



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 18, 2024

PUBLIC ACCESS OPINION 24-014
(Request for Review 2024 PAC 83650)

FREEDOM OF INFORMATION ACT:
Duty to Conduct Reasonable Search
for Responsive Records; Duty to
Disclose Public Records

Mr. Sam Stecklow
Reporter, Invisible Institute
Experimental Station
6100 South Blackstone Avenue
Chicago, Illinois 60637

Mr. Don Perry
Assistant State's Attorney
St. Clair County State's Attorney's Office
10 Public Square
Belleville, Illinois 62220

Dear Mr. Stecklow and Mr. Perry:

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 2023 Supp.)). For the reasons discussed below, this office concludes that the St. Clair County State's Attorney's Office ("State's Attorney's Office" or "SAO") violated the requirements of FOIA by failing to conduct a reasonable search for records responsive to Mr. Sam Stecklow's October 15, 2024, FOIA request, and by improperly denying the request.

BACKGROUND

On October 15, 2024, Mr. Stecklow submitted a FOIA request to the State's Attorney's Office on behalf of the Invisible Institute seeking "the St. Clair County State's Attorney's policies on police-involved shootings and in-custody deaths *and* all reports issued

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from the State's Attorney's office regarding those cases since 2019."¹ (Emphasis added.) On October 18, 2024, the State's Attorney's Office responded that it "performed a search of its records and found no records responsive to your request."² On that same date, Mr. Stecklow replied by asking: "The St. Clair County State's Attorney's Office has no policy about the investigation of fatal police shootings or in-custody deaths, and has not reviewed any such cases since 2019 – is this accurate?"³ On October 21, 2024, the State's Attorney's Office responded: "You are correct. The St. Clair County State's Attorney's Office has no written policy regarding fatal Police shootings, or in custody deaths."⁴ On that same date, Mr. Stecklow further asked: "And it has not reviewed any such cases since 2019?"⁵ The State's Attorney's Office responded: "The FOIA statute requires a Public Body to release documents and records within their custody and control to the public. We do not answer questions. As stated previously we have no documents responsive to your request."⁶

Still on October 21, 2024, Mr. Stecklow submitted a new FOIA request to the State's Attorney's Office, this time seeking a copy of "[a]ny records reflecting the findings of the St. Clair County State's Attorney as to whether to bring charges in the following cases: The police-involved death of Diwone Wallace on 4/2/21[.]"⁷ Mr. Stecklow provided a link to a news article concerning that matter.⁸ The wording of this request differed somewhat from Mr. Stecklow's prior request in using "records" instead of "reports," and specifically mentioning "findings" about "bring[ing] charges." Approximately 20 minutes later, the State's Attorney's Office denied the request pursuant to section 7(1)(f) of FOIA.⁹ Mr. Stecklow filed a Request for Review (2024 PAC 83563) contesting that denial.¹⁰ He argued that the State's Attorney's

¹FOIA portal message from Sam Stecklow to St. Clair County States Attorney's Office (October 15, 2024).

²FOIA portal message from St. Clair County State's Attorney's Office to Requester (October 18, 2024).

³E-mail from Sam Stecklow, Invisible Institute, to [St. Clair County State's Attorney's Office] (October 18, 2024).

⁴E-mail from Don Perry (St. Clair County, IL) to [Sam Stecklow] (October 21, 2024).

⁵E-mail from Sam [Stecklow] to [St. Clair County State's Attorney's Office] (October 21, 2024).

⁶E-mail from Don Perry (St. Clair County, IL) to Sam [Stecklow] (October 21, 2024).

⁷FOIA portal message from Sam Stecklow to St. Clair County States Attorney's Office (October 21, 2024).

⁸Carolyn P. Smith, *Centreville police ask Illinois State Police to investigate 'officer-involved death,'* Belleville News-Democrat (April 4, 2021, 8:45 AM), <https://www.bnd.com/news/local/article250416336.html>.

