

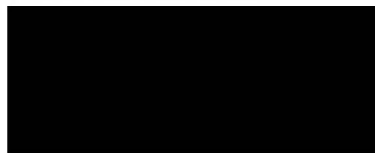


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 21, 2024

Via electronic mail



Via electronic mail

Mr. Patrick T. Brankin
Partner
Schain Banks
70 West Madison Street, Suite 5400
Chicago, Illinois 60602
pbrankin@schainbanks.com

RE: FOIA Request for Review – 2024 PAC 82136

Dear [REDACTED] and Mr. Brankin:

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 Hawthorn Woods Police Department (Department) improperly redacted information responsive to [REDACTED] FOIA request.

On or around July 8, 2024, [REDACTED] submitted a FOIA request to the Department seeking a copy of the police report that led to a named person being arrested for driving under the influence and his car being impounded. On July 9, 2024, the Department provided him with a copy of the police report but redacted information pursuant to sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA.¹ On July 10, 2024, [REDACTED] submitted a Request for Review contesting the extent of the redactions. He stated:

¹ 5 ILCS 140/7(1)(a), (1)(b), (1)(c) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

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I am requesting a complete copy instead of the partially redacted report I received. The Police report 2024-090088 details the arrest of Katelyn Cerniglia. She was driving my daughter to preschool while under the influence of alcohol.

I need the complete copy that clearly shows that my daughter was in the car with her. I am trying to win back custody. The complete copy is for my attorney. Please provide the complete copy so I can win back primary custody so my daughter can live with me and be in a safe environment.^[2]

On July 15, 2024, this office forwarded a copy of the Request for Review to the Department and asked it to provide an unredacted copy of the responsive report for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemptions. On July 16, 2024, this office received those materials. The Department explained that the law it asserted in conjunction with section 7(1)(a) of FOIA is the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 *et seq.* (West 2022)), and that it also redacted the arrestee's statements to the police pursuant to section 7(1)(d)(iv) of FOIA. The following day, this office forwarded a copy of the Department's answer to ██████████ and notified him of his opportunity to submit a reply. He did not do so.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022).

As a threshold matter, the Department stated that "the Requestor has provided no information to the Village to verify his identity or his relationship to the arrestee or the juvenile victim who is named in the report." This office has not received information suggesting that ██████████ did identify his relationship to the driver and minor involved in the incident in his submission to the Department. Accordingly, the Department's response must be evaluated as though the request was submitted by a third party with no personal connection to the parties involved in the incident.

²E-mail from ██████████ to Public Access Counselor (Office of the Attorney General) (July 10, 2024).

³5 ILCS 140/7(1)(d)(iv) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

⁴E-mail from Patrick T. Brankin, Village Attorney, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 16, 2024), at 1.

Section 7(1)(a) of FOIA

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." The JCA is a State law that restricts the disclosure of juvenile law enforcement records. 705 ILCS 405/1-7 (West 2023 Supp.) (restricting disclosure of "juvenile law enforcement records maintained by law enforcement agencies or records of municipal ordinance violations maintained by any State, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before the minor's 18th birthday" to specifically enumerated official parties). Section 7.5(cc) of FOIA⁵ more specifically exempts from disclosure "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act."

The Department argued:

Under the interplay between Section 7(1)(a) and the Juvenile Court Act, law enforcement records related to instances when a minor is the subject of an investigation, arrest, or custodial detention are exempt from disclosure under FOIA. [Citation.] The responsive records contain substantial amounts of personal identifying information of the minor victim, as well as statements made by the minor victim, during the investigation.^[6]

The Department's description of the police report is inaccurate; it does not contain any statements by a minor victim, and the minor's identifying information is discrete and easily segregable. In any event, the report does not concern the investigation, arrest, or custodial detention of a minor, and the Department did not explain why the JCA would apply outside of those circumstances. Nonetheless, as discussed below, the minor's name is exempt from disclosure under section 7(1)(c).

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA provides that "[p]rivate information" is exempt from disclosure "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 2023 Supp.)) defines "private information," in relevant part, as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric

⁵5 ILCS 140/7.5(cc) (West 2023 Supp.), as amended by Public Acts 103-592, effective June 7, 2024; 103-605, effective July 1, 2024; 103-636, effective July 1, 2024.

⁶E-mail from Patrick T. Brankin, Village Attorney, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 16, 2024), at 2.

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 the Request for Review, the Department stated:

[T]he plain language of Section 7(1)(b) undoubtedly covers a great deal of information contained in the responsive records. More specifically, and as discussed at length above, essentially all of the information contained in the responsive records can be categorized as either: (1) personal identity information of the minor victim and the witnesses interviewed by the Village or (2) statements made by witnesses or minors which are entitled to a reasonable expectation of privacy and which could potentially identify them and result in the release of personal information even if redacted. All of this information is protected from disclosure by Section 7(1)(b).^[7]

The responsive report contains certain items that are expressly defined as forms of "private information," particularly a driver's license number, home or personal telephone number, and home address. Therefore, the Department did not improperly redact that information. In contrast, the remaining information in the report does not meet the definition of "private information." In particular, there is no statutory basis for the claim that witness statements are exempt from disclosure under section 7(1)(b).

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." Section 7(1)(c) also 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."

A public body's assertion 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,

⁷E-mail from Patrick T. Brankin, Village Attorney, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 16, 2024), at 2-3.=

196 (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 (1994).

