OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 14, 2012

PUBLIC ACCESS OPINION 12-012
(Request for Review – 2012 PAC 19602)

FREEDOM OF INFORMATION ACT:
Disclosure of Records Relating
to the Death of a Minor

Ms. Becky Schlikerman
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Dear Ms. Schlikerman and Lt. Lyddon:

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 2011 Supp.)). For the reasons that follow, we conclude that the Illinois State Police (ISP) has violated FOIA by improperly withholding investigatory records relating to the shooting death of a minor.

BACKGROUND

FOIA Request and Denial

On April 17, 2012, Ms. Becky Schlikerman, Staff Reporter, *Chicago Tribune*, submitted a FOIA request to ISP seeking "[a]ny and all reports and documents regarding the February 1, 2012, shooting of [a named minor][1] at 541 Forsythe Avenue in Calumet City."[2] On April 30, 2012, ISP denied the request in full pursuant to section 7(1)(a) of FOIA[3] (5 ILCS 140/7(1)(a) (West 2011 Supp.)), which permits a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." In its denial, ISP asserted that the records are exempt from disclosure under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2011 Supp.)) because certain provisions of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)) (JCA) and section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/3 (West 2010)) prohibit the release of the investigatory records. Specifically, ISP cited section 1-7(C) of the JCA (705 ILCS 405/1-7(C) (West 2010)) and section 1-8(A) of the JCA (705 ILCS 405/1-8(A) (West 2010)) as the applicable provisions. ISP also asserted that certain private and personal information could be redacted pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.(5 ILCS 140/7(1)(b), (1)(c) (West 2011 Supp.)).

Request for Review and ISP's Response

On May 3, 2012, Ms. Schlikerman submitted to the Office of the Public Access Counselor a Request for Review of ISP's denial.[4] On May 7, 2012, this office forwarded a copy of the Request for Review to ISP and asked it to provide an explanation of the applicability of

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[1]Because this binding opinion may be subject to judicial review, we have elected to withhold the minor's name.

[2]E-mail from Becky Schlikerman, *Chicago Tribune*, to foia_officer@isp.state.il.us (April 17, 2012).

[3]Letter from Lieutenant Steve Lyddon, FOIA Officer, Illinois State Police, to Becky Schlikerman, *Chicago Tribune* (April 30, 2012).

[4]E-mail Becky Schlikerman, *Chicago Tribune,* to paccess@atg.state.il.us (May 3, 2012).

the JCA.[5] On June 6, 2012, ISP responded, asserting that the responsive records are exempt from disclosure under the JCA because the records detail the death of a juvenile.[6] ISP acknowledged in its June 6, 2012, response letter to this office that section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act is not applicable to this specific situation. ISP did, however, assert the applicability of two additional provisions of the JCA, section 1-7(E) (705 ILCS 405/1-7(E) (West 2010)) and section 5-905(5) (705 ILCS 405/5-905(5) (West 2010)) in support of withholding the records.

This office forwarded to Ms. Schlikerman a copy of ISP's response letter on June 8, 2012.[7] To date, Ms. Schlikerman has not responded to the letter. On June 25, 2012, this office extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.[8]

ANALYSIS

This Request for Review relates to the denial of investigatory records concerning the shooting death of a 15-year-old minor at a private residence. Prior to the shooting, the juvenile was not arrested or taken into custody. The issue for review is whether the cited provisions of the JCA prohibit the disclosure of ISP's investigatory records relating to the shooting.

As a preliminary matter, we note that all public records in the possession or custody of a public body are presumed to be open to inspection and copying. 5 ILCS 140/1.2 (West 2010). Section 3 of FOIA (5 ILCS 140/3 (West 2010)) provides, in pertinent part:

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[5]Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Lieutenant Steve Lyddon, Freedom of Information Officer, ISP (May 7, 2012).

[6]Letter from Bruce Bialorucki, Legal Counsel, ISP, to Matthew C. Rogina, Assistant Public Access Counselor, Office of the Attorney General (June 6, 2012).

[7]Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Betty[sic] Schlikerman, *Chicago Tribune* (June 8, 2012).

[8]Letter from Matthew C. Rogina, Assistant Attorney General, Public Access Bureau, to Lieutenant Steve Lyddon, Freedom of Information Officer, ISP and Ms. Becky Schlikermnan, *Chicago Tribune* (June 25, 2012).

