



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 1, 2024

PUBLIC ACCESS OPINION 24-006
(Request for Review 2023 PAC 79453)

FREEDOM OF INFORMATION ACT:
Basis for Withholding Police Reports
Related to Death of Missing Person

Ms. Meredith Newman
Embed Investigative Reporter
Illinois Answers Project/Better Government Association
223 West Jackson Boulevard
Chicago, Illinois 60606

Ms. Carol Lotz
SID Secretary
Peoria County Sheriff's Office
301 North Maxwell Road
Peoria, Illinois 61604

Dear Ms. Newman and Ms. Lotz:

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 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons discussed below, this office concludes that the Peoria County Sheriff's Office (Sheriff's Office) violated the requirements of FOIA by improperly denying a FOIA request submitted by Ms. Meredith Newman.

BACKGROUND

On December 6, 2023, Ms. Newman submitted a FOIA request to the Sheriff's Office on behalf of the Better Government Association (BGA) seeking copies of "all Peoria

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 2

County police reports for Logan Dunne[.]"¹ On December 14, 2023, the Sheriff's Office denied the request in its entirety pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.² The Sheriff's Office asserted:

Reports 23-3543, 23-3897, 23-4533 & 23-7919 are highly personal and private in nature to the parties involved. These reports were non-crime incidents in which no arrests were made. They are being withheld [under sections 7(1)(b) and 7(1)(c)] as the subject/involved parties right to privacy outweighs any legitimate public interest in obtaining the information.^[3]

On December 20, 2023, Ms. Newman submitted a Request for Review contesting that denial. She explained that "Mr. Dunne is a man who went missing from a Peoria hospital this past June. His remains were found in November, which was confirmed by the Peoria County Coroner's Office." (Hyperlinks omitted.)⁴ Ms. Newman provided internet links to news stories about Mr. Dunne's disappearance and his remains being found.⁵ She disputed the Sheriff's Office's denial because "Mr. Dunne is deceased and therefore privacy concerns do not apply here. The circumstance around how Mr. Dunne went missing is of public interest."⁶

On January 3, 2024, the Public Access Bureau sent a copy of the Request for Review to the Sheriff's Office. The Public Access Bureau also sent the Sheriff's Office a letter requesting unredacted copies of the withheld records for this office's confidential review and a

¹FOIA request form from Meredith Newman, Better Government Association, to Freedom of Information Officer, County of Peoria (December 6, 2023).

² 5 ILCS 140/7(1)(b), (1)(c) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023.

³Letter from Carol Lotz, SID Secretary, Peoria County Sheriff's Office, to Meredith Newman (December 14, 2023).

⁴E-mail from Meredith Newman, Embed Investigative Reporter, Illinois Answers Project/Better Government Association, to Public Access Counselor, [Office of the Attorney General] (December 20, 2023).

⁵Anna Turning, *Illinois parents desperately searching for son Logan Dunne, who escaped from a Peoria hospital nearly three months ago*, NBC News (August 29, 2023, 4:27 p.m.), <https://www.nbcnews.com/dateline/missing-in-america/illinois-parents-desperately-searching-son-logan-dunne-escaped-peoria-rcna102443>; 25News Now, *Coroner confirms body found in the woods Sunday is Logan Dunne*, 25 News Now (November 13, 2023, 4:44 p.m.), <https://www.25newsnow.com/2023/11/13/sheriff-human-remains-found-wooded-area-peoria-county/>.

⁶E-mail from Meredith Newman, Embed Investigative Reporter, Illinois Answers Project/Better Government Association, to Public Access Counselor, [Office of the Attorney General] (December 20, 2023).

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 3

detailed written explanation of the legal and factual bases for the applicability of the asserted exemptions.⁷ The inquiry letter also asked the Sheriff's Office to "please explain whose right to privacy would incur an unwarranted invasion from disclosure of the responsive records and why."⁸

On January 23, 2024, the Sheriff's Office provided for this office's confidential review unredacted copies of reports 23-3543 and 23-7919, and a written explanation for withholding those records from Ms. Newman.⁹ The Sheriff's Office maintained that report 23-3543 was exempt from disclosure under section 7(1)(c) of FOIA, but asserted for the first time that report 23-7919 was exempt from disclosure under sections 7(1)(d)(i) and 7(1)(d)(vii).¹⁰ The Sheriff's Office also elected to provide Ms. Newman with copies of reports 23-3897 and 23-4533 with certain discrete redactions.¹¹ On that same date, this office forwarded a copy of the Sheriff's Office's answer to Ms. Newman and notified her of her opportunity to reply in writing.¹² She did not do so, but during a telephone call on February 8, 2024, she notified an Assistant Attorney General in the Public Access Bureau that she disputed the Sheriff's Office's arguments for withholding reports 23-3543 and 23-7919 in their entireties.¹³

⁷Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Carol Lotz, SID Secretary, Peoria County Sheriff's Office (January 3, 2024).

