



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 21, 2020

PUBLIC ACCESS OPINION 20-008
(Request for Review 2020 PAC 64668)

FREEDOM OF INFORMATION ACT:
Juvenile Court Act of 1987 Does Not Prohibit
Disclosure of Police Records Where a Minor is a Victim

Mr. Adam Horowitz
Horowitz Law
110 East Broward Boulevard, Suite 1850
Fort Lauderdale, Florida 33301

Ms. Mindy Becker
Administrative Secretary
Ogle County Sheriff's Office
202 South 1st Street
Oregon, Illinois 61061

Dear Mr. Horowitz and Ms. Becker:

This is a binding opinion issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons discussed below, this office concludes that the Ogle County Sheriff's Office's (Sheriff's Office) violated the requirements of FOIA by improperly withholding records responsive to Mr. Adam Horowitz's FOIA request.

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BACKGROUND

On or about September 1, 2020, Mr. Horowitz, on behalf of Horowitz Law, submitted a FOIA request to the Sheriff's Office seeking a copy of a police report from July 2013, which involved the alleged sexual assault of a named minor.¹ Mr. Horowitz's FOIA request indicated that he sought the records on behalf of his client, the father of the minor named in the police report, for a civil matter.² On September 3, 2020, the Sheriff's Office denied the request in its entirety pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019) stating it was prohibited from "disclosing juvenile reports."³ On September 4, 2020, Mr. Horowitz submitted a Request for Review disputing the denial.⁴ This office construed the denial by the Sheriff's Office as asserting that the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 *et seq.* (West 2018)) prohibited disclosure of the police report that Mr. Horowitz requested. On September 15, 2020, an Assistant Attorney General (AAG) in the Public Access Bureau contacted the Sheriff's Office by e-mail and provided a copy of a non-binding determination letter in which this office concluded that the JCA did not prohibit the disclosure of records concerning crimes committed by adults against minors (Ill. Att'y Gen. PAC Req. Rev. Ltr. 26360, issued March 19, 2015, at 4).⁵ The AAG asked the Sheriff's Office if the determination would change its position on the disclosure of the requested records.⁶ The Sheriff's Office did not respond.

On September 17, 2020, the Public Access Bureau forwarded a copy of the Request for Review to the Sheriff's Office and asked it to provide copies of the withheld police

¹Ogle County Sheriff's Office's Illinois Freedom of Information Act Request form completed by Adam D. Horowitz, Esq. (undated).

²Ogle County Sheriff's Office's Illinois Freedom of Information Act Request form completed by Adam D. Horowitz, Esq. (undated).

³Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Adam D. Horowitz, Esq. (September 3, 2020).

⁴Letter from Adam D. Horowitz, Horowitz Law, to Public Access Counselor, Office of the Attorney General (September 4, 2020).

⁵E-mail from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, to [Mindy] Becker, [Administrative Secretary, Ogle County Sheriff's Office] (September 15, 2020).

⁶E-mail from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to [Mindy] Becker, [Administrative Secretary, Ogle County Sheriff's Office] (September 15, 2020).

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records for this office's confidential review.⁷ The September 17, 2020, letter also asked the Sheriff's Office to provide a detailed explanation of the factual and legal bases of the applicability of section 7(1)(a) of FOIA to those records.⁸ On October 6, 2020, the Public Access Bureau received the Sheriff's Office's written answer but the submission did not include the withheld police records as requested by this office in its September 17, 2020, letter of inquiry.⁹ Later that day, an AAG contacted the Sheriff's Office by e-mail and requested that the Sheriff's Office furnish the withheld records.¹⁰ On October 7, 2020, this office forwarded a copy of the Sheriff's Office's answer to Mr. Horowitz.¹¹ The Sheriff's Office provided a copy of the responsive police records to the Public Access Bureau on October 13, 2020.¹² The records consist of three related reports under the same incident number.

During a telephone conversation with an AAG on October 21, 2020, Mr. Horowitz's paralegal indicated Mr. Horowitz would not submit a written reply but stood by his contention that the records are subject to disclosure because he is seeking them on behalf of the father of the minor named in the police report.¹³

⁷Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office (September 17, 2020).

⁸Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office (September 17, 2020).

⁹Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Office of the Attorney General, Shannon Barnaby, [Assistant Attorney General, Public Access Bureau] (September 29, 2020).

