



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 20, 2019

Via electronic mail

Ms. Jennifer A. Bonesteel
Stephen P. Kelly Law
27100 North Knoxville Avenue
Peoria, Illinois 61604
jbonesteel@stephenkellylaw.com

Via electronic mail

Ms. Carol Lotz
Records Clerk
Office of the Sheriff
Peoria County
301 North Maxwell Road
Peoria, Illinois 61604
clotz@peoriacounty.org

RE: FOIA Request for Review – 2019 PAC 58028

Dear Ms. Bonesteel and Ms. Lotz:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons stated below, the Public Access Bureau concludes that the Peoria County Sheriff's Office (Sheriff's Office) violated FOIA by improperly denying Mr. Christopher Doscotch's May 9, 2019, FOIA request.

On that date¹, Mr. Doscotch, on behalf of his client [REDACTED], submitted a FOIA request to the Sheriff's Office seeking copies of the police report, video, body camera footage, and any 9-1-1 calls concerning an accident on April 7, 2019. On May 7, 2019, the

¹It appears that Mr. Doscotch's FOIA request was submitted sometime before May 9, 2019, because the Sheriff's Office's response to the FOIA request is dated May 7, 2019, and Ms. Jennifer A. Bonesteel's initial Request for Review was sent to this office on May 8, 2019.

Ms. Jennifer A. Bonesteel
Ms. Carol Lotz
August 20, 2019
Page 2

Sheriff's Office denied Mr. Doscotch's request pursuant to the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 *et seq.* (West 2016)).

On May 9, 2019, the Public Access Bureau received a completed Request for Review from Ms. Jennifer A. Bonesteel, on behalf of Stephen P. Kelly Law, contesting the Sheriff's Office's denial of Mr. Doscotch's FOIA request. On May 13, 2019, the Public Access Bureau sent a copy of the Request for Review to the Sheriff's Office and asked it to provide copies of the withheld records for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the JCA to the withheld records. On May 16, 2019, the Sheriff's Office provided this office with a written answer. The Sheriff's Office also furnished this office with a copy of the traffic crash report for our confidential review, but did not provide copies of any video, body camera footage, or 9-1-1 calls related to the accident. On May 21, 2019, the Public Access Bureau forwarded a copy of the Sheriff's Office's answer to Ms. Bonesteel; she replied on May 22, 2019.

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 2016); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that denies a record "has the burden of proving by clear and convincing evidence" that the record is exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois District*, 176 Ill. 2d 401, 407 (1997).

Section 7.5(bb) of FOIA and the Juvenile Court Act

Section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018; 100-863, effective August 14, 2018; 100-887, effective August 14, 2018) exempts from inspection and copying "[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987." The Sheriff's Office asserted that the JCA prohibits the disclosure of the records requested by Mr. Doscotch because they concern a minor who was investigated and ticketed in connection with the accident. Section 1-7(A) of the JCA (705 ILCS 405/1-7(A) (West 2017 Supp.), as amended by Public Acts 100-285, effective January 1, 2018; 100-720, effective August 3, 2018; 100-863, effective August 14, 2018; 100-1162, effective December 20, 2018), titled "Confidentiality of law enforcement and municipal ordinance violation records[.]" provides, in pertinent part:

All juvenile law enforcement records which have not been expunged are confidential and may never be disclosed to the general public or otherwise made widely available. Juvenile law

Ms. Jennifer A. Bonesteel
Ms. Carol Lotz
August 20, 2019
Page 3

enforcement records may be obtained only under this Section and Section 1-8 and Part 9 of Article V of this Act, when their use is needed for good cause and with an order from the juvenile court, as required by those not authorized to retain them. Inspection, copying, and disclosure of **juvenile law enforcement records maintained by law enforcement agencies or records of municipal ordinance violations** maintained by any State, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following[.] (Emphasis added.)