⁹5 ILCS 140/7(1)(f) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

¹⁰Letter from Sam Stecklow, Reporter, Invisible Institute, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (October 21, 2024).

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Office's October 15, 2024, and October 21, 2024, responses were inconsistent, because the former asserted that there were no responsive records while the latter asserted that one such record was exempt from disclosure.¹¹ Mr. Stecklow conveyed that the type of record he identified in his October 21, 2024, request was the same type of record he sought in his October 15, 2024, request, and disputed that any such records were exempt from disclosure pursuant to section 7(1)(f).¹²

On October 22, 2024, in response to correspondence from this office concerning Mr. Stecklow's Request for Review, the State's Attorney's Office disclosed to this office and to Mr. Stecklow a copy of the record pertaining to Mr. Wallace's death.¹³ The record—a one-page letter from Mr. Daniel E. Lewis, First Assistant State's Attorney for the State's Attorney's Office, to Special Agent Colin Subick of the Illinois State Police (ISP)—briefly described a review of the evidence and concluded that "there is no basis for a claim of excessive use of force nor is there any basis for criminal charges against any officer involved."¹⁴ The State's Attorney's Office's FOIA officer stated that he did not discover the record until this office contacted him in connection with Mr. Stecklow's Request for Review:

As we were not the investigative body regarding the death of Mr. [Wallace], but rather the State Police, I was not aware of any official findings by our office. Upon receipt of your letter I made further inquiry and was made aware of the following attached letter from our Office to the Illinois State Police notifying them that we would not be filing charges.

I hope this puts this matter to rest.^{15]}

¹¹Letter from Sam Stecklow, Reporter, Invisible Institute, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (October 21, 2024), at 1.

¹²Letter from Sam Stecklow, Reporter, Invisible Institute, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (October 21, 2024), at 1.

¹³E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to Katherine Goldsmith, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General], and [Sam Stecklow] (October 22, 2024).

¹⁴Letter from Daniel E. Lewis, First Assistant State's Attorney, [St. Clair County State's Attorney's Office], to Special Agent Colin Subick, Illinois State Police (February 10, 2022).

¹⁵E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to Katherine Goldsmith, [Assistant Attorney General, Public Access Bureau, Office of the Attorney General], and [Sam Stecklow] (October 22, 2024).

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Because the disclosure of the letter pertaining to Mr. Wallace resolved the allegation in Mr. Stecklow's October 21, 2024, Request for Review, this office closed that file.¹⁶ Nonetheless, as a result of the State's Attorney's Office's disclosure of that record, Mr. Stecklow further questioned the completeness of the State's Attorney's Office's response to his October 15, 2024, FOIA request. Mr. Stecklow asked the State's Attorney's Office:

[T]here is another request that already sought this record, and was met with a no responsive records response. Please conduct a new search for responsive records to my first request, or I will be forced to file an appeal of that denial based on the fact that records clearly exist, as evidenced by your response today.^{17]}

Thus, Mr. Stecklow renewed his October 15, 2024, request. On October 22, 2024, the State's Attorney's Office responded, in relevant part: "Your first request was for any documents related to office policy regarding the handling of Police shootings. As I responded, we have no written policy regarding officer shootings."¹⁸ On that same date, Mr. Stecklow replied by highlighting the second half of his October 15, 2024, request, which expressly sought reports issued by the State's Attorney's Office pertaining to police-involved shootings and in-custody deaths since 2019; Mr. Stecklow stated that he would move forward with a new Request for Review.¹⁹ The State's Attorney's Office invited him to do so.²⁰

On October 24, 2024, Mr. Stecklow submitted via e-mail a Request for Review contesting the completeness of the State's Attorney's Office's response to his October 15, 2024, request.²¹ He argued:

The records I am seeking are not easily misplaced or overlooked. They are a serious, integral part of the workings of the SAO — or they should be. The SAO is charged by law with reviewing every fatal police shooting or in-custody death that occurs in its jurisdiction, regardless of the investigative body. Beyond its general responsibilities to review homicides or potential

¹⁶Ill. Att'y Gen. PAC Req. Rev. Ltr. 83563, issued October 23, 2024.

