



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 29, 2020

PUBLIC ACCESS OPINION 20-009
(Request for Review 2020 PAC 65678)

FREEDOM OF INFORMATION ACT:
Disclosure of Arrest Reports
and Corresponding Police Records

Mr. John Kraft
Edgar County Watchdogs
7060 Illinois Highway
Paris, Illinois 61944

Mr. William Westphal
FOIA Administrator
Danville Police Department
2 East South Street
Danville, Illinois 61832

Dear Mr. Kraft and Mr. Westphal:

This binding opinion is 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 Danville Police Department (Department) violated the requirements of FOIA by improperly denying access to the arrest reports and field case report responsive to Mr. John Kraft's FOIA request.

BACKGROUND

On October 23, 2020, Mr. Kraft, on behalf of Edgar County Watchdogs, Inc., submitted a FOIA request to the Department seeking, among other things, copies of **"all police and incident reports of the arrest/detainment of ANDRE WHITE between Sep 20 and Sep**

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26, 2020." (Emphasis in original.)¹ The request also asserted: "Section 2.15 of the FOIA requires these reports to be release [sic] within 72 hours of an arrest." (Emphasis and underscoring omitted.)²

On October 26, 2020, the Department provided Mr. Kraft with copies of records responsive to other parts of his FOIA request which are not the subject of this Request for Review, but denied all of the information about Mr. White's arrest pursuant to section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (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).³ Specifically, the Department denied "report 2020-7719 pertaining to Possession of a Controlled Substance (Case # 2020CF652)[,]" suggesting that prosecution of the case was pending.⁴

On October 31, 2020, Mr. Kraft e-mailed the Department again asking it to disclose the responsive arrest reports.⁵ He contended that because Mr. White was deceased, Mr. White could not be subject to law enforcement proceedings.⁶ On November 2, 2020, the Department responded that its "denial letter is still applicable because there are more individuals than just the deceased involved."⁷ The field case supplement report from Mr. White's death investigation, which the Department had disclosed to Mr. Kraft, revealed that two other persons from the same vehicle had been arrested in addition to Mr. White.⁸

In an e-mail submitted on Saturday, November 14, 2020, and received by the Public Access Bureau on Monday, November 16, 2020, Mr. Kraft submitted a Request for

¹FOIA request from John Kraft, Edgar County Watchdogs, to bwestphal@danvillepd.org and Cyates@danvillepd.org (October 23, 2020).

²FOIA request from John Kraft, Edgar County Watchdogs, to bwestphal@danvillepd.org and Cyates@danvillepd.org (October 23, 2020).

³Letter from William Westphal, FOIA Administrator, Danville Police Department, to John Kraft (October 26, 2020).

⁴Letter from William Westphal, FOIA Administrator, Danville Police Department, to John Kraft (October 26, 2020).

⁵E-mail from John Kraft to Bill Westphal (October 31, 2020).

⁶E-mail from John Kraft to Bill Westphal (October 31, 2020).

⁷E-mail from William Westphal, FOIA Administrator, Danville, IL Police Department, to John Kraft (November 2, 2020).

⁸Field Case Report Supplement, Danville Police Department, Detective Wilson, Danville, Illinois, Case No. 2020-00007721, September 28, 2020, 9:00 a.m.

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Review contesting the denial of the arrest and incident reports related to the arrest of Mr. White.⁹ He argued that "FOIA requires arrest reports be provided within 72 hours of an arrest."¹⁰

On November 19, 2020, the Public Access Bureau sent a copy of the Request for Review to the Department. The Public Access Bureau also sent the Department a letter requesting unredacted copies of the withheld records for this office's confidential review, and a detailed written explanation of the legal and factual bases for the applicability of the asserted exemption.¹¹

On that same date, the Department provided this office with the requested materials.¹² Later on November 19, 2020, this office forwarded a copy of the Department's answer to Mr. Kraft and notified him of his opportunity to reply.¹³ On November 30, 2020, Mr. Kraft submitted a reply.¹⁴

ANALYSIS

Section 1 of FOIA (5 ILCS 140/1 (West 2018)) declares that "it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government." Under FOIA, "[a]ll 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 2018). Bare assertions without a detailed rationale do not satisfy a public body's burden of proving that exemptions are applicable. *Rockford Police Benevolent and Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 150-51 (2d Dist. 2010). Rather, "[t]he public body satisfies its burden when it provides a detailed justification for the claimed exemption which addresses the specific

⁹E-mail from John Kraft to AG PAC (November 14, 2020).

