



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 11, 2013

Public Access Opinion 13-011
(Request for Review 2013 PAC 23559)

Freedom of Information Act:
Records Relating to a Public Body's
Internal Investigation into an Employee's
Conduct

Ms. Maria Chandler
WMBD 31 News
3131 North University
Peoria, Illinois 61604

Ms. Rosalee Dodson
Assistant Corporation Counsel
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61701

Dear Ms. Chandler and Ms. Dodson:

This binding opinion is issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2011 Supp.)). On February 27, 2013, Ms. Maria Chandler of WMBD 31 News submitted to the Office of the Public Access Counselor a Request for Review of the City of Bloomington's partial denial of her FOIA request. That request sought information regarding an October 3, 2012, traffic accident on Ireland Grove Road involving Bloomington Assistant Police Chief Bob Wall. For the reasons discussed below, this office concludes that the City improperly withheld investigatory records and traffic citations relating to the accident.

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BACKGROUND

Ms. Chandler submitted an undated FOIA request to the City seeking "[a]ll police reports regarding the incident on Ireland Grove Road on October 3, 2012, involving Assistant Bloomington Police Chief Bob Wall. This includes all documents pertaining to an internal investigation and any other materials related to this incident."¹ On February 21, 2013, the City provided Ms. Chandler with a summary report regarding the incident from which certain information had been redacted. The City cited sections 7(1)(b) and 7(1)(n) of FOIA (5 ILCS 140/7(1)(b), (n) (West 2011 Supp.), as amended by Public Act 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012; 97-847, effective September 22, 2012) as the basis for its partial denial of Ms. Chandler's request:

- The request asks for "private information", which, if disclosed, would provide information including a person's birthdate, social security number, home or personal telephone number, home address, and other unique identifiers, which is exempt from disclosure under Section 7(1)(b) of 5 ILCS 140/7.
- The request asks for records relating to a public body's adjudication of employee grievances or disciplinary cases which is exempt from disclosure under Section 7(1)(n) of 5 ILCS 140.7. The 3-page final summary report written by then Chief of Police Randall D. McKinley is provided.²

On February 27, 2013, Ms. Chandler submitted her Request for Review of the City's partial denial of her FOIA request, asserting that any "private information" in the records could be redacted and the remainder of the documents provided to her.³ On March 1, 2013, this office forwarded a copy of the Request for Review to the City and asked it to provide copies of the records that were withheld together with an explanation of its basis for asserting sections

¹Letter from Maria Chandler, WMBD 31 News, to Bloomington Police Department (undated).

²Letter from Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington, to Maria Chandler, WMBD 31 News (February 21, 2013).

³E-mail from Maria Chandler, WMBD 31 News, to Public Access (February 27, 2013).

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7(1)(b) and 7(1)(n).⁴ On March 20, 2013, the City responded with a letter providing the following background:

[O]n October 3, 2012 Assistant Chief Robert Wall, while off-duty in his personal vehicle, struck a light pole in Bloomington after leaving a local bar/restaurant establishment. He then drove to his residence and called the police. After an administrative investigation, AC Wall was suspended for (5) 8-hour days (40 hours) without pay, for leaving the scene of an accident.⁵

The City further explained:

The disciplinary investigation into AC Wall's actions on October 3, 2012, ended with a suspension being imposed. Disciplinary actions for City employees can result in one of the following: counseling, written reprimand, suspension without pay, or termination of employment. Here, the matter was formally adjudicated with a suspension. Under 7(1)(n), records relating to a public body's adjudication of employee grievances or disciplinary cases are exempt from disclosure. The records that a public body seeks to exempt under Section 7(1)(n) must be related to the actual adjudication. All of the records considered by Chief McKinley in making his final determination were related to the actual adjudication and are therefore exempt.⁶

This office forwarded to Ms. Chandler a copy of the City's response letter on March 25, 2013.⁷ Ms. Chandler replied on April 26, 2013, contending that the withheld records were pertinent to the final decision made by Chief McKinley.⁸ Between April 11 and April 22,

⁴Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington (March 1, 2013).

⁵Letter from Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington, to Matthew C. Rogina, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (March 20, 2013).

⁶Letter from Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington to Matthew C. Rogina, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (March 20, 2013).