⁸Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Carol Lotz, SID Secretary, Peoria County Sheriff's Office (January 3, 2024), at 2.

⁹Letter from Carol Lotz, Records Manager, Peoria County Sheriff's Office, to Deputy Bureau Chief [Joshua] Jones, Attorney General's Office, Public Access Bureau (dated January 10, 2024; transmitted to the Public Access Bureau via e-mail on January 23, 2024).

¹⁰5 ILCS 140/7(1)(d)(i), (1)(d)(vii) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023.

¹¹E-mail from Carol Lotz, Records Manager, Peoria County Sheriff's Office, to [Meredith] Newman (January 23, 2024).

¹²Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Meredith Newman, Embed Investigative Reporter, Illinois Answers Project/Better Government Association (January 23, 2024).

¹³Telephone call between Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Meredith Newman, Embed Investigative Reporter, Illinois Answers Project/Better Government Association (February 8, 2024).

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 4

On February 14, 2024, this office extended the time within which to issue a binding opinion by 30 business days, to April 1, 2024, 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 2022). 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 2022). Bare assertions without a detailed rationale do not satisfy a public body's burden of proving that exemptions are applicable. *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 151 (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 Department*, 2019 IL App (3d) 170819, ¶ 10.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts 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." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Section 7(1)(c) further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

The Sheriff's Office asserted that report 23-3543 is exempt from disclosure in its entirety under section 7(1)(c) because:

Report 23-3543 is concerning a mental health case.
Although Mr. Dunn [*sic*] is now deceased, our office has
determined that this report is highly personal and private to Mr.
Dunn's [*sic*] immediate surviving family members. Additionally,

¹⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Meredith Newman, Embed Investigative Reporter, Illinois Answers Project/Better Government Association, and Carol Lotz, SID Secretary, Peoria County Sheriff's Office (February 14, 2024).

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 5

there was no threat to the public nor was a member of the public harmed.^[15]

The resolution of a personal privacy exemption claim requires the balancing of the public's interest in disclosure of the specific information requested against the individual's (or in this matter, his family's) interest in privacy. *See Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 20-21 (1997). This determination is made by considering and weighing four factors: "(1) the [requester's] interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (2010). The General Assembly's use of the language "*clearly unwarranted invasion of personal privacy*" evinces a "stricter standard to claim exemption" which the government agency possessing the records bears the burden of sustaining. (Emphasis in original.) *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (1994).

Under the first and second factors of the balancing test, Ms. Newman's personal interest in disclosure is to gather and disseminate in her capacity as a journalist facts concerning Mr. Dunne's disappearance and death. Ms. Newman submitted her FOIA request as an investigative reporter with the Illinois Answers Project, which is published by the BGA. According to its mission statement, the BGA "is a non-partisan, nonprofit news organization and civic advocate working for transparency, equity and accountability in government in Chicago and across Illinois."¹⁶ The Illinois Answers Project's own mission statement provides:

The Illinois Answers Project investigates significant problems in Chicago and Illinois through in-depth reporting and offers the most comprehensive solutions-focused reporting in the state. We inform, engage and mobilize residents, civic leaders and public officials to generate and implement changes that build a state of Illinois in which all communities can prosper.^[17]

As Ms. Newman highlighted in her Request for Review, the circumstances surrounding Mr. Dunne's death are a matter of significant public interest. In addition to the news articles Ms. Newman cited, there have been numerous news articles and television news

¹⁵Letter from Carol Lotz, Records Manager, Peoria County Sheriff's Office, to Deputy Bureau Chief [Joshua] Jones, Attorney General's Office, Public Access Bureau (dated January 10, 2024; transmitted to the Public Access Bureau January 23, 2024).

¹⁶Better Government Association, <https://www.bettergov.org/better-government-association/> (last visited February 9, 2024).

¹⁷Illinois Answers Project, <https://illinoisanswers.org/about/> (last visited February 9, 2024).

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 6

segments from assorted media outlets about Mr. Dunne's disappearance, the extensive search for him, and the discovery of his remains.¹⁸ The search for Mr. Dunne made national news on NBC News' "Missing in America" series.¹⁹ Although the Sheriff's Office appears to argue that there is not a significant public interest in disclosure because there "was no threat to the public nor was a member of the public harmed[.]"²⁰ the Sheriff's Office has offered no legal basis for the notion that the public interest is limited to incidents involving threats or harm to the public at large. Regardless of the underlying cause, the disappearance and death of a member of the community is a legitimate public concern. That is especially so when, as is the case here, the missing person investigation was highly publicized.

