FOIA Guide for Law Enforcement

“Clearly Unwarranted Invasion Of Personal Privacy” - Exemption 7(1)(c)

When asserting this exemption as the basis for redacting information, the public body must seek pre-authorization from the Public Access Counselor’s Office. Please note that only two exemptions (7(1)(c) and 7(1)(f)) require preauthorization.

- Because police reports often contain dates of birth, police departments frequently seek pre-authorization to redact that information from the reports. We have determined that the disclosure of a date of birth would constitute a clearly unwarranted invasion of personal privacy under 7(1)(c) and, as a result, we routinely approve the redaction of dates of birth.
- We encourage public bodies to ask for the FOIA requester’s permission to redact dates of birth. With this permission, pre-authorization is no longer necessary and would expedite the FOIA request. Public bodies may want to create and provide a document that would allow requesters to formally agree to the redaction of the date of birth.
- The disclosure of an individual’s age, however, is not considered an invasion of personal privacy.
- Release of the requester’s date of birth to the requester is not considered an unwarranted invasion of personal privacy.
- Victims’ names and any identifying information may frequently be withheld under 7(1)(c).
- Graphic descriptions of alleged offenses, such as sex crimes, and graphic photographs may frequently be withheld under 7(1)(c).
- Graphic photographs of the deceased’s body during an autopsy may be withheld under Section 7(1)(c)
- The names of individuals who appear in police line-ups may be redacted.
- On many occasions, we have approved the redaction of third-party names from police reports under 7(1)(c). These redactions include, for example, the names of suspects who were never arrested and persons who incidentally appear in the reports, such as relatives or property owners.
- When seeking pre-authorization to redact information under 7(1)(c), a public body should submit unredacted and redacted copies of the documents to the PAC. This will allow us to clearly identify the information that the public body seeks to redact.

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1 This document provides general guidance for use in addressing some of the most common issues that arise in requests to law enforcement agencies under the Illinois Freedom of Information Act. These guidelines are not appropriate for all cases. The Public Access Counselor’s Office reviews pre-authorization requests and requests for review on a case-by-case basis.
• If an arrestee becomes a confidential source and that information is contained in the
police report, the law enforcement agency may withhold the name of that source under
7(1)(c). This prevents the public body from asserting Section 7(1)(d)(iv) as the basis for
its exemption and inadvertently revealing that the arrestee has become a confidential
source.
• In certain limited circumstances, the police may withhold an entire police report if the
report’s narrative contains highly personal information about individuals (in the case of a
domestic disturbance, for example), no arrests were made and the matter is now
closed.
• When someone is arrested, the police must disclose the arrestee’s identifying
information (see 5 ILCS 140/2.15). This information is not exempt under Section
7(1)(c).
• When the victim or the suspect in a police report is the FOIA requester, the disclosure of
the report to that person is not considered an invasion of personal privacy under Section
7(1)(c).

**Information Prohibited From Disclosure By Federal Or State Law,
Rules Or Regulations - Exemption 7(1)(a)**

**Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1)**

• The Juvenile Court Act mandates that reports in which a minor was arrested, charged or
investigated must be withheld in full.
• Reports in which minors are the victims of sex crimes or are incidentally mentioned are
not exempt in full, but the names of the minors may be redacted. Under the Juvenile
Court Act, a public body is required to withhold information identifying an alleged minor
victim of a sex crime. 705 ILCS 405/5-905(2).

**Illinois Supreme Court Rule 415** regulates discovery in criminal cases. Rule 415(c) provides
that any 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 preclude a defendant in a criminal proceeding from obtaining
materials through FOIA that would ordinarily be subject to discovery. The documents,
however, would be subject to any applicable FOIA exemptions, including the redaction
of information under Section 7(1)(c) and Section 7(1)(d)(iv).
• Rule 415(c) would apply to a FOIA request to the Public Defender’s Office where an
individual, who was or is presently represented by the Public Defender, was seeking
records relating to his own case.
Illinois Supreme Court Rules of Professional Conduct 3.6

- The disclosure of documents pursuant to a FOIA request does not constitute an “extrajudicial statement” under Rule 3.6. Prosecutors cannot withhold a document that is responsive to a FOIA request by arguing that Rule 3.6 precludes disclosure and, as a result, the exemption in Section 7(1)(a) of FOIA applies.

- The comments to Rule 3.6 provide important guidance in approaching these issues. The comments provide:

  It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over question of public policy. 233 Ill.2d R. Prof. Conduct 3.6, Comment 1.

“Private Information” - Exemption 7(1)(b)

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

- Section 7(1)(b) provides that public bodies may redact “private information,” unless “disclosure is required by another provision of this Act, a State or federal law or a court order.”

