



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

March 31, 2015

Via electronic mail

Mr. Jeff Kolkey
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Via electronic mail

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RE: FOIA Request for Review – 2015 PAC 34055

Dear Mr. Kolkey and Captain Retzlaff:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons stated below, the Public Access Bureau concludes that the Winnebago County Sheriff's Office (Sheriff's Office) improperly denied Mr. Jeff Kolkey's March 5, 2015, FOIA request.

On that date, Mr. Kolkey submitted a FOIA request to the Sheriff's Office seeking copies of the dash camera video recording of the police pursuit and fatal crash that resulted in the arrest of [REDACTED] as well as related police reports and other documentation. On March 9, 2015, the Sheriff's Office denied the request under section 2.15(c) of FOIA (5 ILCS 140/2.15(c), (West 2012)), asserting that this provision "**exempts a pending case from being**

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released."¹ (Emphasis in original). Mr. Kolkey disputes that denial, noting that [REDACTED] has already been convicted and sentenced.

On March 17, 2015, this office forwarded a copy of the Request for Review to the Sheriff's Office and asked it to provide a detailed explanation of the factual and legal bases for the assertion that section 2.15(c) of FOIA is a valid basis for withholding the responsive records, including an explanation as to why the Sheriff's Office believes the records concern a pending case and how disclosure of the records would interfere with a pending case. We also requested a representative sample of the records that were withheld for our confidential review. On March 30, 2015, this office received the Sheriff's Office's response stating that a post-sentencing motion is pending in the underlying court case, and that the Sheriff's Office intends to disclose the records to Mr. Kolkey after the conclusion of the trial court proceedings; no records were included with that response.

DETERMINATION

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 2012); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

Section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2012)) generally requires the disclosure of the following arrest report information:

(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

Information referenced in subsections (iii) through (vi) of section 2.15(a) may be withheld, but only if its "disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or

¹Letter from Captain Annette Retzlaff, Records Manager, Rockford County Sheriff's Office, to Jeff Kolkey (March 9, 2015).

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physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility." 5 ILCS 140/2.15(c) (West 2012).

The recording and much of the written documentation sought by Mr. Kolkey are not among the four types of arrest report information that may be withheld under section 2.15(c) if disclosure would interfere with a pending law enforcement proceeding. Therefore, section 2.15(c) does not provide a basis for withholding the records in their entirety. To the extent that discrete portions of records in question do contain information set forth in subsections (iii) through (vi) of section 2.15(c), the Sheriff's Office's mere citation to a pending post-sentencing motion is unavailing. The Sheriff's Office has not provided facts from which we could conclude that disclosure of the records at this post-conviction stage of the prosecution would interfere with that proceeding.

Nor are the records exempt from disclosure pursuant to section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2013 Supp.), as amended by Public Act 98-695, effective December 3, 2014), which permits a public body to withhold information that 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*[" (Emphasis added.) The Sheriff's Office is not conducting the trial court proceedings that it cited as its basis for withholding the records, and it has not demonstrated or asserted that disclosure of the records would interfere with any pending or actually and reasonably contemplated law enforcement proceeding that the Sheriff's Office is conducting. Accordingly, we conclude that the Sheriff's Office improperly denied Mr. Kolkey's request.

In accordance with this determination, we request that the Sheriff's Office furnish copies of the requested records to Mr. Kolkey, subject to appropriate redactions pursuant to sections 7(1)(b) and 7(1)(d)(iv) of FOIA² (5 ILCS 140/7(1)(b), (1)(d)(iv) (West 2013 Supp.), as

²Section 7(1)(d)(iv) exempts from disclosure information that 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;" section 7(1)(b) exempts from disclosure "private information", which FOIA defines as:

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. 5 ILCS 140/2(c-5) (West 2013 Supp), as amended by Public Act 98-1129, effective December 3, 2014, 98-806, effective January 1, 2015)

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amended by Public Act 98-695, effective July 3, 2014). If any information is redacted, the Sheriff's Office must provide Mr. Kolkey with a supplemental written response that includes a detailed factual basis for the applicability of any asserted exemptions. *See* 5 ILCS 140/9(a) (West 2012).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter serves to close this file.

Very truly yours



STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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