



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 31, 2018

PUBLIC ACCESS OPINION 18-018
(Request for Review 2018 PAC 55153)

FREEDOM OF INFORMATION ACT:
Disclosure of Complaints Against
Public Employees

Mr. Sam Stecklow
Managing Editor
South Side Weekly
Experimental Station
6100 Blackstone Avenue
Chicago, Illinois 60637

Ms. Helen Shields-Wright
Head Assistant Attorney and FOIA Officer
Metropolitan Water Reclamation District
Of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611-3154

Dear Mr. Stecklow and Ms. Shields-Wright:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that the Metropolitan Water Reclamation District of Greater Chicago's (District) partial denial of Mr. Sam Stecklow's September 19, 2018, FOIA request violated the requirements of FOIA.

BACKGROUND

On September 19, 2018, Mr. Stecklow, on behalf of *South Side Weekly*, submitted a FOIA request to the District seeking records concerning complaints of misconduct against a

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former, named District police officer.¹ By letter dated September 26, 2018, the District extended the time for responding to the request by five business days pursuant to sections 3(e)(iii), 3(e)(iv), 3(e)(v), and 3(e)(vi) of FOIA (5 ILCS 140/3(e)(iii), (iv), (v), (vi) (West 2016)).² On October 1, 2018, the District provided copies of disciplinary notices with employee identification numbers redacted under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (5 ILCS 140/7(1)(b) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018).³ The District denied access to two complaints and final investigatory reports pursuant to section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), which exempts from disclosure certain records relating to the adjudication of employee grievances or discipline.⁴ On October 2, 2018, Mr. Stecklow submitted a Request for Review disputing the denial of records under section 7(1)(n) of FOIA.⁵

On October 9, 2018, the Public Access Bureau sent a copy of the Request for Review to the District and asked it to provide for this office's confidential review copies of the records it withheld pursuant to section 7(1)(n), together with a detailed explanation of the factual and legal bases for the applicability of that exemption.⁶ The District did not respond. On November 19, 2018, the Public Access Bureau sent a second copy of the Request for Review to the District, and asked it to respond to this office's prior correspondence concerning the response to Mr. Stecklow's FOIA request.⁷

¹Letter from Sam Stecklow, Managing Editor, *South Side Weekly*, Experimental Station, to Helen Shields-Wright, Freedom of Information Officer, Metropolitan Water Reclamation District of Greater Chicago (September 19, 2018).

²Letter from Annie Wright, Public Affairs Specialist, Metropolitan Water Reclamation District of Greater Chicago, to Sam Stecklow, *South Side Weekly* (September 26, 2018).

³Letter from Annie Wright, Public Affairs Specialist, Metropolitan Water Reclamation District of Greater Chicago, to Sam Stecklow, *South Side Weekly* (October 1, 2018).

⁴Letter from Annie Wright, Public Affairs Specialist, Metropolitan Water Reclamation District of Greater Chicago, to Sam Stecklow, *South Side Weekly* (October 1, 2018).

⁵Letter from Sam Stecklow, Managing Editor, *South Side Weekly*, Experimental Station, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 2, 2018).

⁶Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Annie Wright, Public Affairs Specialist, Metropolitan Water Reclamation District of Greater Chicago (October 9, 2018).

⁷Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Annie Wright, Public Affairs Specialist, Metropolitan Water Reclamation District of Greater Chicago (November 19, 2018).

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On November 29, 2018, the District provided this office with copies of the requested records and its written answer. The District's answer acknowledged that there had been no adjudication of either of the complaints because "after thorough investigation, both complaints were considered to be unfounded and without merit."⁸ As a result, the District withdrew its assertion of section 7(1)(n) as the basis for withholding the records. Instead, the District asserted that the records are exempt from disclosure pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018) because disclosure would be an unwarranted invasion of personal privacy.⁹ On the same date, the District separately e-mailed a copy of its written answer to Mr. Stecklow,¹⁰ who replied later that day that the "Illinois Appellate Court's decision in *FOP v. Chicago* specifically found that investigations into allegations of misconduct against law enforcement offices are not subject to exemption under 7(1)(c)[.]"¹¹ On November 30, 2018, as required under the law, the Public Access Bureau forwarded a copy of the District's answer to Mr. Stecklow and offered him an opportunity to provide additional comment;¹² he did not reply further. On November 30, 2018, this office also sent a letter to the District's FOIA officer and Mr. Stecklow extending the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.¹³

⁸Letter from Helen Shields-Wright, Head Assistant Attorney, FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau (November 29, 2018), at 2.

⁹Letter from Helen Shields-Wright, Head Assistant Attorney, FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau (November 29, 2018).

