



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 9, 2024

Via electronic mail



Via electronic mail

Ms. Stephanie Sasscer
Assistant State's Attorney
Lee County State's Attorney's Office
309 South Galena Avenue
Dixon, Illinois 61021
ssasscer@countyoflee.org

RE: FOIA Request for Review – 2024 PAC 82717

Dear [REDACTED] and Ms. Sasscer:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons explained below, the Public Access Bureau concludes that the Lee County (County) Sheriff's Office (Sheriff's Office) improperly denied [REDACTED] August 13, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Sheriff's Office seeking a copy of an incident report about a complaint of missing swan decoys. On August 21, 2024, the Sheriff's Office denied [REDACTED] request pursuant to section 7(1)(d)(i) of FOIA.² In its denial letter, the Sheriff's Office stated: "Given that the above-mentioned case is open and

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

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

pending in court, any disclosure of documents associated with the case prior to the closing of the case would interfere with the pending case[.]”³ That same day, ██████████ submitted the above-referenced Request for Review contesting the Sheriff's Office's denial of her request. ██████████ stated that the report concerns charges against her and that her first appearance was upcoming on September 4, 2024.

On August 29, 2024, this office forwarded a copy of the Request for Review to the Sheriff's Office and requested a copy of the withheld report for this office's confidential review as well as a detailed explanation of the factual and legal bases for the applicability of the asserted exemption. The Sheriff's Office did not respond. Accordingly, on September 12, 2024, this office sent another letter to the Sheriff's Office seeking the same materials.

On September 15, 2024, this office received the County State's Attorney's Office's written response on behalf of the Sheriff's Office, as well as a copy of the withheld report. On September 16, 2024, this office forwarded a copy of the State's Attorney's Office's written response to ██████████ and notified her of her right to reply; she did not reply.

DETERMINATION

All public records in the possession or custody 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). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 408 (1997).

Section 7(1)(d)(i) 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:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[.]

³Letter from Devon D. Gugerty, Officer Manager/Freedom of Information Act Officer, Lee County Sheriff's Office, to ██████████ (August 21, 2024).

"The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest." *Baudin v. City of Crystal Lake*, 192 Ill. App. 3d 530, 536 (1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 24-006, issued April 1, 2024, at 8-9 (explaining that a law enforcement agency must demonstrate with a detailed factual basis, rather than conclusory statements, how disclosure of all information in a police report would interfere with law enforcement proceedings to sustain its burden of proving the report is exempt from disclosure in its entirety pursuant to the section 7(1)(d)(i) exemption).

In its response to this office, the State's Attorney's Office noted the context of the case, including the case number, the date of [REDACTED] first appearance on September 4, 2024, and the next action in the case: a pretrial conference, which is set for October 24, 2024. The State's Attorney's Office argued: "Disclosure of the subject report would interfere with the law enforcement proceedings in that an information based on the report had been filed into Lee County Case Number 2024 CM 75, which subjects the report to rules of discovery."⁴

The State's Attorney's Office's response to this office merely states that there is an ongoing proceeding and that the report has been filed in the proceeding. The response does not set forth facts as to how or why disclosure of the responsive report would interfere with the proceeding. Because the State's Attorney's Office has not set forth facts in this matter demonstrating how or why the disclosure of the withheld report would interfere with the proceeding, this office concludes that the State's Attorney's Office has not met its burden of demonstrating by clear and convincing evidence that the requested report is exempt from disclosure in its entirety under section 7(1)(d)(i) of FOIA.⁵

In accordance with the conclusions expressed in this letter, this office requests

⁴Letter from Charles A. Boonstra, Lee County State's Attorney, by Stephanie Sasscer, Assistant State's Attorney, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (September 15, 2024).

⁵This conclusion is based on the response presented by the State's Attorney's Office, as well as the misdemeanor nature of [REDACTED] criminal charge. In *Turner v. Joliet Police Department*, 2019 IL App (3d) 170819, ¶¶ 15-16, the Illinois Appellate Court advised that a defendant charged with a felony could not receive the records pertaining to his arrest, including the police report, through FOIA, because Illinois Supreme Court Rule 415(c) prohibited a criminal defendant represented by counsel from possessing discovery documents. Notably, Illinois Supreme Court Rule 415(c) does not apply to misdemeanors. *See People v. Moore*, 2024 IL App (1st) 231537-U, ¶ 13 ("We note, however, that Illinois Supreme Court Rules 411 through 417 — which provide for discovery in criminal cases — only apply in cases wherein the accused is charged with a felony.") Accordingly, an analysis of the applicability of Illinois Supreme Court Rule 415(c) in this matter is not necessary.

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that the Sheriff's Office provide [REDACTED] with a copy of the requested report. The Sheriff's Office may properly make certain redactions to the report, such as the home addresses, home or personal phone numbers, and driver's license numbers pursuant to section 7(1)(b) of FOIA,⁶ personal information for which disclosure would constitute a clearly unwarranted invasion of personal privacy for persons other than [REDACTED] pursuant to section 7(1)(c) of FOIA (namely any birth dates and the names of any uninvolved third parties),⁷ and the identifying information and statements of any witnesses who provided information to law enforcement pursuant to section 7(1)(d)(iv) of FOIA.⁸ If the Sheriff's Office does elect to redact any information, it shall provide [REDACTED] with a notice of partial denial that meets the requirements of section 9 of FOIA (5 ILCS 140/9 (West 2022)).

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 katherine.goldsmith@ilag.gov.

Very truly yours,

[REDACTED]
KATIE GOLDSMITH
Assistant Attorney General
Public Access Bureau

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⁶Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024) 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." "Private information" is defined to mean:

[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. 5 ILCS 140/2(c-5) (West 2023 Supp.).

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

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