



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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November 21, 2024

Via electronic mail

Ms. Celeste Stack
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53 West Jackson Boulevard, Suite 334
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[REDACTED]

Via electronic mail

Ms. Rebecca Boland
FOIA Officer
Peoria Police Department
600 Southwest Adams Street
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RE: FOIA Request for Review – 2020 PAC 62344

Dear Ms. Stack and Ms. Boland:

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 2023 Supp.)). For the reasons that follow, the Public Access Bureau concludes that the Peoria Police Department (Department) did not improperly redact information that would identify witnesses or third parties from the records responsive to Ms. Celeste Stack's FOIA request, but improperly redacted references to the arrestees.

On January 15, 2020, Ms. Stack submitted a FOIA request to the Department seeking copies of all records, including photographs and investigative reports, related to a murder case against a named person from 1992. On January 30, 2020, the Department responded by providing Ms. Stack with copies of records but redacted certain information

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pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.¹ On March 27, 2020, Ms. Stack submitted the above-referenced Request for Review contesting the Department's partial denial of her FOIA request.

On April 7, 2020, this office forwarded a copy of Ms. Stack's Request for Review to the Department and asked it to furnish unredacted copies of the responsive records for this office's confidential review, together with a detailed explanation of the factual and legal bases for the asserted exemptions. On April 17, 2020, the Department instead elected to provide Ms. Stack with copies of the records with considerably fewer redactions and a written response stating that it had redacted certain information pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)(iv), and 7(1)(d)(vi) of FOIA.² In conjunction with section 7(1)(a), the Department cited section 1-7 of the Juvenile Court Act of 1987 (JCA).³ On April 30, 2020, Ms. Stack confirmed receipt of the Department's supplemental response and responded by stating:

Unfortunately, the revised production is also impossible to decipher as all the names of the witnesses, etc have been erased. Again, these records were produced in court in discovery, were part of a public trial and the records from the trial and multiple appeals are all in the public domain. Peoria has added the claim that some juveniles were interviewed but fails to designate which erased materials are actually from juveniles. In sum, Peoria's revisions do nothing to improve the situation as the materials are still impossible to decipher.^[4]

Before proceeding, this office notes that section 7(1)(a) and the JCA are inapplicable because the records do not concern minors suspected of criminal offenses; rather, as explained below, a minor witness' identity falls within the scope of other exemptions the Department cited.

On May 1, 2020, this office received from the Department unredacted copies of the records sent to Ms. Stack on April 17, 2020. Later, on March 18, 2021, when an Assistant Attorney General (AAG) in the Public Access Bureau followed up with Ms. Stack, she advised that she was still seeking unredacted copies of the records because: "The case file is 20 years old, no investigation is ongoing. In fact, someone was convicted and served an entire sentence.

¹5 ILCS 140/7(1)(b), (1)(c) (West 2019 Supp.).

²5 ILCS 140/7(1)(a), (1)(b), (1)(c), (1)(d)(iv), (1)(d)(vi) (West 2019 Supp.).

³705 ILCS 405/1-7 (West 2018).

⁴E-mail from Celeste Stewart Stack to Ms. [Sarah] Pratt (April 30, 2020).

Peoria redacted factual details so that the documents are worthless as they cannot be followed or understood. This violates the purpose of FOIA."⁵

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 2022). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

In its revised response to the request, the Department explained that it redacted the names and private information of persons who provided information to the police and other persons mentioned in the reports pursuant to sections 7(1)(b) and 7(1)(d)(iv) of FOIA, and that it also redacted information that would constitute a clearly unwarranted invasion of personal privacy pursuant to section 7(1)(c). As discussed in further detail below, the Department primarily redacted discrete information pertaining to witnesses and third parties, leaving in a large volume of intelligible information. Accordingly, it is not evident why Ms. Stack alleges that the redacted records are indecipherable and worthless.

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 FOIA⁶ 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.

This office's review confirmed that many of the redactions are of "unique identifiers" that are expressly defined as "private information," including social security numbers, home or personal telephone numbers, and home addresses. Although Ms. Stack appears to argue that the asserted exemptions, which include section 7(1)(b), cannot apply because the homicide occurred decades ago and the police reports were part of the prosecution

⁵E-mail from Celeste Stack to Ms. [Suzanne] Borland (March 18, 2021).

⁶5 ILCS 140/2(c-5) (West 2018).

and appeals, there is no basis in FOIA from which this office could conclude that the protections of section 7(1)(b) expire under such circumstances. Therefore, the Department did not improperly redact private information pursuant to section 7(1)(b).

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." Section 7(1)(c) also contains an exception providing 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."

In contrast to the identities of arrestees, which generally are not exempt from disclosure under section 7(1)(c),⁷ this office has consistently determined that the disclosure of the identities of third parties who have no direct involvement in an underlying incident but whose names appear incidentally in a police report constitutes a clearly unwarranted invasion of personal privacy. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 26558, issued January 7, 2014, at 3; *see also Mays v. Drug Enforcement Administration*, 234 F.3d 1324, 1327 (D.C. Cir. 2000) ("Absent exceptional circumstances, the balance [between the public interest in disclosure and the right to privacy] categorically favors withholding the names and addresses of third parties as" such information does not provide insight into the conduct or performance of a government agency); Ill. Att'y Gen. Pub. Acc. Op. No. 22-005, issued March 24, 2022, at 10 ("The complainants, as well as witnesses and third parties described incidentally in the complaints, have legitimate privacy interests in the disclosure of their identities.").