⁷Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Maria Chandler, WMBD 31 News (March 25, 2013).

⁸Letter from Maria Chandler, WMBD 31 News, to Matthew C. Rogina, Assistant Attorney General, Public Access Bureau (April 26, 2013).

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2013, the City supplied this office with copies of audio and video recordings relating to the traffic citation and investigation.⁹ These records were not provided to Ms. Chandler.

On April 29, 2013, this office sent a letter asking the City whether the "disciplinary action" referenced in the "Record of Disciplinary Action" provided "was an informal inquiry, a hearing under the Uniform Peace Officers Disciplinary Act, or an administrative proceeding subject to the City's own rules and whether Assistant Chief Bob Wall was given an opportunity to present evidence in his own defense."¹⁰ On May 8, 2013, in an e-mail to the Public Access Bureau staff, the City explained:

[I]t was an informal inquiry (not a hearing under the Uniform Peace Officers Disciplinary Act or an administrative proceeding subject to the City's own rules). AC Wall was not presented with any formal charges. Chief McKinley made his final decision after speaking with AC Wall. AC Wall did not present any evidence[.]¹¹

On April 19, 2013, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.¹²

ANALYSIS

Because all public records in the possession or custody of a public body are presumed to be open to inspection and copying (5 ILCS 140/1.2 (West 2011 Supp.)), exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997). Section 1 of FOIA (5 ILCS 140/1 (West 2011 Supp.)) provides:

⁹This information includes a 911 audio tape, video from State Farm Insurance Company, accident scene photographs, and an audio interview conducted with investigators from the Normal Police Department.

¹⁰Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington (April 29, 2013).

¹¹E-mail from Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington, to Matthew Rogina (May 8, 2013).

¹²Letter from Matthew Rogina, Assistant Attorney General, Public Access Bureau, to Maria Chandler, WMBD 31 News, and Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington (April 19, 2013).

[I]t is declared to be the public policy of the State of Illinois that all persons are entitled to *full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act*. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

* * *

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to *full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people*. The provisions of this Act shall be construed in accordance with this principle[.] (Emphasis added.)

Thus, FOIA requires a narrow interpretation of the language of exemptions that permit the withholding of records.

Section 7(1)(n) of FOIA

The resolution of this matter depends upon whether the City conducted an "adjudication" of the allegations against the assistant chief within the meaning of section 7(1)(n) of FOIA. The City argues that the allegations were "adjudicated" and, therefore, that the records that led to the imposition of final discipline are exempt from disclosure. Black's Law Dictionary defines "adjudication" as meaning "[t]he legal process of resolving a dispute; the process of judicially deciding a case." Black's Law Dictionary 47 (9th ed. 2009). Accordingly, an "adjudication hearing" is defined as an "[a]gency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard." Black's Law Dictionary 788 (9th ed. 2009).

Further, Black's defines "discipline" as "[p]unishment intended to correct or instruct; esp., a sanction or penalty imposed after an official finding of misconduct" (Black's Law Dictionary 531 (9thth ed. 2009), and a "disciplinary proceeding" as "[a]n action brought to reprimand, suspend, or expel a licensed professional or other person from a profession or other

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group because of unprofessional, unethical, improper or illegal conduct." Black's Law Dictionary 530 (9th ed. 2009).

Section 7(1)(n) does not exempt from disclosure all records relating to the discipline of employees of a public body. Rather, section 7(1)(n) exempts only records relating to the public body's *adjudication* of a disciplinary case or an employee grievance. Records generated during a public body's internal investigation of a matter that did not result in any formal adjudicatory proceeding do not relate to an "adjudication," within the meaning of section 7(1)(n).

