that any minor was taken into custody or the subject of a juvenile court proceeding in connection with her death. In 2012, Robert McCullough was convicted of murdering the minor. People v. McCullough, 2015 IL App (2d) 121364, ¶69 [***] N.E.3d [***] (2015). Because those proceedings were not in juvenile court and because the records do not concern a minor who was arrested or taken into custody, we conclude that the records are not exempt from disclosure under section 7(1)(a) of FOIA based on the above-cited provisions of the JCA.

Privacy of Child Victims of Criminal Sexual Offenses Act

ISP also denied Mr. O'Connor's request based on section 3 the Privacy of Child Victims of Criminal Sexual Offenses Act, which provides:

Notwithstanding any other law to the contrary, inspection and copying of law enforcement records maintained by any law enforcement agency or circuit court records maintained by any circuit clerk relating to any investigation or proceeding pertaining to a criminal sexual offense, [***], shall be restricted to exclude the identity of any child who is a victim of such criminal sexual offense or alleged criminal sexual offense. A court may for the child's protection and for good cause shown, prohibit any person or agency present in court from further disclosing the child's identity.

In his Request for Review, Mr. O'Connor stated: "While the perpetrator in this case admitted a sexual attraction to the child, he was never charged with any sexual crime against Ms. Ridulph. The ISP has not met its burden."2

Mr. McCullough was convicted at trial of murder, kidnapping and abduction of an infant in connection with Ms. Ridulph's death; the murder conviction was upheld on appeal, and the kidnapping and abduction charges were vacated. McCullough, 2015 IL App (2d) 121364, ¶149 [***] N.E.3d at [***]. The sample records provided to this office do not demonstrate that the minor was the victim of a criminal sexual offense, and ISP has not provided any information from which we could conclude otherwise. Even if the records did concern a criminal sexual offense, the plain language of section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act would only require ISP to redact the victim's identity; this provision does not

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prohibit disclosure of all records related to such an investigation. Therefore, ISP has not sustained its burden of demonstrating that the records are exempt from disclosure under section 7(1)(a) of FOIA.

However, photos of the decedent after her body was exhumed may be properly withheld pursuant to section 7(1)(e) of FOIA (5 ILCS 140/7(1)(e) (West 2012)), which 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." This exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." The Attorney General has issued a binding opinion concluding that the release of graphic postmortem photographs would be an unwarranted invasion of the privacy of the victim's surviving family members. Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5; see also Katz v. National Archives & Records Administration, 862 F. Supp. 476, 485-86 (D.D.C. 1992) (privacy rights of family members justified withholding President Kennedy's autopsy records under Exemption 6 of the federal FOIA (5 U.S.C. § 552(b)(6) (1988)), which contains language similar to section 7(1)(c)). Likewise, disclosure of photos of the exhumed remains of the victim in this matter are highly personal to her family members, and no public interest in disclosure outweighs their right to privacy.

In accordance with the conclusions expressed in this letter, we request that ISP disclose copies of the records in question to Mr. O'Connor. The Public Access Counselor has determined that resolution of this matter does not require issuance of a binding opinion. This letter serves to close this matter. Please contact me at (312) 814-6756 if you have any questions.

Very truly yours,

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau
Menard Correctional Center  
P.O. Box 1000  
Menard, Illinois 62259

Via electronic mail  
Ms. Connie Jackson  
FOIA Officer  
Oswego Police Department  
3525 Route 34  
Oswego, Illinois 60543  
cjackson@oswegopoliceil.org

RE: FOIA Request for Review – 2015 PAC 34853

Dear [Redacted] and Ms. Jackson:

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 Oswego Police Department (Department) improperly withheld records responsive to [Redacted] April 7, 2015, FOIA request.

On that date, [Redacted] submitted a FOIA request to the Department seeking copies of records concerning his criminal case, including police reports. On April 10, 2015, the Department denied the request in its entirety pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2014)) in conjunction with the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 et seq. (West 2014)). On April 20, 2015, the Public Access Bureau received the above-captioned Request for Review contesting the Department’s denial.

On May 5, 2015, this office sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation for the asserted exemption. On May 12, 2015, the Department provided those records for our confidential review, and on June 1, 2015, it
provided a written response maintaining that the JCA prohibits disclosure of the responsive records because [redacted] was at the time of his arrest a juvenile. [redacted] did not reply.

DETERMINATION

FOIA provides that "[a]ll 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).