- Section 2(c-5) does not list a home zip code as a unique identifier. We have determined, however, that a public body may withhold a person’s home zip code under Section 7(1)(b) if the name of that person has already been released to the requester.
Exemptions That Specifically Apply to Law Enforcement Or Administrative Enforcement Proceedings – Exemptions Under 7(1)(d)

Exemption 7(1)(d)(i)

Exemption 7(1)(d)(i) allows a public body to withhold records that would interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by the law enforcement or correctional agency that received the FOIA request.

- Under Section 1.2 of FOIA (5 ILCS 140/1.2), “[a]ll records in the custody of a public body are presumed to be open to inspection and copying” and “[a]ny 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.” (Emphasis added.)
- As a result, when a public body asserts that records are exempt under Section 7(1)(d)(i), the public body has the burden to prove by clear and convincing evidence that the disclosure of the records would in fact interfere with a pending or actually and reasonably contemplated law enforcement proceeding. The fact that an investigation has been commenced is, by itself, not enough to satisfy the burden to withhold information under this exemption.
- The public body must produce specific evidence that disclosure of information contained in a document, such as a police report, would interfere with an actual or reasonably contemplated law enforcement proceeding.
- A criminal conviction that is being challenged through a post-conviction action does not constitute an ongoing criminal proceeding for the purposes of this exemption. Illinois courts have consistently held that post-conviction appeals are civil proceedings. See Illinois v. Wilson, 37 Ill. 2d 617, 620 (Ill. 1967); see also People v. Andretich, 244 Ill. App. 3d 558, 560 (Ill. App. 3d Dist. 1993); Illinois v. Dominguez, 366 Ill. App. 3d 468, 472, 473 (Ill. App. 2d Dist. 2006).
- If a prosecution has commenced, a police department is strongly encouraged to contact the State’s Attorney’s Office to assess whether disclosure of the requested records could interfere with the prosecution. If a police department intends to assert an exemption under 7(1)(d) in a case where a prosecution is underway, obtaining detailed information from the State’s Attorney’s Office will likely help the police department meet its burden.
- In Day v. City of Chicago, 388 Ill.App.3d 70, 72 (1st Dist. 2009), the plaintiff, who was convicted of murder in 1994, submitted a FOIA request in 2007 to the City of Chicago Police Department seeking all documents relating to his arrest and the investigation. The City denied the police report in its entirety pursuant to then Section 7(1)(c)(1) of FOIA, claiming that the investigation was “ongoing.” The First District Appellate Court
held that the City’s three affidavits were “entirely conclusory and inadequate to sustain the City’s burden to show the requested documents and the redacted portions of the General Case and Arrest Reports were exempt because disclosure would ‘obstruct an ongoing investigation.’” Day, 388 Ill.App.3d at 75. According to the Court, affidavits will not suffice “‘if the public body’s claims are conclusory, merely recite statutory standards, or are too vague or sweeping.’” Day, 388 Ill.App.3d at 74 (quoting Illinois Education Ass’n. v. Illinois State Board of Education, 204 Ill.2d 456, 469 (2003)).

Exemption 7(1)(d)(ii)

Exemption 7(1)(d)(ii) allows a public body to withhold records when disclosure would interfere with active administrative enforcement proceedings conducted by the public body that received the FOIA request.

- The public body has the burden to prove by clear and convincing evidence that the disclosure of the records in question would in fact interfere with active administrative enforcement proceedings.
- This Office has found this exemption to be applicable in matters involving active, internal investigations of alleged police misconduct and matters involving an administrative agency’s active investigation regarding whether an applicant is qualified to hold a license.

Exemption 7(1)(d)(iii)

Exemption 7(1)(d)(iii) allows a public body to withhold records when disclosure would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing.

- The public body has the burden to prove by clear and convincing evidence that the disclosure of the records in question would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing.
- To meet its burden under Section 1.2 of FOIA, the public body must provide specific evidence that disclosure of certain information contained in a police report could create the likelihood that a person will be deprived of a fair trial or impartial hearing. General statements or hypothetical statements are not sufficient to meet this burden.
- A post-conviction appeal would not fall within the scope of Section 7(1)(d)(iii).
- In No. 2010 PAC 9216, we concluded that a police department met its burden to demonstrate that disclosure of police reports would create a likelihood that the defendant would be deprived of a fair trial. In its response to our further inquiry letter, the police department explained that the possibility of additional charges still existed and additional complainants had yet to be identified. The Department also explained
that past similar events involving the defendant had earned him notoriety in the community and could affect a jury selection.

