



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 28, 2025

PUBLIC ACCESS OPINION 25-002
(Request for Review 2025 PAC 85063)

FREEDOM OF INFORMATION ACT:
Basis for Withholding Records Related to
the Resignation or Termination of a
Public Employee

Mr. Travis Lott
County Journal
1101 East Pine Street
Percy, Illinois 62272

Mr. Jason E. Coffey
City Attorney
City of Chester
600 State Street
Chester, Illinois 62233

Dear Mr. Lott and Mr. Coffey:

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 City of Chester Police Department (Department) improperly denied Mr. Travis Lott's January 28, 2025, FOIA request.

BACKGROUND

On that date, Mr. Lott, on behalf of the *County Journal*, submitted a FOIA request to the Department seeking "copies of resignation and/or termination paperwork for any Chester police officers from the months of December 2024 and January 2025[.]" as well as the

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Mr. Travis Lott
Mr. Jason E. Coffey
March 28, 2025
Page 2

Department's payroll history for those months.¹ On February 3, 2025, the Department provided the requested payroll history but denied Mr. Lott's request for resignation or termination paperwork pursuant to sections 7(1)(d)(i), 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d-6) of FOIA (5 ILCS 140/7(1)(d)(i), (1)(d)(ii), (1)(d)(iii), (1)(d-6) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025).² On February 3, 2025, Mr. Lott sent this office a copy of the Department's response attached to an e-mail disputing the Department's denial of resignation or termination paperwork.³ On February 7, 2025, Mr. Lott completed his submission by e-mailing this office a copy of the underlying FOIA request.⁴

On February 13, 2025, 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 any 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 February 18, 2025, the Department furnished those materials, including a complete version of its answer for this office's confidential review and a redacted copy for forwarding to Mr. Lott.⁶ On that same date, this office forwarded a copy of the Department's redacted answer to Mr. Lott⁷ and notified him of his opportunity to reply in writing.⁸ Mr. Lott did not reply. On February 24, 2025, this office received from the Department additional correspondence with two attachments; most of those materials were provided confidentially.⁹

¹E-mail from Travis Lott, Reporter, County Journal, to Bobby Helmers, Chief, Chester Police Department (January 28, 2025).

²Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Travis Lott, County Journal (February 3, 2025).

³E-mail from Travis Lott, County Journal, to Leah Bartelt, Public Access Counselor Office of the Attorney General (February 3, 2025).

⁴E-mail from Travis Lott, Reporter, County Journal to [Teresa Lim] (February 7, 2025).

⁵Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Jason E. Coffey, City Attorney, City of Chester (February 13, 2025), at 2.

⁶Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (February 18, 2025).

⁷See 5 ILCS 140/9.5(d) (West 2023 Supp.) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

⁸Letter from Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Travis Lott, *County Journal* (February 18, 2025).

⁹E-mail from Jason E. Coffey, Fisher, Kerkhover, Coffey & Gremmels, to [Benjamin J.] Silver, [Supervising Attorney, Public Access Bureau, Office of the Attorney General] (February 24, 2025).

ANALYSIS

It is the public policy of the State of Illinois that "all persons are entitled to full and complete information regarding the affairs of government." 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). "The 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.

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

Sections 7(1)(d)(i) and 7(1)(d)(ii) 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]

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

"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). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *Day v. City of Chicago*, 388 Ill. App. 3d 70, 76 (2009) ("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."); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 24-006, issued April 1, 2024, at 8-9 (explaining that a law enforcement agency must demonstrate with a detailed factual basis, rather than conclusory statements, how disclosure of all information in a police report would interfere with a law enforcement investigation to sustain its burden of proving the report is exempt from disclosure in its entirety pursuant to the section 7(1)(d)(i) exemption). Likewise, to fall within the scope of the section 7(1)(d)(ii) exemption, a public body

Mr. Travis Lott
Mr. Jason E. Coffey
March 28, 2025
Page 4

must prove that disclosure of the withheld record would interfere with "active administrative enforcement proceedings[.]" In addition, the record must be "created in the course of administrative enforcement proceedings[.]" 5 ILCS 140/7(1)(d) (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025).