With respect to the personal privacy interests at stake, the Sheriff's Office identified Mr. Dunne's immediate surviving family members as having the applicable interests. A number of federal and state courts, as well as this office,²¹ have concluded that close family members of a decedent possess a separate and distinct right of privacy in the disclosure of highly sensitive information concerning the death of the decedent, and that this right is protected by statutes such as FOIA. For example, in *National Archives & Records Administration v. Favish*, 541 U.S. 157 (2004), the United States Supreme Court examined whether the surviving family members of Vince Foster, an advisor to President Clinton who died of a gunshot wound under disputed circumstances, had a protectable privacy interest in Mr. Foster's death-scene photographs under an exemption in the Federal Freedom of Information Act (*see* 5 U.S.C. § 552(b)(7)(C) (2002)) that contains language similar to that of section 7(1)(c) of the Illinois FOIA.²² *Favish*, 541 U.S. at 167. The Court held "that FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images."

¹⁸25News Now, *3 months later, no leads on missing Peoria County man*, 25 News Now (September 21, 2023, 9:17 p.m.), <https://www.25newsnow.com/2023/09/22/three-months-later-no-leads-missing-peoria-county-man/>; Chris Sims, *Logan Dunne went missing from a Peoria hospital 5 1/2 months ago. His body was found Sunday*, PEORIA JOURNAL STAR (November 14, 2023, 10:02 a.m.), <https://www.pjstar.com/story/news/2023/11/14/logan-dunne-body-found-peoria-il-brimfield-illinois-peoria-county-coroner-nbc-news-dateline/71578662007/>.

¹⁹Jack Bozikis, *Logan Dunne's case brings in national attention*, CIProud.com (September 12, 2023, 5:32 p.m.), <https://www.centralillinoisproud.com/news/top-stories/logan-dunnes-case-brings-in-national-attention/>.

²⁰Letter from Carol Lotz, Records Manager, Peoria County Sheriff's Office, to Deputy Bureau Chief [Joshua] Jones, Attorney General's Office, Public Access Bureau (dated January 10, 2024; transmitted to the Public Access Bureau via e-mail on January 23, 2024).

²¹Ill. Att'y Gen. Pub. Acc. Op. No 10-003, issued October 22, 2010.

²²Exemption 7(C) of the Federal FOIA applies to "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]"

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 7

Favish, 541 U.S. at 170. Similarly, in *New York Times Co. v. National Aeronautics & Space Administration*, 782 F. Supp. 628 (D.D.C. 1991), the Federal District Court held that the privacy rights of family members justified withholding an audio recording of the dying words of the astronauts in the space shuttle Challenger explosion under Exemption 6 of the Federal FOIA (5 U.S.C. § 552(b)(6) (1988)), which also contains language similar to that of section 7(1)(c) of the Illinois FOIA;²³ NASA had "provided the public with a transcript of the tape's substantive contents[.]" but the sound of the voices was the "'intimate detail'" subject to protection. *New York Times Co.*, 782 F. Supp. at 631-33. Thus, Mr. Dunne's immediate surviving family members do possess privacy interests in intrusive and anguish-inducing records vividly depicting his death, such as postmortem photographs of his body.

Ms. Newman did not, however, request graphic images, recordings, or details, nor are there any such records in Report 23-3543. That report concerns the investigation into Mr. Dunne's disappearance and precedes the finding of his remains, so it contains no details about his death. The report contains certain information about Mr. Dunne's condition around the time he went missing that his immediate surviving family members might find to be personal and private,²⁴ but the information appears different in kind from the types or gruesome or otherwise anguish-inducing records that courts have found to be exempt based on surviving family members' privacy interests. The Sheriff's Office's assertion that the report is "highly personal and private" to the immediate surviving family members is flatly conclusory. Notably, news media reports attributed information about Mr. Dunne's condition to his immediate family members.²⁵ Additionally, report 23-3543 contains details about how the Sheriff's Office handled the incident, which plainly bear on the public duties of public employees of the Sheriff's Office.

Lastly, there is no indication that Ms. Newman has alternative means of obtaining the contents of these two reports.

On balance, the evidence of the public interest in disclosure of information concerning Mr. Dunne's disappearance and death outweighs the unsupported claims made by the Sheriff's Office about the extent of the invasion of immediate surviving family members' personal privacy.

