



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 14, 2017

PUBLIC ACCESS OPINION 17-001
(Request for Review 2017 PAC 45894)

FREEDOM OF INFORMATION ACT:
Basis for Withholding Police
Investigatory Records

Mr. John P. Guletz
Rossiter & Boock, LLC
124 Gay Avenue
Clayton, Missouri 63105

Ms. Nancy G. Easum
Freedom of Information Officer
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703

Dear Mr. Guletz and Ms. Easum:

This is a binding opinion 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 2014)). For the reasons discussed below, this office concludes that the Illinois State Police (ISP) violated the requirements of FOIA by improperly denying Mr. John P. Guletz's November 14, 2016, FOIA request.

BACKGROUND

On November 14, 2016, Mr. Guletz submitted a FOIA request to ISP seeking a copy of ISP Field Report F11-16-1617, which he stated was referenced in a copy of a traffic

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 2

crash report that he had previously received.¹ On December 9, 2016, ISP denied that request in its entirety pursuant to section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016), asserting that disclosure of the requested information "would interfere with pending or actually and reasonably contemplated law enforcement proceeding[s] conducted by [a] law enforcement * * * agency."² On January 13, 2017, the Public Access Bureau received a Request for Review from Mr. Guletz disputing ISP's denial of his request.³

On January 18, 2017, the Public Access Bureau sent a copy of the Request for Review to ISP and asked it to provide a copy of the withheld field report for this office's confidential review. The January 18, 2017, letter also requested that ISP provide a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(d)(i) exemption.⁴ On January 27, 2017, ISP furnished the requested materials to this office.⁵ On February 3, 2017, the Public Access Bureau forwarded a copy of ISP's written response to Mr. Guletz;⁶ he did not reply to that response.

ANALYSIS

"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 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) further provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.), as amended by

¹E-mail from John P. Guletz, Rossiter & Boock, LLC, to foia_officer@isp.state.il.us (November 14, 2016).

²E-mail from Nancy G. Easum, Freedom of Information Officer, [Illinois State Police], to Rossiter & Boock, John Guletz (December 9, 2016).

³E-mail from John P. Guletz, Rossiter & Boock, LLC, to Public Access [Bureau, Office of the Attorney General] (January 13, 2017).

⁴Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nancy Easum, Freedom of Information Officer, Illinois State Police (January 18, 2017).

⁵Letter from Nancy G. Easum, Legal Counsel, Illinois State Police, to Steve Silverman, Assistant Attorney General, Public Access Bureau (January 27, 2017).

⁶Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John Guletz, Attorney at Law, Rossiter Boock, LLC (February 3, 2017).

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 3

Public Act 99-642, effective July 28, 2016) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(d)(i) of FOIA exempts from disclosure records in the possession of a law enforcement agency for law enforcement purposes to the extent that their disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement * * * agency that is the recipient of the request[.]" However, "[t]he 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." (Emphasis added.) *Baudin v. City of Crystal Lake*, 192 Ill. App. 3d 530, 536 (2d Dist. 1989).

In *Baudin*, 192 Ill. App. 3d at 533-34, the Illinois Appellate Court considered, among other things, whether a municipality was entitled to summary judgment in a lawsuit alleging that it had improperly withheld its police department's policies and procedures for handling automobile accidents and certain police radio recordings under a prior version of section 7(1)(d)(i) of FOIA (Ill. Rev. Stat. 1987, ch. 116, par. 207(e)).⁷ The municipality's motion for summary judgment described the records as "related to the detection and investigation of crime or the security and operations of correctional institutions[.]" and its supporting affidavits included one that characterized the radio recordings as containing "the verbal reports of alleged criminal activity that is or has occurred in the City of Crystal Lake and are used for investigative purposes by the Police Department." *Baudin*, 192 Ill. App. 3d at 537. The appellate court held that the lower court had improperly granted summary judgment for the municipality based on those affidavits, which it characterized as "entirely conclusory." *Baudin*, 192 Ill. App. 3d at 537. The court further explained:

The burden is on the governmental agency to prove that specific documents fit within one of the statutory exemptions. To meet this burden and to assist the court in making its determination, the agency must provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing. [Citation.]

* * * [I]t is obvious that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information. [Citation.] Therefore, aside from legal argument, where the sole

⁷The *Baudin* court reviewed section 7(e) of FOIA (Ill. Rev. Stat. 1987, ch. 116, par. 207(e)), which was an earlier version of section 7(1)(d)(i) and which exempted from disclosure "[r]ecords of State and local law enforcement agencies and correctional agencies that are related to the detection and investigation of crime."

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 4

support regarding the contents of documents and their exemption is contained in a conclusory affidavit, courts must no longer accept such conclusory or generalized allegations of exemption and must require a relatively detailed analysis of the documents in manageable segments. [Citation.] (Emphasis in original.) *Baudin*, 192 Ill. App. 3d at 537-38.

Likewise, in *Day v. City of Chicago*, 388 Ill. App. 3d 70, 77 (1st Dist. 2009), the Illinois Appellate Court held that affidavits consisting of "sweeping generalities" failed to support the city's assertion that disclosure of records of a 17-year-old murder case would interfere with or obstruct an ongoing investigation.⁸ The court rejected the affidavits as the city's attempt "to use the term 'ongoing criminal investigation' * * * as some sort of magic talisman, the invocation of which 'casts a spell of secrecy over the documents at issue.'" *Day*, 388 Ill. App. 3d at 76 (quoting *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 470 (2003)).