¹⁰E-mail from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, to [Mindy] Becker (October 6, 2020).

¹¹Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Adam Horowitz, Horowitz Law (October 7, 2020).

¹²E-mail from mbecker@oglecounty.org, [Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office], to sbarnaby@atg.state.il.us, [Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (October 13, 2020).

¹³Telephone conversation between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, and Amy Dishowitz, Paralegal, Horowitz Law (October 21, 2020).

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On November 5, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to December 22, 2020, pursuant to section 9.5(f) of FOIA.¹⁴

ANALYSIS

All public records in the possession or custody of a public body "are presumed to be open to inspection and copying" and any public body that denies a public record "has the burden of proving by clear and convincing evidence" that the record is exempt from disclosure. 5 ILCS 140/1.2 (West 2018); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) further provides that "[e]ach 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 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019) are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois District*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(a) of FOIA

Section 7(1)(a) exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Under this provision, "an exemption restricting the expansive nature of the FOIA's disclosure provisions must be explicitly stated - that is, such a proposed disclosure must be *specifically prohibited*." (Emphasis in original.) *Better Government Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 815-16 (4th Dist. 2008).

As a threshold matter, despite the Public Access Bureau's request for a detailed factual and legal explanation to support the applicability of the section 7(1)(a) exemption to the withheld police reports, the Sheriff's Office's answer to this office did not provide any arguments or supporting legal authority in support of this exemption. In fact, the Sheriff's Office did not

¹⁴Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Adam Horowitz, Horowitz Law, and Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office (November 5, 2020).

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cite the JCA or any other Federal or State law as its basis for withholding the reports in their entirety.¹⁵ Instead, the Sheriff's Office's answer simply asserted:

[T]he police report in question regarding this case is entirely juvenile related. The juvenile was abused by an adult, however the report we have on file pertains to the questioning of the juvenile and what happened to him. Therefore I am prohibited from disclosing this juvenile report.^[16]

The Illinois Appellate Court has emphasized that bare assertions without a detailed rationale do not satisfy a public body's burden of demonstrating that records are exempt from disclosure under FOIA. *See Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)). Rather, the court stated, "the public body must provide a **detailed justification** for its claim of exemption, addressing the requested records specifically and in a manner allowing for adequate adversarial testing." (Emphasis added.) *Rockford*, 398 Ill. App. 3d at 150.

The Sheriff's Office's response to this office was generalized and conclusory. The Sheriff's Office reiteration that the withheld police reports involve a minor lacks the specificity and particularized facts required to demonstrate by clear and convincing evidence that any Federal or State law prohibits the Sheriff's Office from disclosing those records to Mr. Horowitz. On that basis alone, the Sheriff's Office has not met its burden of demonstrating that the reports are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

Section 7.5(bb) of FOIA and the Juvenile Court Act

Because the Sheriff's Office's response to the FOIA request¹⁷ and its answer to this office¹⁸ asserted it was prohibited from disclosing the police reports because a juvenile was

¹⁵Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Office of the Attorney General, Shannon Barnaby, [Assistant Attorney General], [Public Access Bureau] (September 29, 2020).

¹⁶Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Office of the Attorney General, Shannon Barnaby, [Assistant Attorney General, Public Access Bureau] (September 29, 2020).

¹⁷Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Adam D. Horowitz (September 3, 2020).

¹⁸Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Office of the Attorney General, Shannon Barnaby, [Assistant Attorney General], [Public Access Bureau] (September 29, 2020).

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involved, it appears that the Sheriff's Office relied on the JCA as its basis for withholding the responsive police reports. Although the Sheriff's Office cited the more general section 7(1)(a) in support of its denial, section 7.5(bb) of FOIA¹⁹ is the provision of FOIA that expressly exempts from disclosure, "information which is or was prohibited from disclosure by the Juvenile Court Act of 1987."

Section 1-7(A) of the JCA (705 ILCS 405/1-7(A) (West 2018)), titled "Confidentiality of juvenile law enforcement and municipal ordinance violation records[.]" provides:

All **juvenile law enforcement records** which have not been expunged **are confidential and may never be disclosed to the general public or otherwise made widely available.** Juvenile law enforcement records may be obtained only under this Section and Section 1-8 and Part 9 of Article V of this Act, when their use is needed for good cause and with an order from the juvenile court, as required by those not authorized to retain them. Inspection, copying, and 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 his or her 18th birthday shall be restricted to the following[.] (Emphasis added.)