¹⁰E-mail from Gabrielle Giamarusti, Sr. Legal Assistant, Metropolitan Water Reclamation District of Greater Chicago, to [Sam] Stecklow (November 29, 2018).

¹¹E-mail from Sam Stecklow, *South Side Weekly*, to Bureau Chief [Steve] Silverman and [Gabrielle] Giamarusti (November 29, 2018).

¹²Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Managing Editor, *South Side Weekly*, Experimental Station (November 30, 2018).

¹³Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Managing Editor, *South Side Weekly*, Experimental Station, and Helen Shields-Wright, FOIA Officer and Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago (November 30, 2018). The November 30, 2018, extension letter, however, contained a scrivener's error which misidentified the extended date within which this office could issue a binding opinion as January 16, 2018. On December 12, 2018, this office sent Mr. Stecklow and the District's FOIA officer an additional letter which clarified the correct date for issuing a binding opinion as January 16, 2019. See Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Managing Editor, *South Side Weekly*, Experimental Station, and Helen Shields-Wright, FOIA Officer and Head Assistant Attorney, Metropolitan Water Reclamation District of Greater Chicago (December 12, 2018).

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ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). "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 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure contained in section 7 of FOIA are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

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

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

"Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. **The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.** (Emphasis added.)

The District's answer to this office stated that the records that were withheld consist of two reports concerning complaints against the named police officer.¹⁴ The answer stated that one of the complaints was made by an employee and there was "no evidence to substantiate the allegation[.]" while the other complaint was made by a member of the public, and it was determined that the officer's actions had "been appropriate and reasonable."¹⁵ The

¹⁴Letter from Helen Shields-Wright, Head Assistant Attorney, FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau (November 29, 2018), at 3.

¹⁵Letter from Helen Shields-Wright, Head Assistant Attorney, FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau (November 29, 2018), at 3.

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District asserted that "[u]nfounded accusations against an individual undoubtedly would be objectionable, and constitute an absolute invasion of privacy to a reasonable person if disclosed to any requestor. * * * Releasing reports of unfounded allegations to any requestor would be embarrassing to [the police officer] and besmirch an otherwise unblemished career."¹⁶ In his reply, Mr. Stecklow argued that "allegations of misconduct against a law enforcement officer cannot be considered exempt on their face."¹⁷

In *Gekas v. Williamson*, 393 Ill. App. 3d 573, 574 (4th Dist. 2009), the Illinois Appellate Court considered whether citizen complaints and records related to citizen complaints against a deputy sheriff were exempt from disclosure under a prior version of section 7(1)(c), which also expressly excluded from its scope information that bears on the public duties of public employees.¹⁸ The trial court ruled that files concerning unfounded complaints could be withheld "in order to protect the deputy's privacy." *Gekas*, 393 Ill. App. 3d at 578. The appellate court reversed, holding that records concerning alleged wrongdoing in the course of the deputy's public duties were subject to disclosure regardless of whether the underlying allegations had merit:

Complaints, founded or unfounded, that he committed misconduct in his capacity as a deputy sheriff are "information that bears on [his] public duties," and the disclosure of such information "shall

¹⁶Letter from Helen Shields-Wright, Head Assistant Attorney, FOIA Officer, Metropolitan Water Reclamation District of Greater Chicago, to Steve Silverman, Bureau Chief, Public Access Bureau (November 29, 2018), at 3.

¹⁷E-mail from Sam Stecklow, *South Side Weekly*, to Bureau Chief [Steve] Silverman and [Gabrielle] Giamarusti (November 29, 2018).

¹⁸Section 7(1)(b)(ii) of FOIA (5 ILCS 140/7(1)(b)(ii) (West 2006)) provided:

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

* * *

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

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not be considered an invasion of personal privacy." [Citation.]
Insomuch as these materials, true or false, founded or unfounded,
bear on his duties as a police officer, the disclosure of these
materials would not invade his personal privacy, and, thus, we do
not reach the question of whether their disclosure would be a
"clearly unwarranted invasion of [his] personal privacy."
[Citation.] *Gekas*, 393 Ill. App. 3d at 586.

See also Watkins v. McCarthy, 2012 IL App (1st) 100632, ¶25, 980 N.E.2d 733, 741 (2012)
("files requested by plaintiff pertaining to complaints against the officers here, which were found
to be without merit, would not be exempt under" a prior version of section 7(1)(c) (5 ILCS
140/7(1)(b)(ii) (West 2008)) that is identical to the version interpreted by the court in *Gekas*).