The scope of the section 7(1)(n) exemption has not yet been defined by any Illinois reviewing court. Useful to our analysis of this issue, however, is the Illinois Appellate Court's clear distinction between a public body's investigation into and adjudication of a personnel matter. The Illinois Appellate Court has distinguished an adjudication from an investigation in determining whether a school board's motion for dismissal of an employee constituted an adjudicatory dismissal order even though the employee elected his right to a hearing under section 24-12 of the School Code (105 ILCS 5/24-12 (West 1998)). *Board of Educ. of Cmty. Consol. School Dist. No. 54 v. Spangler*, 328 Ill. App. 3d 747 (1st Dist. 2002). In that case, the court emphasized that investigative activities which precede a final determination are not components of an adjudication:

[T]he function of investigation/charging is distinct from the function of adjudication. The hearing officer takes and hears evidence (adjudication), while the school board simply investigates and gathers evidence (investigation). 'Investigate' means 'to trace or track; to search into; to examine and inquire into with care and accuracy; * * * examination.' [Citation] 'Adjudicate' or 'adjudge' means 'to decide * * * [and] [i]mplies a judicial determination.' [Citation] The legislature clearly left only one function with the local board, that of investigation and charging. The adjudicatory function, and all matters attendant thereto, was placed with the hearing officer. *Spangler*, 328 Ill. App. 3d at 757.

In *Gekas v. Williamson*, 393 Ill. App. 3d 573 (4th Dist. 2009) the court addressed whether internal affairs files concerning allegations of police officer misconduct were exempt from disclosure under FOIA. Although the defendant in *Gekas* cited provisions of FOIA other than 7(1)(n) to withhold records of internal investigations where the complaints were determined to be unfounded, much of the court's reasoning is applicable here. Noting that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered as invasion of personal privacy" the court stated:

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That a complaint against a deputy sheriff is "unfounded" is nothing more than a conclusion of the sheriff's office: in response to the complaint, the public body investigated itself, or "self-monitored."
* * * If the Act allowed a public body to deny access to complaints that it deemed to be unfounded, defeating the Act would be as easy as declaring a complaint to be unfounded. *Gekas*, 393 Ill. App. 3d at 585.

Similarly, the issue here is whether the public should be allowed access to the information that the chief of police relied upon in reaching his decision to suspend the assistant police chief because those records relate to an internal investigation which ended after an informal inquiry and did not proceed to an "adjudication" as to the assistant police chief's conduct.

Federal district courts that have considered the issue in the context of motions for protective orders are divided on whether records such as complaint register files (CR) compiled by the Chicago Police Department (CPD), which document complaints regarding Chicago police officers, are exempt under section 7(1)(n). Generally, CR files consist of the investigator's report and any potential disciplinary recommendations against an officer who is the subject of a citizen complaint. *Calhoun v. City of Chicago*, 273 F.R.D. 421, 423 (N.D. Ill. 2011) quoting *Clark v. City of Chicago*, No. 10 C 1803, Doc. 49 at 2. See *Calhoun*, 273 F.R.D. at 423 ("Some courts [in this District] have concluded that the plain language of the [Illinois] FOIA exemption includes CRs. * * * Other courts have disagreed that CRs necessarily relate to an 'adjudication'; see also *Bell v. City of Chicago*, 2010 WL 753297, at *2 (N.D. Ill. 2010) ('Clearly, a CR is a record relating to the public body's adjudication of employee disciplinary cases'); but contra, see *Rangel v. City of Chicago*, No. 10 C 2750, 2010 WL 3699991, at *3 (N.D. Ill. 2010) (intent of section 7(1)(n) was 'certainly not to exempt CR register documents').

In *Rangel*, (CPD) moved for the entry of a protective order against the disclosure of confidential personnel records including complaint register entries. *Rangel*, 2010 WL 3699991 at *1. In support of its motion, CPD argued that the recent amendments to the Illinois FOIA exempted the CRs from disclosure. *Rangel*, 2010 WL 3699991 at *1. CPD specifically cited the section 7(1)(n) exemption. *Rangel*, 2010 WL 3699991 at *2. The court, however, rejected CPD's argument that section 7(1)(n) prohibited the disclosure of the CRs and concluded:

The earlier version of the adjudications exemption applied, as relevant here, to "[I]nformation concerning a public body's adjudication of student or employee grievance or disciplinary cases, except for the final outcome of the cases." 5 Ill. Comp. Stat. § 140/7(1)(u) (West 2009). The amended text, nearly identical, exempts "[r]ecords relating to a public body's adjudication of employee grievance or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is

imposed." 5 Ill. Comp. Stat. § 140/7(1)(n) (West 2010). In the first place, employee grievances and discipline is likely related to union and personnel disciplinary procedures. *See Our Opinion: Don't weaken revised FOIA, THE STATE JOURNAL-REGISTER*, Apr. 27, 2010, <http://www.sj-r.com/editorials/x43873749/Our-Opinion-Don-t-weaken-revised-FOIA>. In any event, there is no basis to conclude that this amendment, enacted approximately one month after *Gekas* was decided, was an effort to broaden the scope of the adjudication exemption for public employees, and certainly not to exempt CR register documents. (Emphasis added.) *Rangel*, 2010 WL 3699991 at *3