**Exemption 7(1)(d)(iv)**

Exemption 7(1)(d)(iv) allows a public body to withhold records when disclosure would unavoidably reveal the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies. This exemption does not apply to the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports. Witness information in traffic accident reports “shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request ….”

- A law enforcement officer is not a witness pursuant to Section 7(1)(d)(iv).

**Exemption 7(1)(d)(v)**

Exemption 7(1)(d)(v) provides that a public body may withhold information if releasing it would disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request.

- The public body has the burden to prove by clear and convincing evidence that the disclosure of the records in question would in fact reveal unique or specialized investigative techniques.
- The administering of a polygraph test does not fall within this exemption. In No. 2010 PAC 7909, we concluded that even assuming that the polygraph could be considered a novel investigative tool despite its decades of use, the polygraph reports at issue simply described the examiner’s conclusions as to whether the test subject answered certain questions truthfully. The reports did not provide any information on how the polygraph test was administered or how the process works.
- In No. 2010 PAC 6587, we concluded that disclosure of information concerning a law enforcement agency’s search for a cell phone or its use of a citywide camera system to track a vehicle would not reveal unique or specialized investigative techniques, the disclosure of which would result in demonstrable harm. We found that a Google search returned dozens of articles detailing the technique that the officers used to locate the cell phone – a technique that is not unique to law enforcement. Moreover, a Google search also returned dozens of articles in which city officials discussed the implementation of the citywide camera surveillance system and how police and
emergency dispatchers could use the system to read license plate numbers and track incidents of crime.

**Exemption 7(1)(d)(vi)**

Exemption 7(1)(d)(vi) provides that a public body may withhold information if disclosure would endanger the life or physical safety of law enforcement personnel or any other person.

- The public body has the burden to prove by clear and convincing evidence that the disclosure of the records in question would in fact endanger the life or physical safety of law enforcement personnel or any other person.
- Hypothetical, speculative scenarios do not satisfy the clear and convincing burden under Section 1.2. Instead, the public body must provide specific information about how disclosure of information in response to the FOIA request at issue would endanger the life or physical safety of a law enforcement officer or any other person.

**Exemption 7(1)(d)(vii)**

Exemption 7(1)(d)(vii) provides that a public body may withhold information if disclosure would obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

- The public body has the burden to prove by clear and convincing evidence that the disclosure of the records in question would in fact obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

**Exemption 7(1)(v)**

Exemption 7(1)(v) allows a public body to withhold: "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 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."

- A shift schedule for a police officer is not exempt under 7(1)(v).
- In Public Access Opinion 11-002, the Public Access Counselor’s Office issued a binding opinion concluding that information concerning the number of Chicago police officers assigned to certain districts does not fall within the scope of Section 7(1)(v).
FURTHER GUIDELINES

Arrest Reports And Criminal History Records - Section 2.15

- Under Section 2.15(a) of FOIA, police departments must make arrest reports public no later than 72 hours after the arrest. The 72-hour provision in this section provides for quicker release of these documents than the normal 5-day FOIA timeline. Once the 72 hours pass, however, the arrest reports still must be disclosed. (See Public Access Opinion 11-001).

- Section 2.15(b) of FOIA (5 ILCS 140/2.15(b)) states that public bodies must provide criminal history records if the records are: (i) court records that are public; (ii) records that are otherwise available under State or local law; or (iii) records in which the requesting party is the individual identified, except as provided under Section 7(1)(d)(vi).

- Photographs of arrestees must be disclosed.

- The Illinois Criminal Identification Act (20 ILCS 2630/1 et seq.) and the Illinois Uniform Conviction Information Act (20 ILCS 2635/1 et seq.) do not preclude the release of criminal history information of an arrestee that is contained in an arrest report.

- Documents generated exclusively from the LEADS database, however, are most likely exempt. Law enforcement agencies must keep Law Enforcement Agencies Database System (LEADS) documents confidential from any unauthorized users. 20 Ill. Admin. Code 1240.50. Disclosing a LEADS document in response to a FOIA request could threaten the public body’s access to LEADS. 20 Ill. Admin Code. 1240.110

911 Calls

- 911 emergency call recordings and transcripts are public records and should be released subject to any redactions that may be allowed under Section 7 of FOIA, including Sections 7(1)(c) and (d)(iv).

Medical Examiner’s Files

- In binding opinion 10-003, the Public Access Counselor reviewed a FOIA request for autopsy reports and all other documents and photographs in the files of the medical examiner in the cases of two deaths. The Public Access Counselor concluded that the reports are public records and should be released, noting that the public body did not meet its burden of establishing that disclosure of the documents would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c). The Public Access Counselor noted that the public body may redact portions of the records if they would disclose “private information” under Section 7(1)(b). Additionally, the Public Access Counselor concluded that graphic photographs of the body of the deceased
during the autopsy may be withheld under 7(1)(c), but photographs of other evidence at
the crime scene must be released.