In its response to this office, the Department identified one record, labeled Exhibit A, that it withheld pursuant to sections 7(1)(d)(i), 7(1)(d)(ii), and 7(1)(d)(iii) of FOIA.¹⁰ The Department's redacted response, provided to Mr. Lott, did not disclose the Department's basis for withholding the record pursuant to these exemptions. The confidential portions of the Department's response provided only a few details about the withheld record and the circumstances underlying the record. Those details fall short of demonstrating how or why disclosure of the record would result in the harms contemplated by the section 7(1)(d)(i) and 7(1)(d)(ii) exemptions. The Department did not explain with any specificity how disclosure of the record would interfere with any pending, actual or reasonably contemplated law enforcement or administrative proceeding. Moreover, the Department did not establish the existence of an active administrative enforcement proceeding. Even if an active administrative enforcement proceeding does exist, it is apparent from this office's confidential review of the record in question that it is a pre-existing document which was not created in the course of an administrative enforcement proceeding. Accordingly, the Department did not meet its burden of proving that the record is exempt from disclosure pursuant to sections 7(1)(d)(i) and 7(1)(d)(ii) of FOIA.

Section 7(1)(d)(iii) of FOIA

Section 7(1)(d)(iii) of FOIA exempts from disclosure:

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

* * *

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing[.]

Section 7(1)(d)(iii) of FOIA corresponds with a provision of Federal FOIA (5 U.S.C. § 552(b)(7)(B) (2018)) that exempts from disclosure records compiled for law enforcement purposes to the extent that disclosure would "deprive a person of a right to a fair trial or an impartial adjudication[.]" Although Illinois reviewing courts have not published any

¹⁰Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (February 18, 2025), at [1].

opinions analyzing the applicability of section 7(1)(d)(iii), federal courts¹¹ have held that a public body withholding records pursuant to the "fair trial" exemption, must establish: "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Washington Post Co. v. U.S. Department of Justice*, 863 F.2d 96, 102 (D.C. Cir. 1988); see also *Chiquita Brands Int'l Inc. v. S.E.C.*, 805 F.3d 289, 298 (D.C. Cir. 2015) (the exemption applies "when the release of documents would likely deprive a party of a fair trial[.]").

As discussed above, the Department provided only a few details concerning the record in Exhibit A and a conclusory statement that disclosure of the record would interfere with law enforcement or administrative enforcement proceedings. Neither the existence of a pending investigation or proceeding nor the mere possibility that criminal charges will be filed is sufficient to establish that a trial is "pending or truly imminent." Because the Department's response lacks facts to show that a trial or adjudication is truly imminent and that it is more probable than not that disclosure of any information within the record would interfere with a fair trial or impartial hearing, the Department did not meet its burden of proving that the record is exempt from disclosure pursuant to section 7(1)(d)(iii).

Section 7(1)(d-6) of FOIA and Section 9.2 of the Illinois Police Training Act

Section 7(1)(d-6) of FOIA exempts from disclosure, in relevant part, "[r]ecords contained in the Officer Professional Conduct Database under Section 9.2 of the Illinois Police Training Act except to the extent authorized under that Section." Section 9.2(a) of the Illinois Police Training Act (Act) (50 ILCS 705/9.2(a) (West 2022)) provides that "[a]ll law enforcement agencies and the Illinois State Police shall notify the [Illinois Law Enforcement Training and Standards] Board of any final determination of a willful violation of department, agency, or the Illinois State Police policy, official misconduct, or violation of law within 10 days" when certain other conditions enumerated in that provision are applicable.

Section 9.2(c) of the Act (50 ILCS 705/9.2(c) (West 2022)) establishes an Officer Professional Conduct Database. Specifically, the provision states that "[t]he Board shall maintain a database readily available to any chief administrative officer, or the officer's designee, of a law enforcement agency and the Illinois State Police" which contains certain information, including "each sustained instance of departmental misconduct that lead to a suspension at least 10 days * * * or any other reported violation, the nature of the violation, the reason for the final decision of discharge or dismissal, and any statement provided by the officer[.]"¹² Other than providing exceptions for (1) chief administrative officers of law enforcement agencies or their

¹¹Illinois courts have recognized that because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. See *Margolis v. Director, Illinois Department of Revenue*, 180 Ill. App. 3d 1084, 1087 (1989).

¹²50 ILCS 705/9.2(c) (West 2022).

designees for hiring purposes and (2) prosecutors for the purpose of complying with their obligation to disclose potentially exculpatory evidence,¹³ section 9.2(c)(3) (50 ILCS 705/9.2(c)(3) (West 2022)) restricts access to the contents of the Officer Professional Conduct Database:

The database, documents, materials, or other information in the possession or control of the Board that are obtained by or disclosed to the Board under this subsection shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action when sought from the Board. * * *. The Board shall not disclose the database or make such documents, materials, or other information it has obtained or that has been disclosed to it to the public. (Emphasis added.)