Here, the City's records indicate that the investigation concerned an alleged alcohol-related driving accident involving the assistant police chief. The records consist of the City's police chief's interviews with witnesses and City employees, their fact-based observations and accounts, and additional evidence that supported the City's conclusions. There is no indication, however, that the City's investigation of the incident culminated in an adjudicatory procedure or "agency proceeding" where witnesses were called and the identified employee had a right to call witness and make arguments. This application of section 7(1)(n) to the City's records is consistent with the decision of the Sangamon County Circuit Court in *Calvin Christian, III v. City of Springfield, et al.*, No. 2010-MR-461 (June 3, 2011). In that case, the court held that section 7(1)(n)'s exemption from disclosure does not extend to "records generated as part of [the Springfield Police Department's] investigation of alleged misconduct of its police officers where no adjudicatory process commences."

In addition, many of the records that the chief of police relied upon in reaching his conclusion have no connection to the internal investigation and are public records that relate to the assistant police chief's citation, which are not subject to any exemption under FOIA. For example, law enforcement reports and traffic citations, such as those involved here, are presumed to be open for inspection and copying under FOIA unless they are exempt from disclosure pursuant to another exemption that the City has not identified. These records exist independently of any internal investigation and do not become "adjudicatory" simply because they are relied upon by the public body during the course of its investigation.

Moreover, this office must note the extremely strong public interest in access to a public body's internal investigation into a personnel matter. Disclosure of a full and complete account of a public body's investigation of allegations of employee misconduct ensures that the investigation is consistent with the public body's internal rules and procedures and that the discipline imposed, if any, is consistent with the public body's findings. Without a narrow construction of an "adjudication" under section 7(1)(n), a public body may define an adjudication without regard to the formality of the proceedings which relate to an investigation of its own employee.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments of the parties, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) Ms. Maria Chandler, WMBD 31 News, submitted an undated FOIA request to the City seeking "[a]ll police reports regarding the incident on Ireland Grove Road on October 3, 2012 involving Assistant Bloomington Police Chief Bob Wall. This includes all documents pertaining to an internal investigation and any other materials related to this incident."

2) On February 21, 2013, the City partially denied Ms. Chandler's request under section 7(1)(n) of FOIA. The City provided Ms. Chandler with a final summary report of the investigation with certain private information redacted pursuant to section 7(1)(b).

3) On February 27, 2013, Ms. Chandler submitted to the Office of the Public Access Counselor a Request for Review of the City's partial denial of her FOIA request. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2011 Supp.)). The Public Access Counselor extended the time to issue a binding opinion by 30 business days. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

4) On March 1, 2013, this office forwarded a copy of the Request for Review to the City and asked it to explain the legal and factual basis for its assertion of section 7(1)(n) and to provide a copy of the responsive records.

5) On March 20, 2013, the City supplied us with an explanation of its reasons for asserting section 7(1)(n) together with a copy of the responsive records.

6) For the reasons stated above, the City improperly responded to Ms. Chandler's FOIA request by withholding investigatory records. Such records are not exempt under section 7(1)(n) of FOIA.

Therefore, it is the opinion of the Attorney General that the City has, in violation of the requirements of the Freedom of Information Act, improperly denied Ms. Chandler's FOIA request. Accordingly, the City is directed to take immediate and appropriate action to comply

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with this opinion by responding to Ms. Chandler's request and providing her with responsive records, subject only to any permissible redactions.¹³

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Maria Chandler of WMBD 31 News as defendants. *See* 5 ILCS 140/11.5 (West 2011 Supp.).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

¹³The City may redact additional private information under section 7(1)(b) and, if applicable, any identifying witness information under section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2011 Supp.), as amended by Public Act 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012; 97-847, effective September 22, 2012), which exempts from disclosure information that would "[u]navoidably 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; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue 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[.]"