¹⁷E-mail from Sam Stecklow, Invisible Institute, to [Don] Perry (October 22, 2024).

¹⁸E-mail from Donyel Perry to [Sam] Stecklow (October 22, 2024).

¹⁹E-mail from Sam Stecklow, Invisible Institute, to [Don] Perry (October 22, 2024).

²⁰E-mail from Donyel Perry to [Sam Stecklow] (October 22, 2024).

²¹E-mail from Sam Stecklow, Invisible Institute, to Public Access [Bureau, Office of the Attorney General] (October 24, 2024).

homicides, 50 ILCS 727/1-10(e) mandates that "the State's Attorney, or a designated special prosecutor" with jurisdiction over the case review the investigation to "determine [whether] there is [a] basis to prosecute the law enforcement officer involved" in [an] "officer-involved death." If a decision is made to not prosecute the law enforcement officer, "the investigators shall publicly release a report."

Regardless of whoever "the investigators" envisioned in the final part of the law are, it is clear that the SAO is responsible under the law for reviewing every fatal police shooting and in-custody death investigation, or, at the very least, designating a special prosecutor.

Here are some more cases that I am independently aware of that are likely responsive to my request, if the SAO did indeed carry out its statutory duties:

- St. Clair County Jail detainees Preston Thomas, Samuel L. Johnson, and an unnamed third detainee, who died in custody in January and February 2021^[Citation.]
- St. Clair County Jail detainee Emil Engelman, who reportedly died by suicide in 2020^[Citation.]
- Kyeiree Myers, who died in Fairmont City after being shot by Washington Park Police officers and then hit by two cars^[Citation.]

Only the SAO knows how many more there are.^[22]

On October 29, 2024, the Public Access Bureau sent a copy of the Request for Review to the State's Attorney's Office. The Public Access Bureau also sent the State's Attorney's Office a letter asking for unredacted copies of the records responsive to Mr. Stecklow's October 15, 2024, FOIA request for this office's confidential review, together with a detailed written answer to the allegation that the State's Attorney's Office improperly withheld responsive records.²³ The inquiry letter asked the State's Attorney's Office to include in its

²²Letter from Sam Stecklow, Reporter, Invisible Institute, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (October 29, 2024), at [1-2].

²³Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Don Perry, Assistant State's Attorney, St. Clair County State's Attorney's Office (October 29, 2024), at 4.

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answer a detailed explanation of how it searched for responsive records, specifying which recordkeeping systems it searched, what methods it used to search, who it consulted, and why.²⁴

On that same date, the State's Attorney's Office provided only a written answer, asserting that it would be unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2022)) to gather all reports responsive to Mr. Stecklow's request.²⁵ On that same date, this office forwarded a copy of the State's Attorney's Office's answer to Mr. Stecklow and notified him of his opportunity to reply.²⁶ On that same date, he submitted a reply disputing that the request was unduly burdensome, noting that an identical request to Madison County yielded only 170 pages of responsive records.²⁷ Later on that same date, the State's Attorney's Office submitted an unsolicited response to Mr. Stecklow's reply.²⁸

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). The preamble of FOIA further specifies:

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. 5 ILCS 140/1 (West 2022).

A public body "must construe FOIA requests liberally[.]" *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31; *see also State Journal-Register v. University of*

²⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Don Perry, Assistant State's Attorney, St. Clair County State's Attorney's Office (October 29, 2024), at 4.

²⁵E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 29, 2024).

²⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Reporter, Invisible Institute (October 29, 2024).

²⁷E-mail from Sam Stecklow, Invisible Institute, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois] (October 29, 2024).

²⁸E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

Illinois Springfield, 2013 IL App (4th) 120881, ¶ 21 ("FOIA is to be liberally construed while exemptions are to be read narrowly.").