The JCA generally requires law enforcement records concerning a minor who has been arrested or taken into custody before his or her 18th birthday to be kept confidential. See 705 ILCS 405/1-7 (West 2014); 705 ILCS 405/5-905 (West 2014) (governing delinquent minors). However, the JCA's protections do not apply "to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first degree murder." 705 ILCS 405/5-130(1)(a) (West 2014); see also People v. Patterson, 2014 IL 115102, ¶¶93-98, 25 N.E.3d 526, 548-50 (2014) (upholding constitutionality of automatic transfer to criminal court for minors 15-years-old and up who commit one of the offenses listen in that provision); Ill. Att'y Gen. PAC Req. Rev. Ltr. 12446, issued May 27, 2011, at 6 (JCA does not apply to juvenile charged with first degree murder).

[redacted] was convicted of first degree murder in criminal court following his arrest at age 16. None of the individuals detained and/or arrested alongside [redacted] were minors at the time. Accordingly, the JCA does not apply to the responsive records, and the Department failed to sustain its burden of demonstrating by clear and convincing evidence that the responsive records are exempt from disclosure in their entirities pursuant to section 7(1)(a) of FOIA.

We request that the Department provide [redacted] with copies of the responsive records, subject only to permissible redactions under sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv) (West 2014)). Section 7(1)(b) permits redaction of "unique identifiers." 2 Concerning section 7(1)(c), this office has consistently determined that

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1Letter from Connie Jackson, Records Supervisor, FOIA Officer, Oswego Police Department, to Josh Jones, Public Access Bureau (June 1, 2015).

2Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "unique identifiers" as 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
information identifying a living victim of a crime may be redacted because disclosure would constitute an unwarranted invasion of personal privacy. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 18980, issued December 18, 2013 ("Information identifying an individual as a victim of a crime is highly personal by its very nature."). Moreover, this office has consistently determined that identities of third parties who have no direct involvement in an underlying incident but whose names appear incidentally in a police report may be redacted for the same reason. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 26558, issued January 7, 2014, at 3. Lastly, section 7(1)(d)(iv) allows police departments to redact identifying information 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 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department).

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

Very truly yours,

JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

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March 19, 2015

Via electronic mail
Mr. Joseph Hosey

jooseph.hosey@patch.com

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

RE: FOIA Request for Review – 2014 PAC 31178

Dear Mr. Hosey and Ms. Moriarty:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012, as amended by Public Act 98-1129, effective December 3, 2014)). For the reasons that follow, the Public Access Bureau concludes that the City of Elmhurst (City) improperly denied Mr. Hosey’s August 25, 2014, FOIA request.

On that date, Mr. Hosey submitted a FOIA request to the City seeking "Elmhurst Police Department report 14-32802, unredacted and in its entirety."1 On September 9, 2014, the City denied the request pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2013 Supp., as amended by Public Act 98-695, effective July 3, 2014)). The City asserted that the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1 et seq. (West 2012)) prohibited the release of the requested records. Mr. Hosey's Request for Review contests the City's response, and asserts that information was improperly withheld because the arrest report included information about the arrest of a 21-year old man, as well as information about minors.

This office forwarded the Request for Review to the City and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed

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1 E-mail from Joseph Hosey to FOIA Officer, City of Elmhurst (August 25, 2014).
explanation of the legal and factual basis for the asserted exemption. On October 8, 2014, the City provided the requested records, together with an explanation of its assertion of section 7(1)(a). The City explained that the requested police report involved the arrest of three individuals, two of whom were minors, and that information relating to the arrest of the two minors was properly denied based on sections 1-7(A) and 1-7(C) of the JCA (705 ILCS 405/1-7(A), (C) (West 2013 Supp.), as amended by Public Act 98-756, effective July 16, 2014).

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)(a) of FOIA

Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The City cited the JCA in denying Mr. Hosey's FOIA request in its entirety. This office has previously concluded that the confidentiality provisions of the JCA are intended "to safeguard the privacy of a juvenile who has been arrested and is the subject of a court proceeding and ultimately, to rehabilitate that juvenile." Ill. Att'y Gen. Pub. Acc. Op. No. 12-012, issued August 14, 2012, at 7. Section 1-7(A) of the JCA provides that the "[i]nspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 18th birthday shall be restricted to" enumerated persons who need to access the records in order to perform their official duties. Section 1-7(C) further provides:

The records of law enforcement officers ** concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court.
In addition, section 1-7(E) of the JCA (705 ILCS 405/1-7(E) (West 2013 Supp.)) prohibits law enforcement officers from disclosing "the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor."

