



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 24, 2019

PUBLIC ACCESS OPINION 19-008
(Request for Review 2019 PAC 58547)

FREEDOM OF INFORMATION ACT:
Basis for Withholding Police
Report Narratives

Mr. Felix Sarver
News Reporter
The Herald-News
2175 Oneida Street
Joliet, Illinois 60435

Ms. Sabrina Spano
Assistant Corporation Counsel
City of Joliet
150 West Jefferson Street
Joliet, Illinois 60432

Dear Mr. Sarver and Ms. Spano:

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 2018)). For the reasons discussed below, this office concludes that the City of Joliet Police Department (Department) violated the requirements of FOIA by improperly redacting certain information from the narrative sections of the police reports responsive to Mr. Felix Sarver's June 3, 2019, FOIA request.

BACKGROUND

On June 3, 2019, Mr. Sarver, on behalf of *The Herald-News*, submitted a FOIA request to the Department seeking copies of police reports concerning the arrests of two named

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 2

persons on May 29, 2019.¹ On June 10, 2019, the Department provided him with copies of records related to each of the two case numbers assigned to the arrests. Among the records produced were one case report and six officer supplement reports related to case No. 19-6803 and one case report related to case No. 19-8362. The Department redacted certain information from the records pursuant to sections 7(1)(b), 7(1)(c), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iii), (1)(d)(iv) (West 2018)).² In particular, the Department redacted the entire "NARRATIVE" sections of each of the reports, with the exception of one of the officer supplement reports related to case No. 19-6803 (document No. 11-19-0006803-006) and the case report related to case No. 19-8362 (document No. 11-19-0008362-001), which disclosed the first sentence and the first two sentences of the narrative section of the respective reports.

On June 13, 2019, Mr. Sarver submitted a Request for Review to the Public Access Bureau contesting the Department's "redactions of the narratives in the [] police reports" that he received.³ Although the Department had redacted other discrete information from the records, this Request for Review addresses only the redaction of the narrative portions of the reports.

On June 19, 2019, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide copies of the responsive police reports for this office's confidential review.⁴ The June 19, 2019, letter also requested that the Department provide a detailed explanation of the factual and legal bases for redacting the narratives.⁵ On June 28, 2019, the Department furnished the requested materials to this office, adding an assertion of section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2018)) based on Illinois Supreme Court Rule 415(c) (effective October 1, 1971).⁶ On July 1, 2019, the Public Access Bureau

¹FOIA Records Center submission from Felix Sarver to City of Joliet Police Department (June 3, 2019).

²E-mail from Sergeant Chris Botzum, Administration, Joliet Police Department, to Felix [Sarver] (June 10, 2019).

³FOIA – Request for Review by Public Access Counselor (PAC) submission by Felix Sarver (June 13, 2019).

⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sabrina Spano, Assistant Corporation Counsel, City of Joliet (June 19, 2019), at 1.

⁵Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sabrina Spano, Assistant Corporation Counsel, City of Joliet (June 19, 2019), at 1-2.

⁶Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019).

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 3

forwarded a copy of the Department's written response to Mr. Sarver;⁷ he did not reply to that response. Pursuant to section 9.5 of FOIA, on August 12, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to September 24, 2019.⁸

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 2018). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) 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 (5 ILCS 140/7 (West 2018)) are to be construed narrowly. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

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." (Emphasis added.) "[A]n exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated—that is, such a proposed disclosure must be *specifically prohibited*." (Emphasis in original.) *Better Gov't Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 816 (4th Dist. 2008).

In its answer to this office, the Department asserted that "[t]he request is for information in pending criminal cases in the Will County Circuit Court[.]" and that "the Will County State's Attorney's Office objects to releasing reports on pending cases."⁹ The Department cited Illinois Supreme Court Rule 415(c), which provides that "[a]ny materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide." The Department argued that disclosure of the

⁷Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Felix Sarver, News Reporter, *The Herald-News* (July 1, 2019).

⁸Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, to Felix Sarver, News Reporter, *The Herald-News*, and Sabrina Spano, Assistant Corporation Counsel, City of Joliet (August 12, 2019).

