



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 13, 2024

Via electronic mail
Ms. Samah Assad
Investigative Producer
CBS 2 Chicago
sfassad@viacomcbs.com

Via electronic mail
Ms. Rhiann M. Martynowski
FOIA Appeals Manager
Office of the Director
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
Rhiann.Martynowski@illinois.gov

RE: FOIA Request for Review – 2023 PAC 78862; ISP FOIA no. 05959603

Dear Ms. Assad and Ms. Martynowski:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons that follow, the Public Access Bureau concludes that the Illinois State Police (ISP) did not violate FOIA by withholding data responsive to Ms. Samah Assad's August 29, 2023, FOIA request.

On that date, Ms. Assad submitted a FOIA request to ISP on behalf of CBS 2 Chicago seeking "data, in its original Excel/spreadsheet format, showing the number of Illinois residents who were issued a FOID^[1] card, broken down by year and by county, from Jan. 1, 2010 through the day in which this request is fulfilled[,] as well as "that same data, broken down by

^[1]"FOID" stands for "Firearm Owner's Identification."

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year for the same timeframe, for the Chicago [*sic*] specifically."² On August 31, 2023, Ms. Assad added that she was "also requesting data showing the number of Illinois residents issued a FOID card broken down by zip code, by year, from Jan. 1, 2010 through the day in which this request is fulfilled."³ On September 6, 2023, ISP denied the request pursuant to section 7.5(v) of FOIA.⁴ ISP stated that "[d]ata from the ISP Firearms Services Bureau's licensing database is exempt under Section 7.5(v) of FOIA[,]"⁵ but provided a link to certain related data on its website.⁶ ISP also suggested Ms. Assad follow up with its Public Information Officer, Ms. Melaney Arnold.

Ms. Assad exchanged a series of e-mails with Ms. Arnold, which resulted in ISP declining to provide the data because: "Running historical reports containing the number of FOID applications broken down by county for each year going back to 2010 would require ISP to request its vendor stop working on critical, time sensitive tasks mandated by law in order to create a program to run a report."⁷ In her Request for Review, submitted November 3, 2023, Ms. Assad argues:

While ISP cites 5 ILCS 140/7.5(v) to justify withholding, that exemption does not apply here. CBS 2 did not ask for the names and personal information of people who have applied for or received FOID cards. CBS 2 also did not request any databases under the Firearm Concealed Carry Act, or any other records from the Concealed Carry Licensing Review Board. CBS 2 asked for aggregate, anonymized statistics broken down by year, county and zip code.^[8]

²E-mail from Samah Assad, Investigative Producer, CBS Chicago, to ISP.FOIA.Officer@illinois.gov (August 29, 2023).

³E-mail from Samah Assad, Investigative Producer, CBS Chicago, to ISP.FOIA.Officer@illinois.gov (August 31, 2023).

⁴5 ILCS 140/7.5(v) (West 2022), as amended by Public Acts 103-008, effective June 7, 2023; 103-034, effective June 9, 2023; 103-508, effective July 1, 2023.

⁵E-mail from Illinois State Police, Freedom of Information Unit, Sarah Wheeler – FOIA Officer, to Samah F Assad (September 6, 2023).

⁶Illinois State Police, Statistics, <https://isp.illinois.gov/Foid/Statistics>.

⁷E-mail from Melaney Arnold to Samah Assad (October 27, 2023).

⁸E-mail from Samah Assad, Investigative Producer, CBS Chicago, to PAC (November 3, 2023).

On November 16, 2023, this office forwarded a copy of the Request for Review to ISP and asked it to provide a detailed explanation of the legal and factual bases for the denial of Ms. Assad's request. On December 7, 2023, this office received ISP's written response. On January 10, 2024, Ms. Assad submitted a reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2022). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7.5(v) of FOIA exempts from disclosure:

Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act. (Emphasis added.)

