



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 10, 2022

PUBLIC ACCESS OPINION 22-002
(Request for Review 2021 PAC 68752)

FREEDOM OF INFORMATION ACT:
Section 7(1)(d)(vii) of FOIA Requires
Public Body to Prove Investigation is Ongoing
And That Disclosure of the Information
Would Obstruct the Investigation

Ms. Maggie Miller
Staff Attorney & Criminal Records Relief Coordinator
Chicago Alliance Against Sexual Exploitation
307 North Michigan, Suite 1818
Chicago, Illinois 60601

The Honorable Mary Ann Paolantonio
Village Clerk
Freedom of Information Officer
Village of Melrose Park
1000 North 25th Avenue
Melrose Park, Illinois 60160

Dear Ms. Miller and Ms. Paolantonio:

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 2020)). For the reasons discussed below, this office concludes that the Village of Melrose Park Police Department (Department) violated the requirements of FOIA by improperly denying a FOIA request submitted by the Chicago Alliance Against Sexual Exploitation (CAASE).

BACKGROUND

On November 17, 2021, Ms. Veronica Svendsen, Senior Paralegal for CAASE, submitted a FOIA request to the Department on behalf of a named client of CAASE who had

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reported a sexual assault to the Department in April.¹ CAASE is a registered not-for-profit corporation under section 501(c)(3) of title 26 of the United States Code (26 U.S.C. §501(c)(3) (2018)) that, among other things, "provide[s] individualized legal advice, consultation, and representation following and related to sexual harm."² CAASE's legal services include helping each client "understand the steps in the criminal justice process[,] "navigat[e] the criminal investigation[,] and "understand and assert [their] rights as a crime victim[.]"³ Ms. Svendsen requested copies of "all records created and maintained by your Department regarding [the client's] report and your investigation, **including but not limited to any and all supplements and handwritten notes.**" (Emphasis in original.)⁴ She enclosed a signed "Authorization for Release of Records" signed by the client and naming CAASE attorney Jaime Ann Evans as her attorney. The following day, the Department denied the request in its entirety pursuant to sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA.⁵ In its letter to Ms. Evans, the Department cited as the basis for its denial only that the records "are related to an ongoing investigation and/or proceeding[.]" and that "[t]he disclosure of these records may reasonably interfere with the * * * investigation in this matter."⁶

On November 30, 2021, Ms. Maggie Miller, Staff Attorney and Criminal Records Relief Coordinator for CAASE, submitted to the Public Access Counselor an e-mail⁷ with four attachments containing a Request for Review contesting the validity of the denial. The Request for Review asserted that "the initial report and supplemental investigatory reports are public records subject to request for inspection and copying via the FOIA and the Department has not

¹FOIA request from Veronica Svendsen, Senior Paralegal, Chicago Alliance Against Sexual Exploitation, to Mary Ann Paolantonio, FOIA Officer, Village of Melrose Park (November 17, 2021).

²Chicago Alliance Against Sexual Exploitation, About Us, <https://www.caase.org/mission/> (last visited December 20, 2021).

³Chicago Alliance Against Sexual Exploitation, Victims' Rights Representation, <https://www.caase.org/sexual-assault-victims-rights/> (last visited December 20, 2021).

⁴FOIA request from Veronica Svendsen, Senior Paralegal, Chicago Alliance Against Sexual Exploitation, to Mary Ann Paolantonio, FOIA Officer, Village of Melrose Park (November 17, 2021).

⁵5 ILCS 140/7(1)(d)(ii), (1)(d)(vii) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

⁶Letter from Earl M. Wallace, Records Division, Melrose Park Police Department, to Evans, Jamie Ann (November 18, 2021).

⁷E-mail from Maggie Miller to Public Access [Bureau, Office of the Attorney General] (November 30, 2021).