⁹Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 1.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 4

materials would interfere with discovery in the underlying cases, citing *People v. Schmidt*, 56 Ill. 2d 572 (1974), *People v. Teller*, 207 Ill. App. 3d 346, 349 (2d Dist. 1991), and *People v. Shores*, 2012 IL App (5th) 100196, ¶¶41, 975 N.E.2d 774, 782 (2012). Each of those cases, however, involved parties seeking discovery materials for their own pending criminal or civil cases. See also *Turner v. Joliet Police Department*, 2019 IL App (3d) 170819, ¶¶14-16, 123 N.E.3d 1147, 1151 (2019) (Department did not violate FOIA by denying defendant's request for discovery materials from his pending criminal case pursuant to section 7(1)(a) based on Rule 415(c)). In contrast, Mr. Sarver is a news reporter who is seeking access to the police report narratives pursuant to FOIA in order to report on matters of public interest.

Although Mr. Sarver did not make a discovery request for the records at issue, the Department's response to this office asserted that "[d]iscovery in a pending case is governed by" *Schmidt* and that "[p]roduction of the requested materials would nullify the effect of" *Schmidt*.¹⁰ In *Schmidt*, the Illinois Supreme Court held that a trial court did not have discretion to apply criminal discovery rules to offenses that did not carry the potential for a prison sentence. *Schmidt*, 56 Ill. 2d at 575. It is unclear how the Department's disclosure of the records Mr. Sarver requested under FOIA would disturb or contradict that ruling. The other cases cited by the Department also are irrelevant to this matter. In *Shores*, the court held that the enforcement of Rule 415(c) to prohibit a criminal defendant from obtaining copies of discovery materials in the custody of his attorney did not violate the defendant's constitutional rights to due process and equal protection. *Shores*, 2012 IL App (5th) 100196, ¶42, 975 N.E.2d at 782. And in *Teller*, the court analyzed the extent of permissible discovery in a civil proceeding in which a petitioner sought to rescind the suspension of her driver's license. *Teller*, 207 Ill. App. 3d at 350-51. These rulings have no relevance to FOIA and provide no support for the assertion that Rule 415(c) prohibits a public body from disclosing, in response to a FOIA request by a member of the news media, records which may be sought in discovery. In addition, the Will County State's Attorney's Office's objection to disclosing police reports concerning pending cases is not a cognizable rationale for denying Mr. Sarver's FOIA request. There is no provision of FOIA that renders records exempt from disclosure simply because another public body objects to their

¹⁰Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 1.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 5

disclosure.¹¹ Therefore, the Department did not sustain its burden to deny the information in the narratives pursuant to section 7(1)(a) of FOIA based on Rule 415(c).¹²

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2018)) defines "private information" as:

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

In its answer to this office, the Department simply paraphrased the above definition and stated: "This information was redacted and is self-explanatory as indicated in said statutory reference."¹³ This office's review confirmed that the Department's redactions of the narrative sections encompassed several types of unique identifiers: home or personal telephone numbers, a motor vehicle license number, and a home address. Other information that the Department redacted, however, does not fit within the plain language of the definition of "private information," and therefore, the narratives are not exempt from disclosure in their entirety pursuant to section 7(1)(b) of FOIA.

¹¹In *Twin-Cities Broadcasting Corp. v. Reynard*, 277 Ill. App. 3d 777, 783 (4th Dist. 1996), the Illinois Appellate Court recognized that a third party with a substantial interest in records in the possession of a State's Attorney's office "was entitled to assert an exemption, if one exists, despite the State's Attorney's Office refusal to do so." The court, however, made no finding as to whether or not the records were exempt from disclosure under FOIA. Thus, FOIA does not prohibit the records at issue in this matter from being disclosed because the Will County State's Attorney's Office objects to their release.

¹²The Department may, however, redact information obtained from the Law Enforcement Agencies Data System (LEADS) pursuant to section 7(1)(a) based on an administrative rule (20 Ill. Adm. Code §1240.80(d) (2019), old Part repealed and new Part adopted at 23 Ill. Reg. 7521, effective June 18, 1999). See *Better Gov't Ass'n v. Zaruba*, 2014 IL App (2d) 140071, ¶27, 21 N.E.3d 516, 525 (2014) ("The regulations make clear that the public is not entitled to view or possess data that is transmitted through, received through, or stored in LEADS.").