Section 1-7(A) of the JCA then enumerates the classes of persons who are permitted access to those records.²⁰ The minor who is the subject of the investigation, arrest, or custodial detention along with that minor's parents, and any of those individuals' legal representative are among the authorized parties. 705 ILCS 405/1-7(A)(0.05) (West 2018)).

¹⁹5 ILCS 140/7.5(bb) (West 2018), as amended by Public Acts 101-013, effective June 12, 2019; 101-027, effective June 25, 2019; 101-081, effective July 12, 2019; 101-221, effective January 1, 2020; 101-236, effective January 1, 2020; 101-375, effective August 16, 2019; 101-377, effective August 16, 2019; 101-452, effective January 1, 2020; 101-466, effective January 1, 2020; 101-600, effective December 6, 2019; 101-620, effective December 20, 2019; 101-649, effective July 7, 2020.

²⁰The classes of persons listed as being permitted access to juvenile law enforcement records include judges, local, State, and federal law enforcement agencies, prosecutors, public defenders, probation officers, military personnel, mental health professionals, school officials, Adult and Juvenile Prisoner Review Boards, the Department of Children and Family Services, and the Public Access Counselor when conducting Requests for Review under FOIA. 705 ILCS 405/1-7(A)(0.10) through (13) (West 2018).

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The term "juvenile law enforcement record" is defined in section 1-3(8.2) of the JCA (705 ILCS 405/1-3(8.2) (West 2018)) as:

[R]ecords of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records or documents maintained by any law enforcement agency **relating to a minor suspected of committing an offense, and records maintained by a law enforcement agency that identifies a juvenile as a suspect in committing an offense, but does not include records identifying a juvenile as a victim, witness, or missing juvenile** and any records created, maintained, or used for purposes of referral to programs relating to diversion as defined in subsection (6) of Section 5-105. (Emphasis added.)

In its answer to this office, the Sheriff's Office acknowledged that the requested police reports concern the investigation of an alleged crime committed by an adult against a minor.²¹ Because the records at issue here involve a juvenile as a victim, the plain language of the statute clearly indicates the records are not "juvenile law enforcement records." The Sheriff's Office, however, appears to assert that the JCA applies to all law enforcement records that reference the police interviewing a juvenile in any context.

"The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Dep't of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2014).

Section 1-7A of the JCA prohibits disclosure of "juvenile law enforcement records[.]" which the above definition limits to records "relating to a minor suspected of committing an offense[.]" In *NBC Subsidiary (WMAQ-TV) LLC v. Chicago Police Dep't*, 2019 IL App (1st) 181426, 145 N.E.3d 70 (1st Dist. 2019), the Illinois Appellate Court analyzed the applicability of the JCA to records related to an investigation into whether the fatal shooting of a minor by the police was justified. In holding that the investigatory records did not fall within the scope of the JCA's confidentiality provisions, the court stated:

²¹Letter from Mindy Becker, Administrative Secretary, Ogle County Sheriff's Office, to Office of the Attorney General, Shannon Barnaby, [Assistant Attorney General, Public Access Bureau] (September 29, 2020).

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The plain and unambiguous language of section 1-3(8.2) [of the JCA] limits juvenile law enforcement records to records that relate to juveniles who have committed or are suspected of committing an offense.

* * *

Clearly, the confidentiality provisions of the Act are intended, not to shield possible police misconduct toward minors but rather, to protect the privacy of minors and allow them to lead responsible and productive lives unencumbered by public records of their criminal conduct. *NBC Subsidiary (WMAQ-TV)*, 2019 IL App (1st) 181426, ¶¶28, 30, 145 N.E.3d at 78-79 (1st Dist. 2019).