¹⁰E-mail from John Kraft to AG PAC (November 14, 2020).

¹¹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to William Westphal, FOIA Administrator, Danville Police Department (November 19, 2020).

¹²E-mail from William Westphal, FOIA Administrator, Danville, IL Police Department, to Public Access [Bureau, Office of the Attorney General] (November 19, 2020).

¹³Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to John Kraft, Edgar County Watchdogs (November 19, 2020).

¹⁴Letter from John Kraft, Edgar County Watchdogs, Inc., to [unspecified] (November 30, 2020).

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documents requested and allows for adequate adversarial testing." *Turner v. Joliet Police Department*, 2019 IL App (3d) 170819, ¶10, 123 N.E.3d 1147, 1150 (2019).

As a threshold matter, section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2018), as amended by Public Act 101-433, effective August 20, 2019) expressly requires public disclosure of certain basic information about each arrest within 72 hours of the arrest occurring:

(a) Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

Section 2.15(c) of FOIA (5 ILCS 140/2.15(c) (West 2018), as amended by Public Act 101-433, effective August 20, 2019), however, permits a public body to withhold some of this information in certain circumstances:

(c) Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

In the current circumstances, the records responsive to Mr. Kraft's request include three arrest reports. The plain language of sections 2.15(a) and 2.15(c) required the Department to provide Mr. Kraft with at least information that would identify the arrestees, including their names, ages, addresses, and photographs (when and if available), and information detailing any charges relating to the arrests. The Department did not address section 2.15 of FOIA in its answer to this office. Rather, the Department reiterated that it denied the request pursuant to

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section 7(1)(d)(i) of FOIA, which mirrors the language of section 2.15(c)(i) of FOIA (5 ILCS 140/2.15(c)(i) (West 2018), as amended by Public Act 101-433, effective August 20, 2019). Specifically, 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 Department's FOIA administrator provided the following rationale for denying Mr. Kraft's request in its entirety:

Mr. Kraft's contention is that a deceased person cannot be prosecuted; however, there are two people who were also arrested and are standing trial. Release of their information could prejudice their trials and I am sure this was the intent of the Freedom of Information Act. Further, at no time did I reference Andre White as part of these cases.^{15]}

Mr. Kraft replied by arguing that the Department "has not demonstrated, nor explained with specificity how the release of these arrest reports, etc., would interfere with any pending or actual or reasonably contemplated law enforcement proceedings 'conducted by the law enforcement or correctional agency' that received the FOIA request[.]" (Emphasis in original.)¹⁶

The Department's responses to Mr. Kraft and to this office set forth no facts indicating that disclosure of the arrest report information enumerated in items (iii) through (vi) of section 2.15(a) would interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency. Standing alone, statements that there are pending charges and the possibility or likelihood of upcoming trials for two of the arrestees are insufficient bases upon which to withhold the information referenced in sections 2.15(a)(iii) through 2.15(a)(vi) for any of the three arrestees, as the Department did not explain

¹⁵E-mail from William Westphal, FOIA Administrator, Danville, IL Police Department, to Public Access [Bureau] (November 19, 2020).

¹⁶Letter from John Kraft, Edgar County Watchdogs, Inc., to [unspecified] (November 30, 2020).

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how or why the disclosure of that information would interfere with the prosecution. Therefore, the Public Access Bureau concludes that the Department did not sustain its burden of proving by clear and convincing evidence that the three responsive arrest reports are exempt from disclosure.