The Public Access Bureau has previously determined that if section 1-7(C) of the JCA were intended to exempt from disclosure all law enforcement records concerning minors, then the provisions of section 1-7(E) of the JCA—relating to the disclosure of the identity of minors—would be rendered superfluous. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18629, issued May 2, 2012. Moreover, the disclosure of certain information concerning the arrest of an adult is required by FOIA. Specifically, section 2.15 of FOIA (5 ILCS 140/2.15 (West 2012)) provides:

(a) Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

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(c) Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

Other law enforcement records concerning the arrests of adults are open to inspection and copying, except to the extent that a statutory exemption is applicable. See, e.g., 5 ILCS 140/7(1)(d) (West 2012, as amended by Public Act 98-695, effective July 3, 2014).
Mr. Joseph Hosey  
Ms. Erin C. Moriarty  
March 19, 2015  
Page 4

Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2013 Supp., as amended by Public Act 98-695, effective July 3, 2014)) provides that when "a public record *** contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." (Emphasis added.) Because the records in question concern the arrests of both an adult and two minors, certain information (such as the identity of the juveniles) is protected from disclosure by section 1-7(A) of the JCA, and thus by section 7(1)(a) of FOIA, while information concerning the arrest of the adult must generally be disclosed.

Therefore, we conclude that the portions of the responsive records that identify the minor arrestees and the reasons for their arrests, and that have no direct bearing on the adult's arrest, may be properly redacted or withheld pursuant to section 7(1)(a) of FOIA. For example, the individual citations issued to the minors, their Statements of Rights forms, and their Juvenile Arrest Cards may be withheld in their entirities. However, because portions of the records that identify the adult arrestee and information concerning his arrest are not specifically prohibited from being disclosed by the JCA, we conclude that the City has not sustained its burden of demonstrating that all of the information in the responsive is exempt from disclosure pursuant to section 7(1)(a) of FOIA. To the extent that the records contain information referencing the minors that also relates to the arrest of the adult, such as the minors' statements in the narrative arrest report, the minors' names and other identifying information may be redacted to protect their identities.

In accordance with the conclusions set out above, this office requests that the City provide Mr. Hosey with a copy of the responsive records, subject to any permissible 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 City 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. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

[Signature]

NEIL P. OLSON  
Assistant Attorney General  
Public Access Bureau

31178 f 71a improper mun
Mr. Burl E. Pickett
Chief Deputy
FOIA Officer
Pulaski County Sheriff's Office
500 Illinois Avenue
Mound City, Illinois 62963

RE: FOIA Requests for Review – 2016 PAC 41069, 2016 PAC 41070

Dear [Name] and Mr. Pickett:

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 explained below, the Public Access Bureau concludes that the Pulaski County Sheriff's Office (Sheriff's Office) improperly withheld officer-worn body camera recordings in response to [redacted] FOIA requests.

On March 21, 2016, [redacted] submitted a FOIA request to the Sheriff's Office seeking a copy of the recording captured by Deputy Kent Ray's officer-worn body camera on February 19, 2016, when he was at Meridian High School. The same day, [redacted] submitted a second FOIA request for recordings taken by Deputy Ray's body camera on March 4, 2016. On March 28, 2016, the Sheriff's Office denied both requests in their entireties citing the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act) (50 ILCS 706/10-1 et seq. (West 2014), added by Public Act 99-352, effective January 1, 2016). Specifically, the Sheriff's Office stated that officer-worn body camera recordings are not subject to FOIA unless specific requirements identified in section 10-20(b) of the Body Camera Act (50 ILCS 706/10-20(b) (West 2014), added by Public Act 99-352, effective January 1, 2016) are met. The Sheriff's Office stated that none of the requirements in section 10-20(b) of the Body Camera Act applied to [redacted] requests. The Sheriff's Office also asserted that even if the recordings
were not exempt from disclosure, it "would be required to redact and remove the identification of all individuals [other than] the officer or the subject of the encounter or directly involved in the encounter. The Sheriff's Office does not possess or have available the equipment necessary to redact body camera footage." On March 28, 2016, submitted Requests for Review contesting the denial of her FOIA requests.

On April 6, 2016, the Public Access Bureau sent copies of the Requests for Review to the Sheriff's Office and asked it to provide copies of the officer-worn body camera recordings it had withheld together with a detailed explanation of the factual and legal bases for its assertion of the Body Camera Act. On April 12, 2016, the Sheriff's Office furnished copies of those recordings for our confidential review and provided a written response. The written response stated that the recordings related to Deputy Ray acting to conserve the peace in a dispute between the Meridian School District and concerning the enrollment of her child. The Sheriff's Office further stated:

No complaints were filed on either 02/19/2016 or 03/04/2016. No report was filed by Deputy Ray who had been assigned as a conservator of the peace. No breach of the peace occurred.

The body worn camera recordings made on February 19, 2016 and on March 4, 2016 were not flagged due to the fact that on both dates there was no filing of any complaint, discharge of a firearm, use of force, arrest or detention of anyone.2

On April 19, 2016, this office forwarded the Sheriff's Office's written response to she did not 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); see also Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

Letter from Burl E. Pickett, FOIA Officer, Pulaski County Sheriff's Office, to (March 28, 2016), at 1.