> (a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. * * *
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> (b) Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

A public body "has the burden of proving by clear and convincing evidence" that a public record is exempt from disclosure. 5 ILCS 140/1.2 (West 2010). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Illinois Dep't of Healthcare & Family Servs. v. Warner*, 227 Ill. 2d 223, 229 (2008). Legislative intent is best evidenced by the language used in the statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). "[A] statute should be evaluated as a whole; each provision should be construed in connection with every other section." *Eden Retirement Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 291 (2004).

Juvenile Court Act

Several provisions of the JCA address the confidentiality of law enforcement and court records that involve juveniles. Although these provisions overlap to some extent, they are generally applicable to investigatory records pertaining to a minor who has been arrested or taken into custody, and cases in which a juvenile court proceeding has been or may be initiated.[9]

[9]We note that section 5-905(2) provides that "*[i]nformation identifying* victims of alleged sex offenses shall not be disclosed or open to public inspection under any circumstances. Nothing in this Section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing his or her identity." (Emphasis added.) 705 ILCS 405/5-905(2) (West 2010). This provision, however, would not justify withholding the investigatory records in their entirety; rather it would allow redaction of information that would identify the victim.

Section 1-7(A) of the JCA (705 ILCS 405/1-7(A) (West 2010)) provides that the "[i]nspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been *arrested or taken into custody* before his or her 17th birthday shall be restricted to" specified persons and agencies who have a *bona fide* need for access in order to perform their duties.[10] (Emphasis added.) Similarly, section 1-7(B) (705 ILCS 405/1-7(B) (West 2010)) prohibits any law enforcement officer from disclosing a "fingerprint or photograph relating to a minor who has been *arrested or taken into custody* before his or her 17th birthday[.]" (Emphasis added.)

Section 1-7(C), which was cited by ISP in its denial, provides:

> The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, *concerning all minors under 17 years of age,* must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public *except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law.* For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court. (Emphasis added.) 705 ILCS 405/1-7(C) (West 2010).

Section 1-7(E) states "[l]aw enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to *the arrest, investigation or disposition of any case involving a minor.*" (Emphasis added.) Finally, section 1-8(A) of the JCA limits the inspection and copying of court records relating to a minor who is the subject of a proceeding under the JCA to certain categories of persons and agencies who have a *bona fide* need for access.

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[10]This would include local, state and federal law enforcement agencies, prosecutors, probation officers and social workers, military personnel, mental health professionals, school officials, Adult and Juvenile Prisoner Review Boards, and the Department of Children and Family Services. 705 ILCS 405/1-7(A)(1) through (A)(9) (West 2010).

Article 5 of the JCA (705 ILCS 405/5-101 *et seq.* (West 2010)), which pertains to delinquent minors, also contains provisions addressing the confidentiality of law enforcement and court records relating to juvenile offenders. Section 5-101(A) (705 ILCS 405/5-101(A) (West 2010)) outlines the policy and purpose of the JCA:

> It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.

To fulfill this intent, section 5-101 identifies four purposes of the JCA: (1) to protect citizens from juvenile crime; (2) to hold the juvenile accountable for his or her actions; (3) to provide an assessment for each alleged and adjudicated delinquent juvenile to prevent further delinquent behavior; and (4) to provide due process for the juvenile. 705 ILCS 405/5-101(A), (B), (C), (D) (West 2010).

Part 9 of Article V of the JCA pertains to the confidentiality of records and expungement of records. Section 5-905(1) (705 ILCS 405/5-905(1) (West 2010)), which is similar in scope to section 1-7(A), provides that the "[i]nspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been *arrested or taken into custody* before his or her 17th birthday shall be restricted to the [specified persons and agencies] and when necessary for the discharge of their official duties[.]" Section 5-905(5), which is similar to section 1-7(C), states that "[t]he records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, *concerning all minors under 17 years of age must be maintained separate from the records of adults and may not be open to public inspection or their contents disclosed to the public except by order of the court* or when the institution of criminal proceedings has been permitted under Section 5-130 or 5-805 or required under Section 5-130 or 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or when provided by law." (Emphasis added.) Finally, section 5-905(6) (705 ILCS 405/5-905(6) (West 2010)), like section 1-7(E), prohibits law enforcement officers from disclosing "the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor."