For the same reasons, the Department did not demonstrate that the field case report concerning the three arrests is exempt from disclosure under section 7(1)(d)(i) of FOIA. Regardless of the extent to which the pending law enforcement proceedings in this matter are being conducted by the Department, to meet its burden the Department was required to show that the disclosure of the responsive records would interfere with the proceedings under the particular facts of this case. *See Ill. Att'y Gen. Pub. Acc. Op. No. 17-001*, issued March 14, 2017, at 3-5 (merely stating an investigation remains open and disclosure could interfere with potential prosecution is an inadequate factual basis to deny a field report under section 7(1)(d)(i) of FOIA). Because the Department's explanation is conclusory, this office also finds that the Department has not sustained its burden of proving by clear and convincing evidence that the field case report Mr. Kraft requested is exempt from disclosure in its entirety.

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 October 23, 2020, Mr. John Kraft, on behalf of Edgar County Watchdogs, Inc., submitted a FOIA request to the Danville Police Department seeking, among other things, copies of police and incident reports concerning the arrest of Andre White.

2) On October 26, 2020, the Department denied that part of the request in its entirety pursuant to section 7(1)(d)(i) of FOIA. On October 31, 2020, Mr. Kraft again asked the Department to disclose the responsive arrest reports. On November 2, 2020, the Department responded that it stood by its denial.

3) In an e-mail submitted on Saturday, November 14, 2020, and received by the Public Access Bureau on Monday, November 16, 2020, Mr. Kraft submitted a Request for Review contesting the denial of the arrest and incident reports related to the arrest. 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)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter

4) On November 19, 2020, the Public Access Bureau sent a copy of the Request for Review to the Department and requested unredacted copies of the withheld records for this

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office's confidential review, and a detailed written explanation of the legal and factual bases for the applicability of the asserted exemption.

5) On that same date, this office received those materials from the Department.

6) Later on November 19, 2020, the Public Access Bureau forwarded to Mr. Kraft a copy of the Department's answer and notified him of his opportunity to reply. On November 30, 2020, Mr. Kraft submitted a reply to the Department's answer.

7) Section 2.15(a) of FOIA requires a police department to publicly disclose certain basic information about each arrest within 72 hours of the arrest, subject to several exceptions provided in section 2.15(c) of FOIA. The responsive records in this matter include three arrest reports. The Department did not prove that any of the exceptions in section 2.15(c) apply to any information in the three arrest reports. Therefore, the Department improperly withheld the arrest reports.

8) Section 7(1)(d)(i) of FOIA exempts from disclosure law enforcement 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 that is the recipient of the request[.]" The Department's statement that prosecutions are pending for two of the arrestees is insufficient to demonstrate that disclosure of the records would interfere with the prosecutions. Accordingly, the Department did not prove by clear and convincing evidence that the arrest reports and field case report are exempt from disclosure under section 7(1)(d)(i).

Therefore, it is the opinion of the Attorney General that the Danville Police Department violated the requirements of FOIA by denying the arrest reports and field case report responsive to Mr. Kraft's Freedom of Information Act request. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Kraft with copies of the arrest reports and field case report responsive to his October 23, 2020, FOIA request. Pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (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), the Department may properly redact

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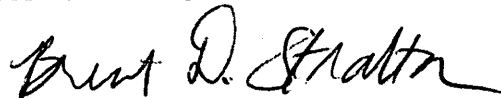
"private information" as that term is defined in FOIA.¹⁷ The Department also may properly redact dates of birth as "personal information" pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019).¹⁸ If the Department chooses to redact this information from the copies of the reports it provides to Mr. Kraft, 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 (5 ILCS 140/9(a) (West 2018)).

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 or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. John Kraft as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

¹⁷Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2018)) 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.

¹⁸Ill. 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 20-009) upon:

Mr. John Kraft
Edgar County Watchdogs
7060 Illinois Highway
Paris, Illinois 61944
john@illinoisleaks.com

Mr. William Westphal
FOIA Administrator
Danville Police Department
2 East South Street
Danville, Illinois 61832
bwestphal@danvillepd.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 29, 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