With respect to the language of Mr. Stecklow's request that encompasses deaths in custody, section 1-5 of the Police and Community Relations Improvement Act (50 ILCS 727/1-5 (West 2022)) defines "officer-involved death" to include, in relevant part, "any death of an individual that results directly from an action or directly from an intentional omission, including unreasonable delay involving a person in custody or intentional failure to seek medical attention when the need for treatment is apparent, of a law enforcement officer[.]" Mr. Stecklow's Request for Review referenced subsection 1-10(e) of the Police and Community Relations Improvement Act (50 ILCS 727/1-10(e) (West 2023 Supp.)). Subsection 1-10(e) is the fifth and final subsection of section 1-10 of that Act,²⁹ which sets forth certain requirements for the investigation of officer-involved deaths. Section 1-10 provides, in relevant part:

(a) Each law enforcement agency shall have a written policy regarding the investigation of officer-involved deaths that involve a law enforcement officer employed by that law enforcement agency.

(b) Each officer-involved death investigation shall be conducted by at least 2 investigators, or an entity or agency comprised of at least 2 investigators, one of whom is the lead investigator. * * *

* * *

(d) The investigators conducting the investigation shall, in an expeditious manner, provide a complete report to the State's Attorney of the county in which the officer-involved death occurred.

(e) If the State's Attorney, or a designated special prosecutor, determines there is no basis to prosecute the law enforcement officer involved in the officer-involved death, or if the law enforcement officer is not otherwise charged or indicted, the investigators shall publicly release a report.

When an Assistant Attorney General in the Public Access Bureau asked Mr. Stecklow for examples of the records the Madison County State's Attorney's Office provided in response to his request for the same type of records at issue in this matter,³⁰ Mr. Stecklow

²⁹50 ILCS 727/1-10(a) through 1-10(e) (West 2023 Supp.).

³⁰E-mail from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General, to [Sam] Stecklow (October 30, 2024).

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submitted copies of letters to investigators that detailed reviews of their reports and concluded that charges were not warranted.³¹ He also provided examples of similarly detailed findings posted on websites of other state's attorneys' offices.³²

Subsection 1-10(d) of the Police and Community Relations Improvement Act expressly requires investigators to provide their own investigatory reports about each officer-involved death to the local State's Attorney (or designated special prosecutor, as applicable), who must then determine whether there is a basis to prosecute the officer; if there is not, investigators are required to publicly release a report pursuant to section 1-10(e) of the Police and Community Relations Improvement Act. State's Attorney's Offices also may elect to compile reports of their findings from their reviews under section 1-10(d). As evidenced by the letter the State's Attorney's Office disclosed in response to Mr. Stecklow's October 21, 2024, request, and by the State's Attorney's Office's assertion that locating the other responsive records would be unduly burdensome, the State's Attorney's Office issues such reports in at least some instances.

In its answer to this office's inquiry letter, the State's Attorney's Office stated that for Mr. Stecklow's October 21, 2024, FOIA request, which pertained only to Diwone Wallace, "we were able to locate a letter from our office to the Illinois State Police regarding a specific fatal Police Shooting, because he had the name of the victim."³³ In contrast, the State's Attorney's Office claimed, Mr. Stecklow's October 15, 2024, request seeking all reports since 2019 regarding police-involved shootings and in-custody deaths "would have to be classified as unduly burdensome per Section 3(g) of FOIA[.]"³⁴ The State's Attorney's Office's full explanation for asserting that the request is unduly burdensome is that: "[W]e do not maintain those records in a separate or specific file. Our office would be required to review every felony review request in the last five years to comply with his request."³⁵ "With that being said[.]" the State's Attorney's Office noted, "[i]f Mr. Stecklow would like our office to search for records

³¹E-mail from Sam [Stecklow] to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 30, 2024).