¹³Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 2.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 6

Section 7(1)(c) of FOIA

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

A public body's contention that the release of information would constitute a clearly unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994). The Attorney General has issued a binding opinion concluding that "arrestees are considered 'essentially public personages' with a 'limited' and 'qualified' right to privacy, 'and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest' that are subject to disclosure." Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7 (quoting *Tennessean Newspaper, Inc. v. Levi*, 403 F.Supp. 1318, 1321 (D.C. Tenn. 1975)).

In support of its assertion of section 7(1)(c) of FOIA as the basis for withholding the narratives, the Department merely paraphrased the language of the exemption: "the report contains personal information, and the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and the disclosure has not been consented to in writing by the individual subject of the information."¹⁴ Yet, one set of reports details multiple arrests and the other report also documents an arrest. The legitimate public interest in information concerning the investigations and arrests outweighs the arrestees' privacy rights. Absent a detailed factual basis for the applicability of the exemption, the Department failed to sustain its burden of proving by clear and convincing evidence that any information in the narratives is exempt from disclosure under section 7(1)(c). Nonetheless, the Attorney General has previously concluded that "[a]n individual's birth date is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this

¹⁴Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 2.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 7

information." Ill. Att'y Gen. Pub. Acc. Op. No 16-009, issued November 7, 2016, at 12. Therefore, the Department may properly redact dates of birth that appear in the narratives pursuant to section 7(1)(c). Additionally, the Attorney General has previously concluded that the disclosure of information identifying a suspect of a crime who has not been arrested or charged would constitute a clearly unwarranted invasion of personal privacy. Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 16. To the extent that the reports discuss one or more suspects who had not been arrested at the time of Mr. Sarver's request, the Department may properly redact any such person's identifying information pursuant to the section 7(1)(c) exemption.

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

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

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

* * *

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

To demonstrate that records are exempt from disclosure under the comparable provision of the Federal FOIA (5 U.S.C.A. §552(b)(7)(B) (West 2012)),¹⁵ an agency must establish: "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Chiquita Brands International Inc. v. S.E.C.*, 805 F.3d 289, 294 (D.C. Cir. 2015) (quoting *Washington Post Co. v. U.S. Dep't of Justice*, 863 F.2d 96, 102 (D.C. Cir. 1988)).

In its answer to this office, the Department argued that the section 7(1)(d)(iii) exemption applies "in that disclosure would deprive the defendants of a fair trial, deprive them of their right to due process and potentially taint a jury pool which outweighs any benefit derived from releasing the requested information."¹⁶ The records, however, concern individuals who

¹⁵Exemption 7(B) of Federal of FOIA (5 U.S.C.A. §552(b)(7)(B) (West 2012)) applies to records that "would deprive a person of a right to a fair trial or an impartial adjudication[.]"

¹⁶Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 2.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 8

were arrested just days before Mr. Sarver submitted his FOIA request. There is no indication that a trial or adjudication was pending or truly imminent at that time. Further, the Department did not explain *how* or *why* disclosure of the information it redacted from the particular narratives at issue would deprive the specific defendants of fair trials or impartial hearings. Instead, the Department's justification for its assertion of section 7(1)(d)(iii) is so generalized that it could apply to virtually any police report involving a suspect charged with an offense at the pre-trial stage. Yet, "[t]o meet its burden * * *, the public body must provide a detailed justification for its claim of exemption, addressing the requested records specifically and in a manner allowing for adequate adversarial testing." *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 150 (2nd Dist. 2010). Because the Department did not set forth facts proving that disclosure of the redacted portions of the narratives would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing under the particular circumstances at issue, the Department did not sustain its burden to deny portions of the narratives pursuant to section 7(1)(d)(iii).