The Department argued that it properly withheld the record discussed above and four additional records, labeled Exhibits B, C, D, and E, pursuant to section 7(1)(d-6).¹⁴ The Department provided a largely confidential explanation for the applicability of the exemption.¹⁵

This office's confidential review of the records found that Exhibits C, D, and E, did not originate with the Department and do not document the resignation or termination of a police officer. Because these three records are not responsive to Mr. Lott's request for "copies of resignation and/or termination paperwork," this office's review will be limited to the two remaining records, Exhibits A and B.

The two remaining records were originally created by the Department. In its response to this office, the Department argued that it properly withheld the records pursuant to section 7(1)(d-6) because "data provided * * * is confidential and not public information."¹⁶ The Department designated as confidential additional correspondence concerning the applicability of section 7(1)(d-6).

¹³See 50 ILCS 705/9.2(c)(1) (West 2022).

¹⁴Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (February 18, 2025), at [1-2].

¹⁵Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (February 18, 2025), at [1-2].

¹⁶Letter from Jason E. Coffey, FISHER, KERKHOVER, COFFEY & GREMMELS LAW OFFICE, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (February 18, 2025), at [2], quoting correspondence the Department received from the Illinois Law Enforcement Training and Standards Board.

As discussed above, the confidentiality provision in section 9.2(c) of the Act is limited to "[t]he database, documents, materials, or other information **in the possession or control of the Board** that are obtained by or disclosed to the Board under this subsection[.]" (Emphasis added.) Additionally, section 9.2(g) of the Act (50 ILCS 705/9.2(g) (West 2022)) expressly permits disclosure of records in the possession of law enforcement agencies which have been submitted to the Board:

Nothing in this Section shall exempt a law enforcement agency from which the Board has obtained data, documents, materials, or other information or that has disclosed data, documents, materials, or other information to the Board **from disclosing public records in accordance with the Freedom of Information Act.** (Emphasis added.)

In construing a statute, the primary objective is to ascertain and give effect to the intent of the General Assembly. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). "[T]he surest and most reliable indicator of" legislative intent "is the statutory language itself, given its plain and ordinary meaning." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 24. Further, it is a fundamental principle of statutory construction that different sections of the same statute should be read together and construed harmoniously. *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 185-86 (2006).

Section 7(1)(d-6) of FOIA exempts records in the database "except to the extent authorized" by section 9.2 of the Act. Under the plain language of section 9.2(g) of the Act, the confidentiality provisions of section 9.2(c) do not prohibit law enforcement agencies that provided information to the Board from disclosing their own public records in accordance with FOIA. It is clear that the General Assembly intended these provisions to restrict access to the database maintained by the Board and exempt from disclosure records in the possession or control of the Board that were obtained from a law enforcement agency, while permitting a law enforcement agency to disclose its own records in accordance with FOIA.

Even if the Board obtained copies of the two contested records and is prohibited from disclosing them under section 9.2(c) of the Act, those records are nonetheless public records of the Department subject to disclosure pursuant to FOIA. Accordingly, the Department did not sustain its burden of proving that the two contested records are exempt from disclosure under section 7(1)(d-6) of FOIA.

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:

Mr. Travis Lott
Mr. Jason E. Coffey
March 28, 2025
Page 8

1) On January 28, 2025, Mr. Travis Lott, on behalf of the *County Journal*, submitted a FOIA request to the Chester Police Department seeking, in relevant part, copies of resignation or termination paperwork from the months of December 2024 and January 2025.

2) On February 3, 2025, the Department denied that portion of Mr. Lott's FOIA request pursuant to sections 7(1)(d)(i), 7(1)(d)(ii), 7(1)(d)(iii), and 7(1)(d-6) of FOIA.

3) On February 7, 2025, Mr. Lott's completed the submission of his Request for Review contesting the Department's 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 2023 Supp.)). Accordingly, the Attorney General may issue a binding opinion with respect to this matter.

4) On February 13, 2025, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the withheld records for this office's confidential review. This office also asked the Department to provide a detailed explanation of the factual and legal bases for its denial of Mr. Lott's request.