²³Exemption 6 of the Federal FOIA exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"

²⁴The Sheriff's Office gave no indication that it had sent or received any communications to or from immediate surviving family members about any interests they might have in keeping the reports confidential.

²⁵Chris Sims, *Logan Dunne went missing from a Peoria hospital 5 1/2 months ago. His body was found Sunday*, PEORIA JOURNAL STAR (November 14, 2023, 10:02 a.m.), <https://www.pjstar.com/story/news/2023/11/14/logan-dunne-body-found-peoria-il-brimfield-illinois-peoria-county-coroner-nbc-news-dateline/71578662007/>.

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 8

Sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA

Sections 7(1)(d)(i) 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:

(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; [or]

* * *

(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 (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 (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); see also *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780, ¶ 39 ("Understandably, defendants would prefer to claim exemptions over their entire files rather than sift through thousands of documents to redact exempt matters and disclose whatever is left. Unfortunately for defendants, section 7(1)(d) itself does not authorize such a generic approach."); Ill. Att'y Gen. Pub. Acc. Op. 22-002, issued February 10, 2022, at 7 (concluding that the public body did not meet its burden of proof under section 7(1)(d)(vii) when it failed to "explain how or why the disclosure of all of the records would obstruct an ongoing investigation").

In comparison with an instance in which a public body met its burden of proof, the court in *Ballew v. Chicago Police Department*, 2022 IL App (1st) 210715, concluded that a police department demonstrated that section 7(1)(d)(i) applied to certain records from a homicide investigation where the suspect remained at large and the case appeared to be linked to another

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 9

unsolved homicide. The investigator in charge of the investigation submitted a sufficiently detailed affidavit to establish the investigation was open and ongoing, and explain how premature disclosure of the information would obstruct the investigation. *Ballew*, 2022 IL App (1st) 210715, ¶¶ 22-23.

In the Sheriff's Office's answer to this office, the Sheriff's Office's FOIA officer provided only the following rationale for the denial of report 23-7919 under the exemptions in sections 7(1)(d)(i) and 7(1)(d)(vii): "Report 23-7919 covers the details regarding the discovery of Mr. Dunn[e]'s body. I apologize, it should have been noted on my original response that this report can not be released at this time as we are still waiting for the forensic anthropology investigation results."²⁶

The Sheriff's Office's explanation for the applicability of section 7(1)(d)(i) and section 7(1)(d)(vii) falls well short of demonstrating how or why disclosure of the particular records at issue would have the negative consequences contemplated by those two exemptions. Although Ms. Newman submitted her FOIA request relatively close in time to the finding of Mr. Dunne's remains, merely stating that the Sheriff's Office was awaiting the results of a forensic anthropology investigation is insufficient to demonstrate that disclosure of the particular information in the report at issue *would* interfere with pending or actually and reasonably contemplated law enforcement proceedings or obstruct an ongoing criminal investigation. Therefore, the Public Access Bureau concludes that the Sheriff's Office failed to sustain its burden of proving by clear and convincing evidence that report 23-7919 is exempt from disclosure in its entirety under sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA.

Additionally, although the Sheriff's Office cited section 7(1)(c) for only the other report (23-3543), this office concludes that section 7(1)(c) does not exempt Report 23-7919 from disclosure in its entirety either. While this report directly relates to Mr. Dunne's death and contains certain details about the discovery of the body, the information is generally newsworthy and fundamentally distinguishable in nature from records such as graphic images and recordings that courts have found exempt based on immediate surviving family members' personal privacy interests.

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:

²⁶Letter from Carol Lotz, Records Manager, Peoria County Sheriff's Office, to Deputy Bureau Chief [Joshua] Jones, Attorney General's Office, Public Access Bureau (dated January 10, 2024; transmitted to the Public Access Bureau via e-mail on January 23, 2024).

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 10

1) On December 6, 2023, Ms. Meredith Newman submitted a FOIA request to the Peoria County Sheriff's Office on behalf of the Better Government Association seeking copies of "all Peoria County police reports for Logan Dunne."

2) On December 14, 2023, the Sheriff's Office denied the request in its entirety pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.

3) In an e-mail on December 20, 2023, Ms. Newman submitted a Request for Review contesting that denial. She explained that Mr. Dunne's remains were found in November after he went missing in June of that year. 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 2022), as amended by Public Act 103-069, effective January 1, 2024).