As described above, the records that the District withheld under section 7(1)(c)
consist of two reports that document complaints against a police officer and summarize
investigations of the complaints. Both of the complaints concern the officer's actions while he
was performing his public duties as a District police officer. As a result, the records
unequivocally bear on the officer's public duties. In accordance with the appellate courts'
conclusions in *Gekas* and *Watkins*, disclosure of these reports would not constitute an
unwarranted invasion of the police officer's personal privacy. This is the case even when, as
happened here, the investigations found that one complaint was unsubstantiated and the other
complaint involved conduct by the officer that was appropriate. Consequently, the reports are
not exempt from disclosure pursuant to section 7(1)(c) of FOIA.

However, names and other discrete information in the reports that identify the
complainants are exempt from disclosure pursuant to section 7(1)(c). Information identifying
individuals who made complaints of this nature against public employees is highly personal; the
subjects' privacy rights outweigh any legitimate public interest in disclosure of their identities.
See Coleman v. F.B.I., 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (interpreting the provision of Federal
FOIA that corresponds to section 7(1)(c) and concluding that disclosure of FBI documents would
constitute an unwarranted invasion of personal privacy because "it is evident that release of any
portion would reveal the identities of innocent third parties, witnesses or victims.").¹⁹

¹⁹Exemption 7(C) of Federal FOIA (5 U.S.C. § 552(b)(7)(C), as amended by Pub. L. No. 99-570,
1802 (1986) exempts from disclosure "information compiled for law enforcement purposes, but only to the extent
that the production of such law enforcement records or information * * * could reasonably be expected to constitute
an unwarranted invasion of personal privacy[.]" Because Illinois' FOIA statute is based on the Federal FOIA statute,
decisions interpreting similar provisions of the Federal Act, while not controlling, may provide helpful and relevant
precedents in construing the State Act. *See, e.g., Margolis v. Director, Ill. Dep't of Revenue*, 180 Ill. App. 3d 1084,
1087 (1st Dist. 1989).

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FINDINGS AND CONCLUSIONS

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

1) On September 19, 2018, Mr. Sam Stecklow, on behalf of *South Side Weekly*, submitted a FOIA request to the Metropolitan Water Reclamation District of Greater Chicago seeking records concerning complaints of misconduct against a former, named police officer.

2) On September 26, 2018, the District sent a letter to Mr. Stecklow extending the time for its response by five business days under section 3(e) of FOIA.

3) In a letter dated October 1, 2018, the District provided Mr. Stecklow with copies of two disciplinary notices with employee identification numbers redacted pursuant to section 7(1)(b) of FOIA, but withheld two complaints and related documentation, citing section 7(1)(n) of FOIA.

4) On October 2, 2018, this office received Mr. Stecklow's Request for Review disputing the denial of his request for records under section 7(1)(n) of FOIA. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA.

5) On October 9, 2018, the Public Access Bureau sent a copy of the Request for Review to the District and asked it to provide for this office's confidential review copies of the records it withheld pursuant to section 7(1)(n), together with a detailed explanation of the factual and legal bases for the applicability of that exemption.

6) On November 19, 2018, this office sent the District an additional copy of the Request for Review and this office's October 9, 2018, letter, along with a letter noting the lack of a response from the District and asking the District to provide the requested materials.

7) On November 29, 2018, the District provided this office with copies of the withheld records and a written answer in which it withdrew its assertion of section 7(1)(n) as the basis for withholding the records at issue, but asserted that the records are exempt from disclosure pursuant to section 7(1)(c) of FOIA. The District also e-mailed its written answer directly to Mr. Stecklow, who replied to the District and to this office later that day. On November 30, 2018, this office forwarded a copy of the District's answer to Mr. Stecklow for any further comment; he did not reply.

8) Also on November 30, 2018, this office extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney

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General may properly issue a binding opinion with respect to this matter.

9) Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "[u]nwarranted 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 exemption further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

10) The records at issue concern two complaints against a named police officer alleging improper conduct while on duty. The District's investigations determined that "there is no evidence to substantiate the employee complaint" and that in the other incident the officer's actions were "appropriate and reasonable." Nevertheless, these records directly bear on the police officer's public duties. Accordingly, the records are not exempt from disclosure pursuant to section 7(1)(c) of FOIA. However, the complainants' identifying information may be redacted pursuant to section 7(1)(c) because disclosure of that information would constitute a clearly unwarranted invasion of the complainants' personal privacy.

For the reasons stated above, it is the opinion of the Attorney General that the District's partial denial of Mr. Stecklow's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the District is directed to take immediate and appropriate action to comply with this binding opinion by providing Mr. Stecklow with copies of the records that were withheld, subject to the permissible redaction of the complainants' identifying information pursuant to section 7(1)(c).

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 2016). An aggrieved party may obtain judicial review of the decision by filing a

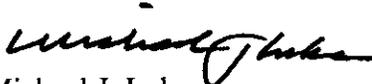
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complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Sam Stecklow as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-018) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 31, 2018.


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