The term "juvenile law enforcement records" is defined in section 1-3(8.2) of the JCA (705 ILCS 405/1-3(8.2);(West 2017 Supp.), as amended by Public Acts 100-689, effective January 1, 2019; 100-863, effective August 14, 2018; 100-1162, effective December 20, 2018) as:

[R]ecords of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records or documents maintained by any law enforcement agency relating to a minor suspected of committing an offense, and records maintained by a law enforcement agency that identifies a juvenile as a suspect in committing an offense

The Attorney General has held that section 1-7(A) of the JCA prohibits the disclosure of records of minors who have been investigated, arrested, or taken into custody. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 18-016, issued November 14, 2018, at 8. In addition, the Attorney General has observed 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." Ill. Att'y Gen. Pub. Acc. Op. No. 12-012, issued August 14, 2012, at 7. The Public Access Bureau has previously held that section 1-7(A) of the JCA does not prohibit the disclosure of law enforcement records of a minor charged as an adult. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 42359, issued April 11, 2017, at 3 ("Because the prosecution of a minor in adult court is a matter of public record, applying the confidentiality provisions of the JCA to records concerning such cases would not further the JCA's purpose of protecting the privacy of the minor to promote rehabilitation.")

In her reply to this office, Ms. Bonesteel asserted section 1-7(A) of the JCA only prohibits disclosure of records if the minor was charged with a juvenile offense in juvenile court.

Ms. Jennifer A. Bonesteel
Ms. Carol Lotz
August 20, 2019
Page 4

The minor's traffic offense in this matter was adjudicated in traffic court.² Although the General Assembly recently amended section 1-7(A) to include protections for records of minors receiving municipal ordinance violations, which are not handled in juvenile court, the JCA does not list records relating to traffic citations as a type of record that must be kept confidential. In addition, traffic citations are not specifically listed in the definition of "juvenile law enforcement record" in section 1-3(8.2) of the JCA. Under the canon of statutory interpretation *expressio unius est exclusio alterius*, meaning "to express or include one thing implies the exclusion of the other, or of the alternative[.]" the General Assembly's express provision for the confidentiality of a juvenile ordinance violation records and silence about the need for confidentiality of juvenile traffic citations signifies that the General Assembly did not intend to extend the confidentiality provisions of section 1-7(A) JCA to the law enforcement records of minors receiving traffic citations.

The Sheriff's Office's answer to this office asserted "[t]he accident report, requested by Stephen Kelly's Office, was denied as a minor was investigated and ticketed during this incident. This decision is supported by the Juvenile Court Act [citation] which mandates any report involving a minor that was arrested, charged, or investigated must be withheld in full."³ Although this office's review of the withheld report confirmed that a citation for disregarding a stop sign was issued to a seventeen-year-old driver of one of the vehicles involved, the Sheriff's Office has not explained how records related to a traffic citation constitute a "juvenile law enforcement record" subject to the confidentiality provisions of the JCA. Accordingly, this office concludes that the Sheriff's Office has not sustained its burden of demonstrating by clear and convincing evidence that the requested records are exempt from disclosure pursuant to section 7.5(bb) of FOIA.

In accordance with the conclusions in this letter, the Public Access Bureau requests that the Sheriff's Office provide Mr. Doscotch and Ms. Bonesteel with a copy of the traffic crash report, video and body camera footage, and any 9-1-1 calls concerning the accident. If the Sheriff's Office does not possess video or body camera footage or 9-1-1 calls for the accident, please provide Mr. Doscotch and Ms. Bonesteel with a supplemental response explaining the search the Sheriff's Office performed to try to locate those records. This office has determined that resolution of this matter does not require the issuance of a binding opinion.

²According to the electronic court records on the Peoria County Circuit Clerk's website, the traffic citation at issue was adjudicated on April 17, 2019 in Peoria County Traffic Court Case number 19-TR-04540-1.

³Letter from Carol Lotz, Records Clerk, Peoria County Sheriff's Office, to Matt Hartman, Assistant Attorney General, Public Access Bureau (May 16, 2019).

Ms. Jennifer A. Bonesteel
Ms. Carol Lotz
August 20, 2019
Page 5

If you have any questions, please contact me at (217) 782-9054,
mhartman@atg.state.il.us, or the Springfield address provided on the first page of this letter.
This correspondence serves to close this matter.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

58028 f 75bb improper co

cc: *Via electronic mail*
Mr. Christopher Doscotch
Law Office of Christopher Doscotch
chris@doscotchlaw.com