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

Section 7(1)(d)(iv) of FOIA exempts from disclosure:

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

* * *

(iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]

Section 7(1)(d)(iv) is intended to ensure that law enforcement personnel can gather pertinent information from witnesses in order to effectively combat crime, rather than obtain information from criminal suspects. *See, e.g., McDonnell v. U.S.*, 4 F.3d 1227, 1258 (3d Cir. 1993) ("[T]he

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 9

goal of" the corresponding exemption in the Federal FOIA¹⁷ is "to protect the ability of law enforcement agencies to obtain the cooperation of persons having relevant information and who expect a degree of confidentiality in return for their cooperation."). Witness statements may be withheld in their entireties only if disclosure of their contents "would necessarily result in the disclosure of the identity of that source[]" of information and, therefore, "redaction of the file cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).

In support of its assertion of the section 7(1)(d)(iv) exemption to redact the narratives, the Department asserted: "The complainants and witnesses (source of information) have not consented in writing to disclosure of the requested information. The identity of said persons would be easily identifiable if their statements were released."¹⁸ As with the section 7(1)(d)(iii) exemption, the Department made only general and conclusory assertions concerning section 7(1)(d)(iv). The Department did not provide any facts showing how or why the exemption applies to any or all portions of the particular statements at issue.

The Department did not redact just the identities and statements of witnesses from the responsive narratives. Rather, the Department also redacted information concerning the investigative activities of law enforcement officers involved in the underlying matters. To the extent that the narratives reflect the involvement of any undercover officer(s), the identities of any such officers may properly be concealed pursuant to section 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(vi) (West 2018) (exempting from disclosure information that would "endanger the life or physical safety of law enforcement personnel or any other person[.]"). No information concerning the officers' law enforcement activities, on the other hand, is within the scope of section 7(1)(d)(iv).

Furthermore, although the Department revealed the identities of four arrestees, the Department redacted police officers' summaries of the statements three of them made while they were in custody and after they had waived their Miranda rights, as well as a police officer's general depiction of the fourth arrestee's responses to police questioning that apparently occurred shortly before his arrest. As noted above, section 7(1)(d)(iv) is not intended to shield information that criminal suspects, except confidential informants, provide under questioning to

¹⁷Exemption 7(D) of Federal of FOIA (5 U.S.C.A. §552(b)(7)(D) (West 1988)) applies to records that "could reasonably be expected to disclose the identity of a confidential source, * * *, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source[.]"

¹⁸Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Joshua M. Jones Deputy Bureau Chief – Public Access Bureau, Office of the Attorney General (June 28, 2019), at 2.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 10

the law enforcement personnel investigating them. The Department did not prove by clear and convincing evidence that any portion of the arrestees' statements is exempt from disclosure pursuant to section 7(1)(d)(iv).

In contrast, although the Department's explanation for the applicability of the section 7(1)(d)(iv) exemption as to the actual witness statements lacked detail, this office confirmed that the Department redacted certain information it received from individuals who were not arrested and who provided information to the Department in order to seek its assistance. Information that would unavoidably identify such individuals is within the plain language of the section 7(1)(d)(iv) exemption and may be redacted. The Department, however, did not set out facts sufficient to show that it was necessary to redact *all* of the information from the narrative in case No. 19-8362 in order to avoid identifying the witnesses. Therefore, the Department may properly redact only the names of the witnesses from the narrative of the report of case No. 19-8362 pursuant to section 7(1)(d)(iv).¹⁹

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 June 3, 2019, Mr. Felix Sarver, on behalf of *The Herald-News*, submitted a FOIA request to the City of Joliet Police Department seeking copies of police reports pertaining to the arrests of two named persons on May 29, 2019.
- 2) On June 10, 2019, the Department provided Mr. Sarver with copies of responsive records but denied his request in part, citing sections 7(1)(b), 7(1)(c), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA to redact information. Specifically, the Department redacted nearly all of the information in the narrative sections of the police reports.
- 3) On June 13, 2019, Mr. Sarver submitted a Request for Review to the Public Access Bureau contesting the Department's redaction of the narrative sections of the police reports. 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 2018)).
- 4) On June 19, 2019, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the responsive police

¹⁹To the extent that the records contain unique identifiers such as home addresses or birth dates from which a witness could be potentially identified, that information is also exempt from disclosure pursuant to sections 7(1)(b) and 7(1)(c) as described above.

