

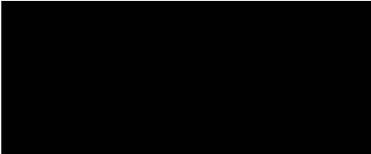


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 16, 2022

Via electronic mail



Via electronic mail

Mr. Thomas Jones
Chief of Police
Village of Lindenhurst Police Department
2300 East Grand Avenue
Lindenhurst, Illinois 60046
jones@lindenhurstpd.org

RE: FOIA Request for Review – 2022 PAC 71207

Dear [REDACTED] and Mr. Jones:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the response by Village of Lindenhurst Police Department (Police Department) to [REDACTED] April 11, 2022, FOIA request did not violate the requirements of FOIA.

On April 11, 2022, [REDACTED] submitted a FOIA request to the Police Department seeking copies of all police calls made to his address from March 20, 2022, to the present date. On April 12, 2022, the Police Department provided [REDACTED] with copies of responsive records, but redacted certain information pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022). On that same date, [REDACTED] submitted the above-referenced Request for Review disputing the Police Department's response.

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On April 18, 2022, this office sent a copy of the Request for Review to the Police Department and asked it to provide unredacted copies of the contested records for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of section 7(1)(b) of FOIA. The Police Department did not respond to this office. On August 3, 2022, this office again forwarded a copy of the Request for Review and inquiry letter to the Police Department and requested a response. On August 4, 2022, the Police Department provided this office with the requested materials, and explained that it did not receive the Request for Review the first time this office sent a copy. On August 8, 2022, this office forwarded a copy of the Police Department's response letter to ██████████; he did not submit a written reply.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2020); *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 2020).

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2020)) defines "private information" as:

[U]nique 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 (Emphasis added).

In its response to this office, the Police Department stated it properly redacted "name, address, date of birth, telephone number, complainant's information, third party information, and police officer identifiers/signatures" pursuant to section 7(1)(b).¹ The information the Police Department redacted that meets the definition of "private information" because it uniquely

¹E-mail from Cynthia Mroczek, F.O.I.A. Officer, to Chief [Thomas] Jones (August 3, 2022).

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identifies people's home or personal telephone numbers, home addresses, signatures, employee identification numbers, and driver's license numbers. The Police Department did not improperly redact this information because it is exempt from disclosure under the section 7(1)(b) exemption. However, section 7(1)(b) does not encompass names and dates of birth. Because the rights of certain third parties are at stake, this office will analyze those items below under the section 7(1)(c) exemption.²

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Further, under section 7(1)(c), "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001).

In balancing the public interest in disclosure of personal information with personal privacy rights, courts have held that while arrestees have diminished privacy interests, the right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'" *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (quoting *American Civil Liberties Union v. U.S. Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011)); see also Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 16 (disclosure of information identifying suspect of a crime who had not been arrested or charged would constitute a clearly unwarranted invasion of personal privacy). Similarly, courts have concluded that the disclosure of the names of witnesses and other third parties in police reports would typically constitute an unwarranted invasion of personal privacy. See, for example, *Mays v. Drug Enforcement Administration*, 234 F.3d 1324, 1327 (D.C. Cir. 2000) ("Absent exceptional circumstances, the balance [between the public interest in disclosure and the right to privacy] categorically favors withholding the names and addresses of third parties as" such information does not provide insight into the conduct or performance of a government agency); see also *Coleman v. F.B.I.*, 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal

²5 ILCS 140/7(1)(c) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

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privacy because they "reveal the identities of innocent third parties, witnesses or victims."); Ill. Att'y Gen. Pub. Acc. Op. No. 22-005, issued March 24, 2022, at 10-11 (names and other identifying information of third parties in complaint documents exempt from disclosure).

Based on its confidential review of the responsive records, this office confirms that the Police Department redacted the names of people accused of crimes, but there is no indication those individuals were arrested or charged with crimes. The Police Department also redacted names of witnesses and third parties mentioned incidentally in the police reports. Although ██████████ has a personal interest in information related to incidents at his home address, the redacted names are highly personal in the context of the reports. Moreover, the disclosure of the names would not illuminate how law enforcement officials performed their public duties, so there is no legitimate public interest in disclosure that outweighs the parties' privacy rights. In addition to the section 7(1)(c) exemption, section 7(1)(d)(iv) of FOIA³ plainly allows police to withhold witness identities. Lastly, the Attorney General has concluded that the disclosure of a person's date of birth would generally constitute a clearly unwarranted invasion of personal privacy (Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12), so the Police Department permissibly redacted that information. Because the disclosure of the redacted identifying information would constitute a clearly unwarranted invasion of personal privacy, the Police Department did not improperly redact that certain names and dates of birth under section 7(1)(c) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. Please contact me at c.lucentemccullough@ilag.gov or the Chicago address on the first page of this letter if you have any questions.

Very truly yours,

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CHRISTINA M. LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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³Section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022) 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."