The justification for keeping juvenile criminal records confidential is both theoretical and practical. Gregory W. O'Reilly, *Illinois Lifts the Veil on Juvenile Conviction Records*, 83 Ill.B.J. 402, 403 (1995). At the theoretical level, publicizing juvenile criminal records has been viewed as punishment and thus inconsistent with the theory behind juvenile court, which is to rehabilitate, not to punish. O'Reilly, *Illinois Lifts the Veil on Juvenile Conviction Records*, 83 Ill.B.J. at 403. At the practical level, by keeping juvenile criminal records confidential, the courts could shield youthful mistakes and prevent children from being stigmatized, suffering harm to their employment prospects, or gaining the attention they may have sought. O'Reilly, *Illinois Lifts the Veil on Juvenile Conviction Records*, 83 Ill.B.J. at 403.

Similarly, the United States Supreme Court has stated that "the prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State." *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring, citing National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Standard 5.13, pp. 224-225 (1976)). In a juvenile case under the JCA, the juvenile's welfare and best interests must be considered. *In re B.K.*, 358 Ill. App. 3d 1166, 1172 (5th Dist. 2005).

ISP asserts that the JCA applies to the underlying records because the "felonious conduct of a minor" resulted in that minor's death. ISP further explains that "had the minor survived the police encounter, he would have been the subject of criminal charges."[11] ISP discounts that the plain language of the JCA demonstrates an intent to safeguard the privacy of a juvenile who has been arrested and is the subject of a juvenile court proceeding and ultimately, to rehabilitate that juvenile. In this instance, the minor was not arrested or taken into custody. There is no basis in the language of the statutes cited that would apply the confidentiality provisions of the JCA to records concerning the death of a minor who was neither taken into custody nor the subject of a juvenile court proceeding.

Even if we were to accept ISP's contention that the minor "would have been the subject of criminal charges" had he survived, the investigatory records at issue do not focus upon the alleged criminal conduct of the minor. ISP's investigation served a function different from assessing the criminal wrongdoing of the juvenile. In its response to this office, ISP stated that "this case was investigated by the Public Integrity Task Force at the request of the Police Chief

[11]Letter from Bruce Bialorucki, Legal Counsel, ISP, to Matthew C. Rogina, Assistant Public Access Counselor, Office of the Attorney General (June 6, 2012).

of Calumet City, Edward Gilmore."[12] The Civil Administrative Code of Illinois (20 ILCS 2605/2605-35 (West 2010)) gives ISP the jurisdiction to investigate police shootings. Although the investigatory records do reference the alleged criminal conduct of the juvenile as background information, the purpose of ISP's investigation was to determine if the shooting of the minor by members of the Calumet City Police Department was justified. Consequently, the provisions of the JCA are inapplicable to ISP's investigatory records.

Sections 7(1)(b) and 7(1)(c) of FOIA

ISP has also asserted that other information in the records, particularly unique identifiers and dates of birth, are exempt under sections 7(1)(b) and (1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2011 Supp.)). Section 7(1)(b) exempts from inspection and copying "private information" as defined by FOIA.[13] Section 7(1)(c) exempts from inspection and copying "[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." The exemption 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."

ISP may redact unique identifiers pursuant to section 7(1)(b), and the dates of birth and the names of any family members of the juvenile that appear in the investigatory records pursuant to section 7(1)(c) of FOIA. Disclosure of the names of the relatives of the deceased minor would be highly personal and objectionable to the reasonable person. Additionally, the relatives provided information to ISP and the Calumet City Police. As a result, their identifies would be exempt from disclosure under section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2011 Supp.), as amended by Public Acts 97-783, effective July 13, 2012; 97-813, effective July 13, 2012) which exempts from inspection and copying information that

[12] Letter from Bruce Bialorucki, Legal Counsel, ISP, to Matthew C. Rogina, Assistant Public Access Counselor, Office of the Attorney General (June 6, 2012).

[13] Section 2(c-5) defines "private information" to include unique identifiers such as "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." (Emphasis added.) 5 ILCS 140/2(c-5) (West 2011 Supp.).

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; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request[.]"

