



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 11, 2025

Via electronic mail



Via electronic mail

Ms. Ellen Ogden Burford
Attorney for the City of Granite City
2000 Edison Avenue
Granite City, IL 62040
foia@granitecity.illinois.gov

RE: FOIA Request for Review – 2024 PAC 83921

Dear [REDACTED] and Ms. Burford:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5 (West 2023 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the City of Granite City (City) improperly denied [REDACTED] [REDACTED] November 12, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the City seeking reports and videos related to crash report #2024-22354. On November 13, 2024, the City denied the request in its entirety pursuant to section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2023 Supp.)), as amended by Public Act 103-605, effective July 1, 2024). On November 21, 2024, this office received [REDACTED] complete Request for Review contesting the denial. On

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December 3, 2024, ██████████ confirmed in an e-mail to this office that he was contesting the City's denial of reports as well as videos.

On December 4, 2024, this office forwarded a copy of the Request for Review to the City and requested a copy of the withheld records for this office's confidential review as well as a detailed explanation of the factual and legal bases for the applicability of section 7(1)(d)(i) to the records. On December 27, 2024, this office received the City's response. That same day, this office forwarded a copy of the City's written response to ██████████ he 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[.]

"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 City stated that a detective had advised that the crash was still being investigated, and the accident reconstruction report had still not been completed and provided to the City. The City stated that it would present the matter to the Madison County State's Attorney's Office once that report was complete in order for that office to issue charges. The City argued that disclosure of the contested records "would likely result in the dissemination of the information, including witness information[,]"¹ but did not elaborate as to how disclosure of the information would interfere with law enforcement proceedings. The City further stated: "Recently, investigative material of the Granite City Police Department which was released pursuant to FOIA was posted to social media. This allowed defense counsel to seek a new trial in a new venue with the position the jury pool had been tainted."²

Although the City's response to this office stated that the matter was still under investigation, the response did not set forth facts as to how or why disclosure of the responsive records would interfere with that investigation. Rather, the City provided only conclusory statements. Based on this office's review of the contested records, it is unclear how disclosure of most portions of the records would interfere with the Police Department's investigation or State's Attorney's Office's potential prosecution of the matter. The City did not provide any additional details regarding the previous case in which it had released some information, such as the type of information that was released, who accessed the information, and the nature of the charges that were filed in that case. Accordingly, this office concludes that the City did not sustain its burden of demonstrating by clear and convincing evidence that the records are exempt from disclosure in their entireties pursuant to section 7(1)(d)(i) of FOIA.

However, a portion of the records includes statements from a witness that may be used in the creation of the accident reconstruction report. Based on this office's review of the records, release of the portions documenting the witness's impressions of the accident and moments just prior to the accident would interfere with the creation of the accident reconstruction report. Because the report had not been completed at the time of [REDACTED] FOIA request, the City did not improperly withhold those limited portions of the records pursuant to section 7(1)(d)(i) of FOIA. [REDACTED] may wish to submit an additional FOIA request for the remaining portions of the records once the report is complete.

In accordance with the conclusions expressed in this letter, this office requests that the City provide [REDACTED] with copies of the contested records subject only to permissible redactions. This office will provide the City with a copy of the witness interview notes with permissible redactions highlighted. Additionally, the City may redact "private

¹Letter from Ellen Ogden Burford, Attorney at Law, to Attorney Benjamin Silver, Supervising Attorney, Public Access Bureau (December 27, 2024), at [2].

²Letter from Ellen Ogden Burford, Attorney at Law, to Attorney Benjamin Silver, Supervising Attorney, Public Access Bureau (December 27, 2024), at [2].

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information"³ under section 7(1)(b) of FOIA⁴ and the dates of birth and races of individuals under section 7(1)(c).⁵ If the City redacts any portion of the records, it should provide an explanation for those redactions to [REDACTED] in accordance with 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 file is closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,

[REDACTED]
BENJAMIN J. SILVER
Supervising Attorney
Public Access Bureau

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³Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2023 Supp.)) defines "private information" to include:

[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. (Emphasis added.)

⁴5 ILCS 140/7(1)(b) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025.

⁵5 ILCS 140/7(1)(c) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025.