³²*See, e.g.*, The County of DuPage, Statement From State's Attorney Berlin Regarding the Officer-Involved Shooting Death of Isaac Goodlow (June 6, 2024), https://www.dupagecounty.gov/news_detail_T2_R1211.php; McHenry County, Office of the State's Attorney, Patrick D. Kenneally, State's Attorney, State's Attorney Reports, <https://www.mchenrycountyil.gov/departments/state-s-attorney-s-office/state-s-attorney-reports>; Jodi M. Hoos, State's Attorney, Peoria County, Final Report, In re: fatal shooting in Chillicothe on 2-13-2024, <https://www.peoriacounty.gov/DocumentCenter/View/12526/Final-Report-Chillicothe-Officer-Involved-Shooting?bidId=>.

³³E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

³⁴E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

³⁵E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

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regarding the specific individuals he references in this review request, we will be happy to do that."³⁶

Mr. Stecklow replied that he did "not believe the records will be particularly voluminous. St. Clair County's neighbor, Madison County, which is of a similar size, provided responsive records to an identical request that numbered about 170 pages, not including the response letters."³⁷ In its unsolicited response to that reply,³⁸ the State's Attorney's Office argued:

Mr. Stecklow's argument that Madison County provided responsive records to an identical request is irrelevant to this matter. The fact that Madison County in Mr. Stecklow's opinion is "of a similar size," has no bearing on how St. Clair County records are stored. That statement makes the unfounded assumption that every similarly situated Public Body stores every category of record the exact same way, and that every similarly situated Public Body has a written policy for a requested category of records.^[39]

In a reply to that correspondence, Mr. Stecklow contended:

Where this seems to land is that the SAO claims it has no responsibility to search for and release a select group of records, over a discrete time period, having to do with one of the most vital public integrity functions that it plays in society, because of how the SAO has chosen to maintain its records. I do not believe that this is what FOIA provides for.^[40]

A public body must perform a reasonable search for responsive records under the circumstances of each FOIA request. *Better Government Ass'n*, 2020 IL App (1st) 190038, ¶ 31. "Although a public body is not required to perform an exhaustive search of every possible location, the body must construe FOIA requests liberally and search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n*, 2020 IL App (1st)

³⁶E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

³⁷E-mail from Sam Stecklow, Invisible Institute, to DBC [Joshua M.] Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (October 29, 2024).

³⁸FOIA does not contemplate a response by a public body to a requester's reply. 5 ILCS 140/9.5 (West 2023 Supp.). This office did not ask the State's Attorney's Office for a response to Mr. Stecklow's reply.

³⁹E-mail from Don Perry, Assistant State's Attorney, St. Clair County, to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 29, 2024).

⁴⁰E-mail from Sam [Stecklow] to [Joshua M.] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (October 30, 2024).

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190038, ¶ 31 (quoting *Judicial Watch, Inc. v. U.S. Department of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)). It is the public body's "burden * * * to demonstrate that it has thoroughly searched for the requested documents where they might reasonably be found." *Mohammad v. Chicago Police Department*, 2020 IL App (1st) 190011, ¶ 22 (quoting *Miller v. U.S. Department of State*, 779 F.2d 1378, 1383 (8th Cir. 1985)).

Despite this office's direct and unambiguous request for an explanation of how the State's Attorney's Office searched for responsive records, the State's Attorney's Office provided no such information. Indeed, there is no evidence in the record that the State's Attorney's Office performed any search at all. To the extent that the State's Attorney's Office was unclear about what records Mr. Stecklow was seeking, it did not notify Mr. Stecklow that the request was unclear or ask him to clarify his request. In his correspondence to the State's Attorney's Office after the disclosure of the letter responsive to his October 21, 2024, request, Mr. Stecklow reiterated his October 15, 2024, request to the State's Attorney's Office and made clear that he was seeking those same kinds of records. In response, the State's Attorney's Office only stated that it did not have a policy regarding officer shootings. It did not address the request for reports issued by the State's Attorney's Office pertaining to police-involved shootings and in-custody deaths since 2019 even after Mr. Stecklow expressly stated that he was seeking such records.