4) On January 3, 2024, the Public Access Bureau sent a copy of the Request for Review to the Sheriff's Office 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 January 23, 2024, the Sheriff's Office provided this office with unredacted copies of reports 23-3543 and 23-7919 for this office's confidential review, and its written explanation for its denial. The Sheriff's Office maintained that report 23-3543 was exempt from disclosure under section 7(1)(c), but asserted for the first time that report 23-7919 was exempt from disclosure under sections 7(1)(d)(i) and 7(1)(d)(vii). The Sheriff's Office also provided Ms. Newman with copies of reports 23-3897 and 23-4533 with certain discrete redactions.

6) Later on January 23, 2024, the Public Access Bureau forwarded to Ms. Newman a copy of the Sheriff's Office's answer and notified her of her opportunity to reply. She did not submit a written reply, but by telephone on February 8, 2024, she notified this office that she disputed the Sheriff's Office's argument for withholding reports 23-3543 and 23-7919 in their entireties.

7) On February 14, 2024, this office properly extended the time within which to issue a binding opinion by 30 business days, to April 1, 2024, 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 7(1)(c) of FOIA exempts 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." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 11

the information." Section 7(1)(c) further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

9) The Sheriff's Office's argument that report 23-3543 is exempt from disclosure under section 7(1)(c) is unavailing because the report does not contain the type of graphic or vivid content for which courts have recognized a protectable privacy interest for surviving family members. There is a significant public interest in the information concerning the disappearance and death of a member of the community which has been the subject of extensive media coverage. That public interest outweighs the Sheriff's Office's sparse personal privacy claims.

10) Section 7(1)(d)(i) of FOIA exempts from disclosure law enforcement records that would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency[.]" Section 7(1)(d)(vii) exempts from disclosure law enforcement records that would "obstruct an ongoing criminal investigation by the agency that is the recipient of the request."

11) The Sheriff's Office's explanation for the applicability of sections 7(1)(d)(i) and 7(1)(d)(vii) is conclusory and does not explain how or why disclosure of report 23-7919 would have the negative consequences that these two exemptions are intended to prevent. In addition, the Sheriff's Office's response to this office neither asserted nor demonstrated that report 23-7919 is exempt from disclosure under section 7(1)(c).

Accordingly, the Sheriff's Office did not prove by clear and convincing evidence that either of the withheld reports is exempt from disclosure in its entirety under sections 7(1)(c), 7(1)(d)(i), or 7(1)(d)(vii) of FOIA.

Therefore, it is the opinion of the Attorney General that the Peoria County Sheriff's Office violated the requirements of FOIA by improperly denying in its entirety Ms. Newman's December 6, 2023, Freedom of Information Act request. Accordingly, the Sheriff's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Newman with copies of the remaining reports responsive to the FOIA request, subject only to permissible redactions of discrete information.

Pursuant to section 7(1)(b) of FOIA, the Sheriff's Office may properly redact

Ms. Meredith Newman
Ms. Carol Lotz
April 1, 2024
Page 12

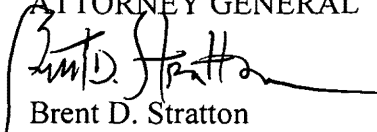
"private information" as that term is defined in FOIA.²⁷ Pursuant to section 7(1)(c) of FOIA, the Sheriff's Office also may properly redact as "personal information" dates of birth and the names of third parties that appear incidentally in the records. In addition, the Sheriff's Office may redact the names and other personally-identifying information of witnesses who provided the Sheriff's Office with information during the investigation pursuant to section 7(1)(d)(iv).²⁸ If the Sheriff's Office redacts information from the copies of the reports it provides to Ms. Newman, it must include a written denial notice that identifies the factual or legal basis for each redaction and that otherwise fully complies with the requirements of section 9(b) of FOIA.²⁹

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 2022). 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 Ms. Meredith Newman as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

²⁷Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2022)) 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.

²⁸5 ILCS 140/7(1)(d)(iv) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023 (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[.]").

²⁹5 ILCS 140/9(b) (West 2022) ("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.").

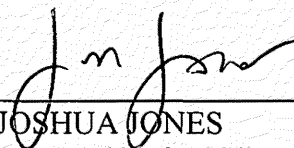
CERTIFICATE OF SERVICE

Joshua Jones, Deputy Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 24-006) upon:

Ms. Meredith Newman
Embed Investigative Reporter
Illinois Answers Project/Better Government Association
223 West Jackson Boulevard
Chicago, Illinois 60606
mnewman@illinoisanswers.org

Ms. Carol Lotz
SID Secretary
Peoria County Sheriff's Office
301 North Maxwell Road
Peoria, Illinois 61604
clotz@peoriacounty.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 Chicago, Illinois on April 1, 2024.



JOSHUA JONES
Deputy Chief, Public Access Bureau

JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau
Office of the Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7951