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provided a legally sufficient justification for its decision to withhold them."⁸ Ms. Miller further contended:

[T]he Department has not provided any information about how disclosure of the requested documents would in fact obstruct an ongoing investigation or administrative proceeding. Rather, they have merely stated this exemption applies because disclosure of the records "may reasonably interfere" with their investigation or administrative proceeding. This is not sufficient to demonstrate by clear and convincing evidence that the requested records are exempt from their duty to disclose the same under the FOIA.^{9]}

On December 3, 2021, 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 exemptions.¹⁰

On December 14, 2021, counsel for the Department provided this office with the requested materials.¹¹ On that same date, this office forwarded a copy of the Department's answer to Ms. Miller and notified her of her opportunity to reply.¹² On December 17, 2021, Ms. Miller submitted a reply.¹³

⁸Letter from Maggie Miller, Staff Attorney, Chicago Alliance Against Sexual Exploitation, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (November 30, 2021), at 1.

⁹Letter from Maggie Miller, Staff Attorney, Chicago Alliance Against Sexual Exploitation, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (November 30, 2021), at 2.

¹⁰Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Mary Ann Paolantonio, Village Clerk, Freedom of Information Officer, Village of Melrose Park (December 3, 2021).

¹¹Letter from Terrence Casey, An Attorney for the Village of Melrose Park, Del Galdo, [sic] Law Group, LLC, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (December 14, 2021).

¹²Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Maggie Miller, Staff Attorney & Criminal Records Relief Coordinator, Chicago Alliance Against Sexual Exploitation (December 14, 2021).

¹³Letter from Maggie Miller, Staff Attorney, Chicago Alliance Against Sexual Exploitation, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (December 17, 2021).

On January 28, 2022, this office extended the time within which to issue a binding opinion by 30 business days, to March 15, 2022, pursuant to section 9.5(f) of FOIA.¹⁴

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with" FOIA. 5 ILCS 140/1 (West 2020). 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 2020). 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 documents requested and allows for adequate adversarial testing." *Turner v. Joliet Police Dep't*, 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 2020)) expressly requires public disclosure of certain basic information about an arrest within 72 hours after the arrest:

(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.

¹⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Maggie Miller, Staff Attorney & Criminal Records Relief Coordinator, Chicago Alliance Against Sexual Exploitation, and Terrence Casey, An Attorney for the Village of Melrose Park, Del Galdo Law Group, LLC (January 28, 2022).

Section 2.15(c) of FOIA (5 ILCS 140/2.15(c) (West 2020)), however, does permit 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.

The records responsive to CAASE's request include an arrest report. The plain language of sections 2.15(a) and 2.15(c) required the Department to provide CAASE with, at the very least, information that would identify the arrestee, including name, age, address, and photograph (when and if available), and information detailing any charges relating to the arrest. Additional information described in section 2.15(a) could properly be withheld only if the Department demonstrated that disclosure would interfere with a law enforcement proceeding or endanger law enforcement or other persons, as set out in section 2.15(c). 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 sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA, which contain language somewhat similar to the language of section 2.15(c)(i) of FOIA (5 ILCS 140/2.15(c)(i) (West 2020)).¹⁵ Specifically, sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA exempt 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:

* * *

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request; [or]

* * *

¹⁵The language of section 2.15(c)(i) mirrors the language of section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021).

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(vii) obstruct an ongoing criminal investigation by the 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 (2d Dist. 1989). "Simply saying there is an 'ongoing criminal investigation because the case has not been cleared,' with little additional explanation, is not 'objective indicia' sufficient to show the ongoing investigation exemption applies." *Day v. City of Chicago*, 388 Ill. App. 3d 70, 76 (1st Dist. 2009) (quoting *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 470 (2003)). In *Day*, the court explained that a public body may not "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*, 204 Ill. 2d at 470).