The State's Attorney's Office's answer to this office indicates that it believes it was not required to search for responsive reports unless Mr. Stecklow named the subjects. A requester, however, must only identify the records being requested by describing their contents. See *Bocock v. Will County Sheriff*, 2018 IL App (3d) 170330, ¶ 50 ("Plaintiff identified the documents sought based upon a description of their contents. To require a citizen seeking public records to identify those records with any greater specificity would be in complete contravention of the public policy underlying FOIA."). Mr. Stecklow's request for reports issued by the State's Attorney's Office concerning police-involved shootings and in-custody deaths since 2019 reasonably described the discrete records he sought, especially after he restated his request on October 22, 2024. He was not required to name the subjects to adequately identify those records. Although the State's Attorney's Office stated that it was willing to disclose the reports for the subjects Mr. Stecklow named in his Request for Review, the State's Attorney's Office should have already done so. Even then, there is no indication that such a measure would account for all records responsive to the full scope of the FOIA request.

As to the State's Attorneys Office's claim, first raised in response to the Request for Review, that Mr. Stecklow's request posed an undue burden, section 3(g) of FOIA provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making

the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

"Before invoking the section 3(g) exemption, the public body must provide the requester 'an opportunity to confer with it in an attempt to reduce the request to manageable proportions.'" *Shehadeh v. Madigan*, 2013 IL App (4th) 120742, ¶ 19 (quoting 5 ILCS 140/3(g) (West 2012)). Further, "a public body asserting a section 3(g) exemption must make a clear and convincing showing that the burden of compliance outweighs public interest in the disclosure of the requested records." *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education*, 2018 IL App (1st) 171846, ¶ 38.

The State's Attorney's Office did not fulfill the procedural requirements for treating the request as unduly burdensome. Specifically, in response to Mr. Stecklow's FOIA request, the State's Attorney's Office did not assert that the request was unduly burdensome, explain why it would be unduly burdensome or the extent to which the request would burden its operations, or give Mr. Stecklow an opportunity to confer in order to narrow the request to manageable proportions. The State's Attorney's Office thus forfeited the ability to deny the request on that basis. The State's Attorney's Office's untimely assertion of the section 3(g) exemption in response to the Request for Review was thus improper. On this basis alone, the State's Attorney's Office's assertion of section 3(g) necessarily fails.

Moreover, the State's Attorney's Office's unsupported claim that the request is unduly burdensome because the State's Attorney's Office would need to examine every felony review file from the previous five years does not account for much less burdensome alternatives. Police-involved shootings and in-custody deaths are generally uncommon, noteworthy, and memorable events distinguishable from the typical case that is screened for felony charges. As noted above, officer-involved deaths must receive a specialized review under section 1-10 of the Police and Community Relations Improvement Act. There are only so many employees of the State's Attorney's Office who may have authored the kind of report Mr. Stecklow requested, and/or who hold supervisory positions that make them aware of such determinations; these public employees and the State's Attorney could readily be consulted about the existence of responsive reports.

Finally, the State's Attorney's Office could have devised keyword searches of recordkeeping systems such as e-mail accounts that may have been used to transmit copies of the reports, or at least contain communications that could be used to identify relevant cases and locate the reports. In particular, the State's Attorney's Office gave no reason why it could not electronically search correspondence with ISP, including to the Special Agent at ISP to whom

the State's Attorney's Office addressed the report pertaining to Mr. Wallace. The State's Attorney's Office also set forth no facts about its recordkeeping systems from which this office could conclude that locating and compiling any remaining records responsive to Mr. Stecklow's October 15, 2024, request would pose an undue burden that outweighs the significant public interest in records detailing prosecutors' reviews of police-involved shootings and in-custody deaths for criminal charges. Accordingly, the State's Attorney's Office improperly denied the request.

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 15, 2024, Mr. Sam Stecklow submitted a FOIA request to the St. Clair County State's Attorney's Office on behalf of the Invisible Institute seeking a copy of the State's Attorney's Office's policy on police-involved shootings and in-custody deaths, and copies of all reports issued from the State's Attorney's office regarding those cases since 2019.