- Section 5/4-7001 of the Counties Code (55 ILCS 5/4-7001) sets forth a separate set of
fees for: Coroner’s reports ($3 per page); Autopsy report ($30); Verdict of coroner’s jury,
($5); Toxicology Report ($15); Photo obtained by coroner ($3); and Miscellaneous
Reports ($15).

Costs and Fees

- “Except when a fee is otherwise fixed by statute,” each public body may charge fees
reasonably calculated to reimburse its actual cost for reproducing and certifying public
records and for the use, by any person, of the equipment of the public body to copy
records. No fees shall be charged for the first 50 pages of black and white, letter or legal
sized copies requested by a requester. The fee for black and white, letter or legal sized
copies shall not exceed 15 cents per page.” 5 ILCS 140/6.

- For voluminous reports that exceed 50 pages and for which the requester cannot or will
not pay, the first 50 pages must be released at no cost and the remaining pages may be
withheld.

- Pursuant to Section 5/11-416 of the Illinois Vehicle Code (625 ILCS 5/11-416), public
bodies may charge $5 for a copy of a vehicle accident report prepared by a law
enforcement agency.

Further Inquiry by the PAC

- Section 9.5 (c) of FOIA (5 ILCS 140/9.5(c)) provides that “upon receipt of a request for
review, the Public Access Counselor shall determine whether further action is
warranted. If the Public Access Counselor determines that the alleged violation is
unfounded, he or she shall so advise the requester and the public body and no further
action shall be undertaken. In all other cases, the Public Access Counselor shall
forward a copy of the request for review to the public body within 7 working days after
receipt and shall specify the records or other documents that the public body shall
furnish to facilitate the review. **Within 7 working days after receipt of the request for
review, the public body shall provide copies of records requested and shall
otherwise fully cooperate with the Public Access Counselor.**” (Emphasis added.)

- A further inquiry letter issued by our Office does not mean that a public body is
necessarily in violation of FOIA. Rather, it means that the Public Access Counselor’s
Office needs more information to complete its review.

- When responding to a further inquiry letter, a public body may choose to provide
confidential information in the response letter. In some instances, this may help the
public body meet the clear and convincing standard as required under Section 1.2.
Please note that under FOIA, we are required to forward a copy of any response from a public body to the requester and provide the requester an opportunity to reply. 5 ILCS 140/9.5(d). FOIA provides, however, that “[t]o the extent documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of [the] Act, the Public Access Counselor shall not further disclose that information.”  5 ILCS 140/9.5(c).The Act also requires that we redact “any alleged confidential information to which the request pertains” when providing a copy of your written response to the requester. 5 ILCS 140/9.5(d).To assist us in doing so, we request that to the extent your response contains allegedly confidential information, you clearly identify that specific information for us.

• Some public bodies have chosen to provide two letters to this Office in response to a further inquiry letter, one with redactions that may be forwarded to the requester and one without redactions that cannot be forwarded to the requester. When providing copies of documents without redactions for review by the Public Access staff, some public bodies choose to stamp “Produce only to the PAC per 5 ILCS 140/9/5. Not for public dissemination” on each document.

• Failure to respond to a further inquiry letter or a failure to provide this Office with a copy of the police reports could result in a finding that the public body has not met its burden of establishing that the reports are exempt from disclosure.

Unduly Burdensome

• Section 3(g) of FOIA (5 ILCS 140/3(g)) provides that “requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.”

• In No. 2010 PAC 9625, the Public Access Counselor’s Office found that a FOIA request to the Chicago Fire Department seeking run sheets for a seven-year period was unduly burdensome. The Fire Department met its burden by clearly explaining in detail that the Department would have to scan each report to determine if it was a “transport” (rather than a refusal or other non-transport call.) The Department would then have to review each transport call for medical treatment information and other private information and redact that information from each document. Finally, the Department would have to copy the requested documents. The Department explained that complying with this request would require approximately 500 hours to locate, sort, print, review, redact and respond to the request. Based on this very specific and detailed response, we concluded that the Department met its burden to establish that the FOIA request was unduly burdensome to the daily operations of the Department.
Additional Resources

Additional information, including binding opinions and pre-authorization letters are available at the Illinois Attorney General’s website at http://www.illinoisattorneygeneral.gov. Also, please feel free to contact the Public Access Counselor’s Office’s hotline number 1-877-299-3642 for additional information.