In its answer to this office, the Department asserted:

The Requestor has not provided written consent for disclosure of any of the minor's information, nor has he provided any information proving his interest in the requested records or the public's interest in the requested records. Even if the Requestor does eventually articulate his or the public's interest in the responsive records, it is hard to imagine how that individual or public interest could outweigh the privacy interests of the minor. [Citation.] For these reasons, the Village's denial of the request under Section 7(1)(c) should stand.^[8]

While a victim's name and other identifying information is exempt from disclosure under section 7(1)(c), the Department's repeated reliance on the minor's privacy interests for the redactions to the information concerning the adult arrestee is misplaced; the minor did not provide any statements and the minor's identifying information is readily amenable to redaction. The bulk of the redacted information consists of statements made by the driver in response to police questioning immediately prior to her arrest and descriptions of related activities by the police. This office has issued a binding opinion concluding that the basic facts of arrests are generally a matter of public interest. Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7. There is a legitimate public interest in the circumstances surrounding arrests for driving under the influence due to the impact of the offense on the public, and the arrestee does not have privacy interests in the information reflecting the Department's basis for her arrest that overcome that public interest. Accordingly, while the Department did not improperly redact dates of birth, the minor's identifying information, and the arrestee's height and weight as a clearly unwarranted invasion of personal privacy pursuant to section 7(1)(c), the Department did not demonstrate that the remaining information concerning the interaction between the driver/arrestee and police is exempt from disclosure.

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

Section 7(1)(d)(iv) of FOIA allows a law enforcement agency to redact or withhold public records only to the extent that 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[.]"

⁸E-mail from Patrick T. Brankin, Village Attorney, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 16, 2024), at 3.

In defense of the applicability of section 7(1)(d)(iv), the Department argued:

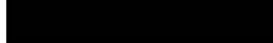
The information in the records contains information from persons who provided statements to law enforcement is specifically exempt under the plain language of Section 7(1)(d)(iv) because, in this instance, they provided statements to the Village in connection with a law enforcement investigation. [Citation.]

Further, because the information provided by these sources is inextricably intertwined with all of the information and statements in the responsive records, the Village's a [*sic*] blanket denial was proper – yet the Village provided a partially redacted Report.^[9]

The Department's argument that it could have issued a blanket denial of [REDACTED]. [REDACTED] request is erroneous because, as noted above, the incident involved an arrest for driving under the influence. Furthermore, the Department failed to demonstrate that the driver's statements to the police in response to police questioning immediately prior to being arrested fall within the scope of section 7(1)(d)(iv). The section 7(1)(d)(iv) exemption protects witnesses' abilities to provide witness statements to the police in confidence. *See 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). In this matter, the alleged "witness" statement was provided by the driver after a police officer approached her for questioning pursuant to a dispatch call indicating that the driver appeared to be driving while intoxicated. Because the Department does not claim that the driver is a confidential source or person who filed a complaint, the Department necessarily claims that she falls within the language "or persons who * * * provide information to * * * law enforcement * * * agencies."

In construing a statute, the primary objective is to ascertain and give effect to the intent of the General Assembly. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). "[T]he surest and most reliable indicator of" legislative intent "is the statutory language itself, given its plain and ordinary meaning." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 24. "The words and phrases in a statute should be construed in light of other relevant provisions and not in isolation." *People v. Bradford*, 2016 IL 118674, ¶ 15. A reviewing body "may consider 'the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another.'" *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 22 (quoting *In re M.M.*, 2016 IL 119932, ¶ 16). Additionally, "statutes should not be construed in a way that would defeat the statute's purpose or yield an absurd or unjust result." *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 107 (2000).

⁹E-mail from Patrick T. Brankin, Village Attorney, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 16, 2024), at 4.


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To the extent the language "or persons who * * * provide information to * * * law enforcement * * * agencies" is ambiguous in scope in isolation, in the context of section 7(1)(d)(iv) it is evident that the General Assembly was not referring to information that would unavoidably identify any and all persons who provided information to a law enforcement agency in any and all circumstances. Such an interpretation would clearly be overbroad, as it would allow public bodies to withhold such disparate things as a police officer's notice to his or her supervisor about sustaining an on-duty injury and a homicide suspect's admission of guilt during a custodial interrogation. Rather, the context of section 7(1)(d)(iv) reflects that in addition to confidential sources, the General Assembly intended to afford protection to individuals who similarly chose to provide information to law enforcement. The purpose of facilitating the provision of information to law enforcement by protecting the identities of people who elect to provide law enforcement with information would generally not be served by protecting the statements made by a suspect of a criminal offense in response to a police officer's questions during an incident that results in the suspect's arrest. This office has previously determined that "the contents of the arrestee's conversation with police officers and descriptions of police officer conduct, are not exempt from disclosure under section 7(1)(d)(iv) of FOIA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 57951, issued January 10, 2022, at 7. This office makes the same determination here.

The Department did not sustain its burden of proving by clear and convincing evidence that the portions of the police report documenting the driver/arrestee's statements and the police officer's conduct are exempt from disclosure are under sections 7(1)(a), 7(1)(b), 7(1)(c), or 7(1)(d)(iv) of FOIA. This office asks the Department to provide  with a new copy of the report, subject only to the redaction of "unique identifiers" under section 7(1)(b) as discussed above and all information pertaining to the minor, dates of birth, and the arrestee's height and weight under section 7(1)(c).

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 joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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