In its response to this office, the Department provided merely the following rationale for its denial under the section 7(1)(d)(ii) and section 7(1)(d)(vii) exemptions:

As of the date of this correspondence, it remains the Village's position that the requested records relate to a criminal case that remains pending, and the release o[f] the responsive records would interfere with the ongoing criminal case, and to the extent that any investigation is ongoing, jeopardize the investigation. Once the case has closed, the Village will release the responsive records to all parties that have requested them, including Ms. Svendsen.¹⁶

In CAASE's reply to that response, Ms. Miller maintained that "the Village has failed to demonstrate that disclosure of the requested records would in fact interfere with an ongoing investigation or pending proceeding."¹⁷

Neither the Department's response to the FOIA request nor its response to this office set forth facts indicating that disclosure of the arrest report information enumerated in

¹⁶Letter from Terrence Casey, An Attorney for the Village of Melrose Park, Del Galdo, [sic] Law Group, LLC, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (December 14, 2021).

¹⁷Letter from Maggie Miller, Staff Attorney, Chicago Alliance Against Sexual Exploitation, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (December 17, 2021), at 1.

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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. Likewise, even if the Department meant to cite section 7(1)(d)(i),¹⁸ the Department did not demonstrate that the exemption shields all of the responsive records from disclosure. The Department did not set forth any facts indicating that the records concern an "active administrative enforcement proceeding[]" for purposes of section 7(1)(d)(ii). Instead, the Department's response to this office merely stated "**to the extent that any** investigation is ongoing[.]"¹⁹ the records would be exempt. (Emphasis added.) The Department did not establish that an investigation actually was ongoing, much less explain how or why the disclosure of all of the records would obstruct an ongoing investigation. For instance, the Department provided no facts indicating that any investigative measures were outstanding. The most recent investigative activity documented in the records at issue occurred months before Ms. Svendsen submitted her FOIA request. Therefore, the Public Access Bureau concludes that the Department did not sustain its burden of proving by clear and convincing evidence that any of the responsive records are exempt from disclosure under section 7(1)(d)(vii).

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 November 17, 2021, Ms. Veronica Svendsen, Senior Paralegal for CAASE, submitted a FOIA request to the Department on behalf of a named client of CAASE who had reported a sexual assault to the Department in April. She enclosed a signed authorization from the client. The request sought copies of all records concerning the client's reporting of the offense to the Department and the Department's investigation.

2) On November 18, 2021, the Department denied the request in its entirety, citing sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA.

3) In an e-mail on November 30, 2021, Ms. Maggie Miller, Staff Attorney and Criminal Records Relief Coordinator for CAASE, submitted a Request for Review contesting the

¹⁸Given that section 7(1)(d)(ii) is plainly inapplicable to the records and that sections 7(1)(d)(i) and section 7(1)(d)(vii) are similar and often asserted together, this office discusses section 7(1)(d)(i) for a thorough analysis of related exemptions.

¹⁹Letter from Terrence Casey, An Attorney for the Village of Melrose Park, Del Galdo, [sic] Law Group, LLC, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (December 14, 2021).

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validity of the denial. 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 2020)).

4) On December 3, 2021, 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 office's confidential review and a detailed written explanation of the legal and factual bases for the applicability of the asserted exemptions.

5) On December 14, 2021, this office received those materials from the Department.

6) Later on December 14, 2021, the Public Access Bureau forwarded to Ms. Miller a copy of the Department's answer and notified her of CAASE's opportunity to reply. On December 17, 2021, Ms. Miller submitted CAASE's reply to the Department's answer.

7) On January 28, 2022, this office properly extended the time within which to issue a binding opinion by 30 business days, to March 15, 2022, pursuant to section 9.5(f) of FOIA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Section 2.15(a) of FOIA requires a police department to disclose certain basic information about each arrest within 72 hours of the arrest, subject to possible exceptions for portions of the information which are provided in section 2.15(c) of FOIA. The responsive records in this matter include an arrest report. The Department did not prove that any of the exceptions in section 2.15(c) apply to any information in the arrest report. Therefore, the Department improperly withheld the arrest report.

9) Section 7(1)(d)(i) of FOIA mirrors section 2.15(c)(i) in permitting law enforcement records to be withheld when disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency[.]" Even if the Department had cited the section 7(1)(d)(i) exemption, the Department set forth no facts showing the exemption applies.