5) On February 18, 2025, the Department furnished the requested materials to this office, including a complete version of its answer for this office's confidential review and a redacted copy to forward to Mr. Lott.

6) On that same date, the Public Access Bureau forwarded a copy of the Department's written answer to Mr. Lott and notified him of his right to reply; he did not reply to that answer.

7) Section 7(1)(d)(i) of FOIA exempts from disclosure records in the possession of a law enforcement agency for law enforcement purposes only to the extent that their disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[.]" Section 7(1)(d)(ii) of FOIA exempts from disclosure records created in the course of administrative enforcement proceedings only to the extent that their disclosure would "interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request[.]"

8) The Department stated that it withheld one record (labeled Exhibit A) pursuant to sections 7(1)(d)(i) and 7(1)(d)(ii). The Department did not explain with any specificity how disclosure of the record would interfere with any pending or contemplated law enforcement proceeding. The Department also did not identify an active administrative enforcement proceeding or demonstrate how disclosure of the record would interfere with such a proceeding. Further, the record was not created in the course of an administrative enforcement proceeding. Accordingly, the Department has not proven by clear and convincing evidence that the record is exempt from disclosure under sections 7(1)(d)(i) or 7(1)(d)(ii) of FOIA.

9) Section 7(1)(d)(iii) of FOIA exempts from disclosure law enforcement records when their disclosure would "create a substantial likelihood that a person will be deprived of a fair trial or impartial hearing[.]"

10) The Department did not demonstrate that a trial or adjudication related to the record identified as Exhibit A was imminent at the time of Mr. Lott's request, and the Department did not explain how or why disclosure of the record would deprive anyone of a fair trial or impartial hearing. Accordingly, the Department has not sustained its burden of demonstrating that the record is exempt from disclosure under section 7(1)(d)(iii) of FOIA.

11) Section 7(1)(d-6) of FOIA exempts from disclosure "[r]ecords contained in the Officer Professional Conduct Database under Section 9.2 of the Illinois Police Training Act except to the extent authorized under that Section."

12) Section 9.2(c) of the Illinois Police Training Act provides that "[t]he database, documents, materials, or other information in the possession or control of the Board that are obtained by or disclosed to the Board under this subsection shall be confidential by law and privileged[.]"

13) Section 9.2(g) of the Illinois Police Training Act provides that "[n]othing in this Section shall exempt a law enforcement agency from which the Board has obtained data, documents, materials, or other information or that has disclosed data, documents, materials, or other information to the Board from disclosing public records in accordance with the Freedom of Information Act."

14) The plain language of section 9.2(g) of the Illinois Police Training Act provides that the confidentiality provisions in section 9.2(c) do not exempt a law enforcement agency that provided records to the Board from disclosing its own public records in accordance with FOIA.

15) The Department withheld two records (labeled Exhibits A and B) responsive to Mr. Lott's request for resignation or termination paperwork pursuant to section 7(1)(d-6) of FOIA.

16) Because those two records are the Department's own public records rather than records in the possession or control of the Board, section 9.2(g) of the Illinois Police Training Act provides that they are not subject to the confidentiality provisions of section 9.2(c) of the Act. Accordingly, the Department has not sustained its burden of demonstrating that the records are exempt from disclosure under section 7(1)(d-6) of FOIA.

Therefore, it is the opinion of the Attorney General that the City of Chester Police Department improperly withheld two records in response to Mr. Travis Lott's January 28, 2025, Freedom of Information Act request for resignation or termination paperwork for police officers. Accordingly, the Department is hereby directed to take immediate and appropriate action to

Mr. Travis Lott
Mr. Jason E. Coffey
March 28, 2025
Page 10

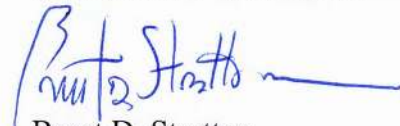
comply with this opinion by providing Mr. Lott with copies of the withheld records, labeled Exhibits A and B.

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. Travis Lott 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

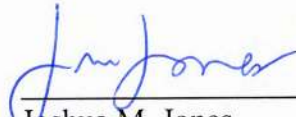
CERTIFICATE OF SERVICE

Joshua M. Jones, Bureau Chief, Public Access Bureau, Chicago, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 25-002) upon:

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Mr. Jason E. Coffey
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City of Chester
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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 March 28, 2025.



Joshua M. Jones
Bureau Chief

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