ISP also seeks to withhold post-mortem photographs of the minor, as well as medical, toxicology, and autopsy reports. To the extent that post-mortem photographs of the minor's body are responsive to the request, the Public Access Counselor has previously concluded that decedents' family members have a personal privacy interest with respect to the release of post-mortem photographs. *See* Ill Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5. In that binding opinion, the Public Access Bureau reviewed the Cook County Medical Examiner's denial of two FOIA requests seeking records relating to two prominent individuals. This office concluded that post-mortem photographs depicting the bodies of the deceased are highly personal and are exempt from disclosure under section 7(1)(c) of FOIA, as surviving family members have a legally-recognized privacy right in the depiction of their family members' remains. *See* Ill Att'y Gen. Pub. Acc. Op. No. 10-003 at 1. However, we concluded that the remaining autopsy records were not exempt under section 7(1)(c), as the public interest outweighed the privacy rights of the family members with regard to the non-post mortem photographs. *See* Ill Att'y Gen. Pub. Acc. Op. No. 10-003 at 7. Similarly, in this instance we conclude that the public interest in a complete and full investigation of the shooting outweighs the privacy concerns of any surviving relatives with respect to the autopsy, toxicology, and medical records that are responsive to this request.

Additionally, other than a general assertion that a person's privacy right survives after his or her death, ISP has provided no factual basis for this office to conclude that any records other than the post-mortem photographs of the victim, such as the autopsy records, toxicology records, and medical records are exempt from disclosure under section 7(1)(c).[14] Contrary to ISP's position, this office has previously concluded that the personal privacy interest of the victim in the disclosure of his or her identity ceases to exist upon death. *See* Ill. Att'y Gen.

[14]ISP refers to a previous nonbinding opinion issued by this office, Ill. Att'y Gen. PAC Req. Rev. Ltr. 13231, issued January 4, 2012, that ISP asserts supports its contention that a person's privacy right survives after death. In that matter, however, this office made no specific finding as to the issue of whether an individual's privacy right continues to survive after death. Instead, this office informed an inmate that pursuant to *Kenyon v. Garrels*, 184 Ill. App. 3d 29, 32 (4th Dist. 1989), FOIA does not require a public body to answer questions posed by a requester. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 13231 at 2.

PAC Pre-Auth. dl6137, issued August 24, 2010, at 2. Thus, ISP has not presented specific legal or factual arguments to support a conclusion that an individual's privacy right exists after death and, in this case, requires withholding of specific records under section 7(1)(c). ISP has also failed to provide specific factual or legal arguments to support a conclusion that the release of certain, pertinent parts of the records would result in an invasion of privacy for the surviving relatives of the deceased victim. Therefore, we conclude that ISP has not met its burden of establishing that section 7(1)(c) applies and requires ISP to refuse to release certain records despite the public interest in disclosure of these records.

FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

1) On April 17, 2012, Ms. Becky Schlikerman submitted a FOIA request to the Illinois State Police requesting, "[a]ny and all reports and documents regarding the February 1, 2012, shooting of [a named minor] at 541 Forsythe Avenue in Calumet City."

2) On April 30, 2012, ISP denied the request in full pursuant to section 7(1)(a) of FOIA and the cited provisions of the Juvenile Court Act.

3) On May 3, 2012, Ms. Schlikerman submitted to the Office of the Public Access Counselor a Request for Review of ISP's denial of her request. Ms. Schlikerman's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2011 Supp.)).

4) On June 25, 2012, the Attorney General extended the time frame to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may issue a binding opinion with respect to the disclosure of the records at issue.

5) ISP, as a matter of law, improperly withheld records that were not prohibited from release under the JCA, and therefore were not exempt from disclosure under section 7(1)(a) of FOIA.

Therefore, for the reasons addressed above, it is the opinion of the Attorney General that ISP has, in violation of the requirements of the Freedom of Information Act, improperly denied Ms. Schlikerman's request. Accordingly, ISP is directed to take immediate

and appropriate action to comply with this opinion by responding to Ms. Schlikerman's request and providing her with the responsive records, subject only to the permissible redactions set out above.

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 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois, Ms. Becky Schlikerman, and the *Chicago Tribune* as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Sincerely,

LISA MADIGAN
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