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 11

reports for this office's confidential review. This office also asked the Department to provide a detailed explanation of the factual and legal bases for redacting the narratives.

5) On June 28, 2019, the Department furnished the requested materials to this office. The Department asserted that the information it redacted from the narratives was also exempt from disclosure under section 7(1)(a) of FOIA.

6) On July 1, 2019, the Public Access Bureau forwarded a copy of the Department's written answer to Mr. Sarver; he did not reply to that response.

7) Pursuant to section 9.5 of FOIA, on August 12, 2019, this office extended the time within which to issue a binding opinion by 30 business days, to September 24, 2019. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law[.]" and Illinois Supreme Court Rule 415(c) provides that "[a]ny materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide." Rule 415(c) does not specifically prohibit disclosure of any portion of the narratives to Mr. Sarver because he is not a criminal defendant seeking discovery materials for his criminal case. The Department may properly redact only information obtained through LEADS pursuant to section 7(1)(a).

9) Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." The Department redacted from the narratives home or personal telephone numbers, a motor vehicle number, and a home address. Because these items meet the definition of "private information" in section 2(c-5) FOIA, the Department's redaction of this discrete information pursuant to section 7(1)(b) did not violate FOIA. The Department did not sustain its burden to redact any other information from the narratives pursuant to section 7(1)(b).

10) 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." Because the narratives document arrests and because arrests are legitimate matters of public interest that outweigh arrestees' privacy rights, the Department failed to prove that any information in the narratives discussing the circumstances surrounding the arrests is exempt from disclosure under section 7(1)(c). The Department may properly redact from the narratives only dates of birth and information that would unavoidably identify any

Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 12

suspects who had not been arrested or charged at the time of the request pursuant to section 7(1)(c).

11) Section 7(1)(d)(iii) of FOIA exempts from disclosure law enforcement records when their disclosure would "create a substantial likelihood that a person will be deprived of a fair trial or impartial hearing." There is no indication that a trial or adjudication related to the records at issue was imminent at the time of Mr. Sarver's request, and the Department did not explain how or why disclosure of the particular narratives at issue would deprive the specific defendants of fair trials or impartial hearings. Therefore, the Department did not sustain its burden to redact any information from the narratives pursuant to section 7(1)(d)(iii).

12) Section 7(1)(d)(iv) of FOIA exempts from disclosure law enforcement records when their disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]" The information in the narratives that does not consist of witness identities and witness statements is not within the scope of section 7(1)(d)(iv), nor does the exemption encompass information provided by criminal suspects under questioning by law enforcement. The Department did not demonstrate that all of the information in the narratives relating to the actual witness statements is exempt from disclosure. The Department may properly redact only the names of the two witnesses in case No. 19-8362 pursuant to section 7(1)(d)(iv).

13) Although the Department did not cite section 7(1)(d)(vi) of FOIA, that exemption permits a police department to withhold information that would "endanger the life or physical safety of law enforcement personnel or any other person." Under this exemption, the Department may properly redact from the reports of case No. 19-6803 information that would identify any undercover officers.

Therefore, it is the opinion of the Attorney General that the Department's response to Mr. Sarver's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the Department is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Sarver copies of the narrative sections of the responsive police reports, subject only to the redactions authorized above.

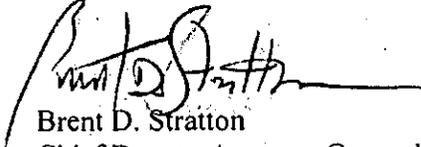
Mr. Felix Sarver
Ms. Sabrina Spano
September 24, 2019
Page 13

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 2018). 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 Felix Sarver as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy 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 19-008) upon:

Mr. Felix Sarver
News Reporter
The Herald-News
2175 Oneida Street
Joliet, Illinois 60435
fsarver@shawmedia.com

Ms. Sabrina Spano
Assistant Corporation Counsel
City of Joliet
150 West Jefferson Street
Joliet, Illinois 60432
sspano@jolietcity.org

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 September 24, 2019.



SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548