Section 7.5(bb) of FOIA and Section 10-20(b) of the Body Camera Act

Section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2014), added by Public Act 99-352, effective January 1, 2016) exempts from inspection and copying "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act." (Emphasis added.) Section 10-20(b) of the Body Camera Act provides generally that recordings made with the use of an officer-worn body camera are not subject to disclosure under FOIA, with three exceptions:

1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or body harm, shall be disclosed in accordance with the Freedom of Information Act if:

   (A) the subject of the encounter captured on the recording is a victim or witness; and

   (B) the law enforcement agency obtains written permission of the subject or the subject's legal representative;

2) except as provided in paragraph (1) of this subsection (b), any recording which is flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and

3) upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, the recording to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative. (Emphasis added.)

Thus, section 10-20(b)(3) of the Body Camera Act expressly requires a law enforcement agency to disclose a recording to the subject of an encounter upon his or her request.

Based upon our review of the recordings in question, they relate to meetings with administrative staff at the school where the enrollment of her son was discussed. In the February 19, 2016, recording Deputy Ray accompanies to a meeting with
school administrators; the recording also shows Deputy Ray having a conversation with [redacted] The March 4, 2016, recording, involves a traffic stop and Deputy Ray escorting [redacted] to the school and accompanying [redacted] while she was in the school. [redacted] is the subject of the encounters recorded by Deputy Ray's body camera. Because [redacted] has submitted FOIA requests for the recordings and because, pursuant to section 10-20(b)(3) of the Body Camera Act, the Sheriff's Office is required to provide the subject of the encounter with a copy of the recordings upon request, this office concludes that the recordings are not exempt from disclosure to [redacted] under section 7.5(bb) of FOIA.

Redaction of Body Camera Recordings

Section 10-20(b) of the Body Camera Act also contains specific procedures that law enforcement is required to follow when disclosing officer-worn body camera recordings:

Only recordings or portions of recordings responsive to the request shall be available for inspection or reproduction. Any recording disclosed under the Freedom of Information Act shall be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter. Nothing in this subsection (b) shall require the disclosure of any recording or portion of any recording which would be exempt from disclosure under the Freedom of Information Act. (Emphasis added.)

This office's review of the recordings confirms that portions of the recordings contain images or other information from which the identity of individuals other than Deputy Ray, [redacted] and school administrators directly involved in the discussions of the enrollment of [redacted] son, can be determined. Accordingly, the Sheriff's Office is required by section 10-20(b) of the Body Camera Act to redact the recordings to remove the identifying images or information before disclosing the recordings.

The Sheriff's Office asserts that it is unable to provide [redacted] with the requested recordings because it does not possess equipment capable of redacting the recordings.^[3]

^[3] Although the Public Access Bureau has previously determined that public bodies are not generally required to obtain specialized software or procure specialized assistance to redact information that is exempt from public records under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2012)) (see, Ill. Att'y Gen. PAC Req. Rev. Ltr. 21275, issued August 27, 2013 (concluding that a public school district was not required to purchase equipment or hire outside technical support to redact the identifying images of a student on a school security camera video that were found to be exempt under FOIA), that determination is clearly distinguishable from this matter because of the specific redaction requirements of section 10-20(b) of the Body Camera Act.
Section 10-20(b) of the Body Camera Act, however, expressly requires a law enforcement agency to redact certain information from officer-worn body camera recordings before disclosing those recordings. The provisions of the Body Camera Act, including the redaction requirement, further the statute's purpose of "improving transparency and accountability, and strengthening the public trust *** while protecting individual privacy and providing consistency in [officer-worn body camera] use across this State." 50 ILCS 706/10-5 (West 2014), added by Public Act 99-352, effective January 1, 2016. That purpose would be severely undermined if public bodies could avoid the disclosure requirements of the Body Camera Act simply by choosing not to obtain the technology needed to redact body camera recordings.

A law enforcement agency that uses officer-worn body cameras must comply with all provisions of the Act, including the redaction requirement. Thus, the law enforcement agency must not only possess cameras that comply with the technical requirements of sections 10-20(a)(1) and 10-20(a)(2) of the Body Camera Act (50 ILCS 706/10-20(a)(1), (2) (West 2014), added by Public Act 99-352, effective January 1, 2016), but must also possess or be able to obtain the technical expertise necessary to redact recordings when obligated to do so by section 10-20(b). Accordingly, this office concludes that the Sheriff's Office is required to redact the recordings in question to remove images or other information that would identify persons other than the officer, and the school personnel involved in the encounters, and to provide with redacted copies of the requested recordings. If it does not possess the ability to redact the recordings, then it may be necessary for the Sheriff's Office to seek such services from an outside source.

The Public Access Counselor has determined that resolution of these matters do not require the issuance of a binding opinion. This correspondence serves to close these matters. If you have questions, you may contact me at (217) 782-9054 or the Springfield address listed at the bottom of the first page.