ISP's response to Mr. Guletz's FOIA request recited the statutory language of section 7(1)(d)(i) of FOIA, but did not provide a "detailed factual basis" for its application as expressly required by section 9(a) of FOIA (5 ILCS 140/9(a) (West 2014)). ISP's response to this office stated, in pertinent part:

After the Request for Review was filed, the status of the case was again checked. At that time, Illinois State Police District 11 personnel stated the matter was still open despite the contents of the last supplemental report, which indicated the case was closed. District 11 further indicated the matter is still being reviewed by the State's Attorney's Office for possible prosecution. Therefore, [ISP] would continue to deny this request based upon Section 7(1)(d)(i) of the Freedom of Information Act. [Citation.] Release of these documents prior to a determination regarding prosecution could interfere with the decision making process as well as any possible prosecution.^[9]

⁸The city denied the request under a prior but substantively identical version of section 7(1)(d)(i) that exempted records to the extent that disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency[.]" 5 ILCS 140/7(1)(c)(i) (West 2006). In addition, the request was denied under another exemption that applied to records to the extent that disclosure would "obstruct an ongoing criminal investigation." 5 ILCS 140/7(1)(c)(viii) (West 2006).

⁹Letter from Nancy G. Easum, Legal Counsel, Illinois State Police, to Steve Silverman, Assistant Attorney General, Public Access Bureau (January 27, 2017).

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 5

That explanation is conclusory. ISP merely stated that its investigation remains open and contended that disclosure of the records could interfere with a State's Attorney's office's charging decision and potential prosecution. ISP has not, however, provided any factual basis or supporting legal authority for the assertion that the disclosure of any or all of the information in the field report in question would interfere with an investigation or other law enforcement proceeding conducted by ISP. Accordingly, this office concludes that ISP has not sustained its burden of demonstrating by clear and convincing evidence that the field report is exempt from disclosure in its entirety pursuant to section 7(1)(d)(i) of FOIA.

FINDINGS AND CONCLUSIONS

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

- 1) On November 14, 2016, Mr. John Guletz submitted a FOIA request to ISP seeking a copy of ISP Field Report F11-16-1617.
- 2) On December 9, 2016, ISP denied the request in its entirety, citing section 7(1)(d)(i) of FOIA.
- 3) On January 13, 2017, the Public Access Bureau received a Request for Review from Mr. Guletz contesting the denial of his 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 2014)). Therefore, the Attorney General may issue a binding opinion with respect to this matter.
- 4) On January 18, 2017, the Public Access Bureau sent a copy of the Request for Review to ISP and asked it to provide a copy of the withheld field report for this office's confidential review. This office also asked ISP to provide a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(d)(i) exemption.
- 5) On January 27, 2017, ISP furnished the requested materials to this office.
- 6) On February 3, 2017, the Public Access Bureau forwarded a copy of ISP's written response to Mr. Guletz; he did not reply to that response.

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 6

7) Section 7(1)(d)(i) of FOIA exempts from disclosure records in the possession of a law enforcement agency for law enforcement purposes only to the extent that their disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement * * * agency that is the recipient of the request[.]"

8) The mere existence of an open investigation does not render records exempt from disclosure under section 7(1)(d)(i) of FOIA. To sustain its burden under this exemption, a public body must demonstrate how the disclosure of the records would interfere with a pending or actually and reasonably contemplated law enforcement proceeding conducted by the public body that received the FOIA request.

9) ISP's assertion of section 7(1)(d)(i) is conclusory and devoid of detail. Because ISP has not provided clear and convincing evidence demonstrating that the disclosure of the field report at issue would interfere with a law enforcement proceeding conducted by ISP, this office concludes that ISP has not sustained its burden of demonstrating that the field report is exempt from disclosure in its entirety pursuant to section 7(1)(d)(i) of FOIA.

Therefore, it is the opinion of the Attorney General that ISP's response to Mr. Guletz's Freedom of Information Act request violated the requirements of FOIA. Accordingly, ISP is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Guletz a copy of ISP Field Report F11-16-1617. In its response to this office, ISP asserted that the report contains information that is exempt from disclosure pursuant to sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (c) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016).¹⁰ If ISP wished to assert those exemptions it should have done so in a timely initial response to Mr. Guletz. However, ISP may redact from the report "private information"¹¹ which is exempt under section 7(1)(b) of FOIA, and dates of birth

¹⁰Letter from Nancy G. Easum, Legal Counsel, Illinois State Police, to Steve Silverman, Assistant Attorney General, Public Access Bureau (January 27, 2017).

¹¹Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2015 Supp.)) provides:

"Private information" means 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.

Mr. John P. Guletz
Ms. Nancy G. Easum
March 14, 2017
Page 7

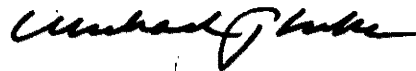
which are exempt under section 7(1)(c) of FOIA.¹² If ISP chooses to redact this information from the copy of the report it provides to Mr. Guletz it must include a written denial that identifies the basis for each redaction and which otherwise complies with the requirements of section 9(a) of FOIA.

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 2014). 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 John Guletz as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

¹²Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12 (an individual's birth date is highly personal by its very nature and the individual's right to privacy outweighs any legitimate public interest in its disclosure).

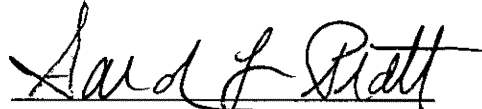
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 17-001) upon:

Mr. John P. Guletz
Rossiter & Boock, LLC
124 Gay Avenue
Clayton, Missouri 63105
jguletz@rossiterboock.com

Ms. Nancy G. Easum
Freedom of Information Officer
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
Nancy_Easum@isp.state.il.us

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on March 14, 2017.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
500 South Second Street
Springfield, Illinois 62706
(217) 785-5526