Additionally, 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:

* * *

⁷*See* 5 ILCS 140/2.15(a) (West 2020) (requiring public disclosure of information that identifies each arrestee within 72 hours after arrest); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7 (concluding that the disclosure of the identities of arrestees and basic facts about their arrests and the related investigations would not constitute a clearly unwarranted invasion of personal privacy).

(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[.] (Emphasis added.)

This provision allows police departments to protect the anonymity of both confidential informants and other persons who provide them with information. *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 200-01 (2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department). Witness statements may be withheld in their entirety only if disclosure of the contents "would necessarily result in the disclosure of the identity of that source" of information and, therefore, "redaction of the [records] cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (1994).

This office's review of the responsive records confirmed that the Department redacted the names of witnesses who provided information to the police. The names of the witnesses who provided information to the Department fall within the scope of section 7(1)(d)(iv), and the names of other witnesses and third parties mentioned in the reports fall within the scope of section 7(1)(c) of FOIA. The Department also redacted dates of birth, which are exempt from disclosure under section 7(1)(c).⁸ This office's review of the redacted material further confirmed that much of the information the Department redacted from the witness statements is exempt under section 7(1)(d)(iv) because it would unavoidably identify those witnesses even after their names are redacted. For instance, the disclosure of descriptions of witnesses' familial connections to involved parties would expose their identities. Although Ms. Stack contends that the witnesses' identities are not exempt because the records were produced in court in discovery and were part of a public trial where a person was convicted and then served a prison sentence, the exemptions set forth in sections 7(1)(c) and 7(1)(d)(iv) of FOIA do not cease to protect the identities of witnesses in the context of police reports merely because discovery occurs, a trial is held, or a case ends. *Henareh v. United States*, No. 1:17-cv-00630, 2018 U.S. Dist. LEXIS 207234, at *8-9 (S.D.N.Y. Dec. 6, 2018) (disclosure of recordings "during criminal discovery does not warrant public disclosure pursuant to FOIA if the recordings otherwise fall within an applicable exemption."). The applicability of law enforcement exemptions for records that would interfere with or obstruct criminal investigations and legal proceedings⁹ do expire when the investigations and proceedings end, but the Department is not relying on those

⁸"An 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 information." Ill. Att'y Gen. Pub. Acc. Op. No 16-009, issued November 7, 2016, at 12.

⁹5 ILCS 140/7(1)(d)(i), (1)(d)(vii) (West 2019 Supp.).

exemptions in this matter. Thus, the age and status of the prosecution related to this investigation is immaterial here.

Additionally, Ms. Stack argues that the witness identities are not exempt because records from the trial and appeals are already in the public domain. A requester seeking otherwise exempt records carries "the burden of pointing to specific information in the public domain that appears to duplicate that being withheld." *Afshar v. Department of State*, 702 F.2d 1125, 1130 (D.C. Cir. 1983). "That is so because the task of proving the negative--that information has not been revealed--might require the government to undertake an exhaustive, potentially limitless search." *Davis v. United States Department of Justice*, 968 F.2d 1276, 1279 (D.C. Cir. 1992). In the absence of supporting evidence such as trial transcripts, the assertion that recordings were played in a criminal trial fails to demonstrate that "specific information identical to that being withheld that has been placed in the permanent public record." *Black v. United States Department of Justice*, 69 F. Supp. 3d 26, 30 (D.C. Cir. 2014).

This office has received no specific evidence showing what if any witness identities were revealed in open court and preserved in a permanent public record. Nothing in sections 7(1)(c) and 7(1)(d)(iv) expressly or impliedly requires a law enforcement agency to ascertain whether otherwise exempt information in its possession has been disclosed in a judicial proceeding. Accordingly, there is no basis for this office to conclude that Ms. Stack is entitled to unredacted copies of the records at issue because they are in the public domain.

Nonetheless, this office's review found that the Department redacted references to the arrestees from some of the witness statements. The arrestees' identities are not exempt under section 7(1)(c) as noted above, and the Department did not demonstrate that disclosing the arrestees' names in the witness statements would unavoidably identify the witnesses. Under these circumstances, this office concludes that the Department improperly redacted the arrestees' names.¹⁰ If Ms. Stack is interested in obtaining a new copy of the record without the redaction of the arrestee names, this office asks her to confirm that; if she does, this office asks the Department to provide Ms. Stack with a new copy of the records without redacting the arrestees' names.

¹⁰Sections 7(1)(a) and 7(1)(d)(vi) do not apply to the arrestees' names because they were not juveniles at the time of the incident, rendering the JCA inapplicable, and because the Department did not explain how or why disclosing the arrestees' names would endanger the life or physical safety of any person.

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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 (773) 590-6840 or matthew.goodman@ilag.gov.

Very truly yours,

A solid black rectangular box used to redact the signature of Matt Goodman.

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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