2) On October 18, 2024, the State's Attorney's Office responded that it possessed no responsive records.

3) On October 21, 2024, Mr. Stecklow submitted a follow-up FOIA request to the State's Attorney's Office for a copy of the report pertaining to the officer-involved death of Diwone Wallace.

4) On that same date, the State's Attorney's Office denied the request pursuant to section 7(1)(f) of FOIA.

5) On that same date, Mr. Stecklow submitted a Request for Review (2024 PAC 83563) disputing that denial.

6) On October 22, 2024, the State's Attorney's Office disclosed a copy of the responsive report pertaining to Mr. Wallace, resolving Request for Review 2024 PAC 83563.

7) On that same date, Mr. Stecklow asked the State's Attorney's Office to conduct a new search for the remaining records responsive to his October 15, 2024, request, but the State's Attorney's Office refused to do so.

8) In an e-mail transmitted to the Public Access Bureau on October 24, 2024, Mr. Stecklow submitted a Request for Review contesting the reasonableness of the State's Attorney's Office's search for reports responsive to his October 15, 2024, request, and its failure to disclose responsive records other than the belated disclosure of the report pertaining to Mr. Wallace. 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 2023 Supp.)). Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

9) On October 29, 2024, the Public Access Bureau sent a copy of the Request for Review to the State's Attorney's Office. The Public Access Bureau also sent the State's Attorney's Office a letter asking for unredacted copies of the records responsive to Mr. Stecklow's October 15, 2024, FOIA request for this office's confidential review, together with a detailed written answer to the allegation that the State's Attorney's Office improperly withheld responsive records. The inquiry letter also asked the State's Attorney's Office to explain in detail how it searched for responsive records, specifying which recordkeeping systems it searched, what methods it used to search, who it consulted, and why.

10) On October 29, 2024, the State's Attorney's Office furnished only a written response in which it asserted that complying with the request would be unduly burdensome under section 3(g) of FOIA.

11) On that same date, Mr. Stecklow submitted a reply.

12) A public body must perform a reasonable search for records responsive to a FOIA request; a public body bears the burden of demonstrating that its search for records was reasonable.

13) The State's Attorney's Office failed to demonstrate that it performed a reasonable search for responsive records.

14) In order to treat a request as unduly burdensome under section 3(g) of FOIA, a public body must meet certain procedural prerequisites, including first extending to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions.

15) The State's Attorney's Office did not meet the procedural requirements of section 3(g) of FOIA, and did not demonstrate that it otherwise properly denied the request under section 3(g) or for any other reason.

Therefore, it is the opinion of the Attorney General that the St. Clair County State's Attorney's Office violated the requirements of FOIA by failing to perform a reasonable search for records responsive to Mr. Sam Stecklow's October 15, 2024, Freedom of Information Act request and by improperly denying the request. Accordingly, the State's Attorney's Office is hereby directed to take immediate and appropriate action to comply with this opinion by (1) performing a new, diligent search tailored to the full scope of Mr. Stecklow's October 15, 2024, FOIA request; (2) providing Mr. Stecklow with copies of any and all responsive records; and (3) furnishing to Mr. Stecklow a written explanation of the State's Attorney's Office's supplemental search for responsive records in sufficient detail to assess the adequacy of the State's Attorney's Office's search measures. If the State's Attorney's Office redacts any portion of the responsive

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records pursuant to any exemption(s) set out in FOIA, it shall issue a notice that fully complies with section 9 of FOIA (5 ILCS 140/9 (West 2022)).

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 Mr. Sam Stecklow 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

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 24-014) upon:

Mr. Sam Stecklow
Reporter, Invisible Institute
Experimental Station
6100 South Blackstone Avenue
Chicago, Illinois 60637
foia@invisibleinstitute.com

Mr. Don Perry
Assistant State's Attorney
St. Clair County State's Attorney's Office
10 Public Square
Belleville, Illinois 62220
Donyel.Perry@co.st-clair.il.us

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on December 18, 2024.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
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