As previously noted, the definition of juvenile law enforcement records in section 1-3(8.2) of the JCA specifically excludes records identifying a minor who was the victim of an offense. Consequently, the JCA does not prohibit disclosure of police reports concerning a minor who is an alleged victim, unless the suspect or perpetrator is also a juvenile. *See NBC Subsidiary (WMAQ-TV)*, 2019 IL App (1st) 181426, ¶31, 145 N.E.3d at 79 (1st Dist. 2019) (deciding the JCA "governs the confidentiality of law enforcement records that focus on a minor as the subject of an investigation, arrest, or custodial detention."). Based on this office's confidential review of the reports in question, the minor named in the responsive police reports was an alleged victim, not a suspect. Therefore, the confidentiality provisions of the JCA are inapplicable to the police reports requested by Mr. Horowitz.

FINDINGS AND CONCLUSIONS

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

- 1) On September 1, 2020, Mr. Horowitz, on behalf of Horowitz Law, submitted a FOIA request to the Sheriff's Office seeking copies of a police report that Mr. Horowitz stated involved the alleged sexual assault of a named minor. Mr. Horowitz represents the father of the minor named in the police report.
- 2) On September 3, 2020, the Sheriff's Office denied the request in its entirety pursuant to section 7(1)(a) of FOIA.
- 3) On September 4, 2020, Mr. Horowitz submitted a Request for Review to the

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Public Access Counselor contesting the denial by the Sheriff's Office of his 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 2018)).

4) On September 17, 2020, the Public Access Bureau forwarded a copy of Mr. Horowitz's Request for Review to the Sheriff's Office and asked it to provide copies of the withheld police reports for this office's confidential review. This office also asked the Sheriff's Office to provide a detailed explanation of the factual and legal bases for the assertion that section 7(1)(a) specifically prohibits the disclosure of those records.

5) On October 6, 2020, the Public Access Bureau received the Sheriff's Office's written answer, which argued that it was prohibited from disclosing the requested reports because they referenced interviews with a juvenile. The Sheriff's Office provided copies of the withheld police reports to the Public Access Bureau on October 13, 2020.

6) On October 7, 2020, this office forwarded a copy of the Sheriff's Office's answer to Mr. Horowitz; he did not submit a written reply to the response.

7) On November 5, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to December 22, 2020, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Although the Sheriff's Office cited the exemption in section 7(1)(a) of FOIA which generally exempts records prohibited from being disclosed by State or Federal laws or rules and regulations implementing such laws, it did not cite any laws, rules, or regulations that prohibit disclosure of the police reports Mr. Horowitz requested.

9) The Public Access Bureau construed the Sheriff's Office's response to the request and answer to this office as asserting that the JCA prohibits disclosure of the police reports. Section 7.5(bb) of FOIA specifically exempts from disclosure "information which is or was prohibited from disclosure by the Juvenile Court Act of 1987."

10) Section 1-7A of the JCA prohibits the disclosure of "juvenile law enforcement records[.]" except to authorized parties.

11) Section 1-3(8.2) of the JCA defines "juvenile law enforcement record," as those "relating to a minor suspected of committing an offense, and records maintained by a law enforcement agency that identifies a juvenile as a suspect in committing an offense but does not include records identifying a juvenile as a victim, witness, or missing juvenile."

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12) The requested police reports concern a minor who was the victim of an alleged crime involving an adult suspect. The minor was not suspected of committing an offense. Therefore, the police reports are not "juvenile law enforcement records" under the plain language of the definition of that term in section 1-3(8.2) of the JCA. Accordingly, the police reports are not exempt from disclosure under sections 7(1)(a) or 7.5(bb) of FOIA.

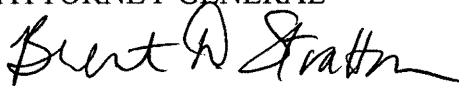
Therefore, it is the opinion of the Attorney General that the denial of Mr. Horowitz's Freedom of Information Act request by the Sheriff's Office violated the requirements of FOIA. Accordingly, the Sheriff's Office is directed to take immediate and appropriate action to comply with this opinion by disclosing to Mr. Horowitz copies of the police reports responsive to his request.

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 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Adam Horowitz as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

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 20-008) upon:

Mr. Adam Horowitz
Horowitz Law
110 East Broward Boulevard, Suite 1850
Fort Lauderdale, Florida 33301
ADAM@ADAMHOROWITZLAW.COM

Ms. Mindy Becker
Administrative Secretary
Ogle County Sheriff's Office
202 South 1st Street
Oregon, Illinois 61061
mbecker@oglecounty.org

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 December 21, 2020.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548