10) Section 7(1)(d)(ii) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request[.]" The Department set forth no information indicating that it was conducting an active administrative enforcement proceeding related to the responsive records. Accordingly, the Department did not prove by clear and convincing evidence that any of those records are exempt from disclosure under section 7(1)(d)(ii).

11) Section 7(1)(d)(vii) of FOIA exempts from disclosure law enforcement records to the extent that disclosure would "obstruct an ongoing criminal investigation by the agency that is the recipient of the request." The Department did not establish that a criminal investigation was ongoing at the time Ms. Svendsen submitted her FOIA request, nor did it set forth any facts demonstrating how or why disclosure of the records would obstruct an ongoing criminal investigation. Accordingly, the Department did not prove by clear and convincing evidence that any of the other responsive records are exempt from disclosure under section 7(1)(d)(vii).

Therefore, it is the opinion of the Attorney General that the Melrose Park Police Department violated the requirements of FOIA by improperly denying in its entirety CAASE's November 17, 2021, Freedom of Information Act request. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing CAASE with copies of the records responsive to the FOIA request, subject only to permissible redactions of discrete information.

Pursuant to section 7(1)(a) of FOIA,²⁰ the Department may properly withhold a Law Enforcement Agencies Database System (LEADS) printout that is prohibited from being disclosed by an administrative rule²¹ that implements the Criminal Identification Act (20 ILCS 2630/0.01 *et seq.* (West 2020)). Any record withheld by the Department must be fully justified as required by section 9(b) of FOIA.

Pursuant to section 7(1)(b) of FOIA,²² the Department may properly redact

²⁰5 ILCS 140/7(1)(a) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 (exempting from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.").

²¹"LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information." 20 Ill. Adm. Code §1240.80(d) (2020), last amended at 23 Ill. Reg. 7521, effective June 18, 1999; *see also Better Gov't Ass'n v. Zaruba*, 2014 IL App (2d) 140071, ¶27, 21 N.E.3d 516, 525 (2014) ("The regulations make clear that the public is not entitled to view or possess data that is transmitted through, received through, or stored in LEADS.").

²²5 ILCS 140/7(1)(b) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 (exempting from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.").

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"private information" as that term is defined in FOIA.²³ Pursuant to section 7(1)(c) of FOIA,²⁴ the Department also may properly redact as "personal information" dates of birth and the names of third parties that appear incidentally in the records. In addition, the Department may redact the names and other personally-identifying information of witnesses who provided the Department with information during the investigation pursuant to section 7(1)(d)(iv).²⁵ If the Department redacts information from the copies of the reports it provides to CAASE, it must include a written denial that identifies the factual or legal basis for each redaction and which otherwise fully complies with the requirements of section 9(b) of FOIA.²⁶

²³Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2020)) 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.

²⁴5 ILCS 140/7(1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 (exempting from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.").

²⁵5 ILCS 140/7(1)(d)(iv) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021 (exempting from disclosure law enforcement records to the extent that disclosure would "unavoidably 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[.]").

²⁶5 ILCS 140/9(b) (West 2020) ("When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.").

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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 2020). 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, Ms. Maggie Miller, and CAASE as defendants. *See* 5 ILCS 140/11.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

cc: Mr. Terrence Casey
An Attorney for the Village of Melrose Park
Del Galdo Law Group, LLC
1441 South Harlem Avenue
Berwyn, Illinois 60402

CERTIFICATE OF SERVICE

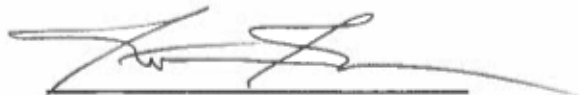
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 22-002) upon:

Ms. Maggie Miller
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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 Chicago, Illinois on February 10, 2022.


STEVE SILVERMAN
Chief, Public Access Bureau

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