Correspondingly, section 10(i) of the Firearm Concealed Carry Act⁹ authorizes the creation of the databases at issue in section 7.5(v) of FOIA:

The Illinois State Police shall maintain a database of license applicants and licensees. The database shall be available to all federal, State, and local law enforcement agencies, State's Attorneys, the Attorney General, and authorized court personnel. Within 180 days after July 9, 2013 (the effective date of this Act), the database shall be searchable and provide all information included in the application, including the applicant's previous addresses within the 10 years prior to the license application and any information related to violations of this Act. **No law enforcement agency, State's Attorney, Attorney General, or**

⁹430 ILCS 66/10(i) (West 2022).

member or staff of the judiciary shall provide any information to a requester who is not entitled to it by law. (Emphasis added.)

In its response to this office, ISP explained that "Ms. Assad's request was not denied as unduly burdensome; it was denied because data contained in ISP's Firearms Services Bureau's licensing database (FLARES) is exempt from disclosure."¹⁰ ISP asserted:

The FLARES database was established pursuant to the Firearm Concealed Carry Act requirement that ISP maintain a database of concealed carry license applicants and licensees (430 ILCS 66/1 et seq.). FOID information is also housed in FLARES. As such, FOID data is exempt from disclosure pursuant to section 7.5(v) of FOIA, which provides in pertinent part: "databases under the Firearm Concealed Carry Act" are exempt from disclosure. Senior Assistant Attorney General Edie Steinberg most recently confirmed in a determination letter dated September 1, 2023, that FOID data/stats are exempt from disclosure. While aggregate data about FOID cards may not necessarily be categorized as "information of people" who obtained FOID cards, that data is maintained in a database that is exempt from disclosure pursuant to 7.5(v) of FOIA.^[11]

In this passage, ISP referenced a recent determination letter (Ill. Att'y Gen. PAC Req. Rev. Ltr. 76411, issued September 1, 2023) in which this office concluded that data about returned FOID cards and firearm dispossession records were exempt from disclosure under section 7.5(v) of FOIA because they were contained in the FLARES database.

ISP also explained that the communications from Ms. Arnold to Ms. Assad pertained to Ms. Assad's status as a member of the media, rather than the confines of FOIA:

As a courtesy to the media, specifically requests seeking records not available for release pursuant to FOIA, ISP's FOIA Unit commonly supplies ISP's Public Information Office contact information. Although the intent is not clear in the denial, this is to give media requesters access to records that may be available for

¹⁰Letter from Rhiann Martynowski, FOIA Appeals Manager, Illinois State Police, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 7, 2023), at [1].

¹¹Letter from Rhiann Martynowski, FOIA Appeals Manager, Illinois State Police, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 7, 2023), at [1].

release by the Agency but would not be released pursuant to a FOIA request. The FOID data requested by Ms. Assad will not be released through FOIA. The Agency may decide to work with its Vendor to create a program to run specific reports to produce the data that Ms. Assad requested. If the Agency completes that task, it may decide to post that data on ISP's website alongside other FOID-related data. Nevertheless, the FOID data will not be produced via FOIA.^[12]

Ms. Assad replied by contending that "[i]n its answer, the ISP heavily relies on semantics and contradictions – none of which justify or even address the improper Freedom of Information Act denial."^[13] Noting that ISP denied the request because it asserted that information in the FLARES database is exempt from disclosure, Ms. Assad reiterated that she was seeking anonymized information. Ms. Assad further argued:

ISP also cites an exemption for databases under the Firearm Concealed Carry Act. But that exemption applies only to "names and information of people." I am not seeking names and information of specific people. Again, I am seeking only anonymized data – like the data ISP has released in the past on its own volition.

ISP's letter does not explain why the specific information I'm seeking would fall under the exemptions they cited.

And, in fact, ISP acknowledges (despite the specter of privacy interests it raises here) that it has affirmatively chosen to make similar information publicly available to the media. Considering the voluntary disclosure of this information by ISP previously, it is difficult to seriously credit ISP's privacy arguments here.^[14]

ISP has adequately explained that the requested data is exempt from disclosure because it is contained within the FLARES database, which was created pursuant to the Firearm Concealed Carry Act. Although Ms. Assad argues that the section 7.5(v) exemption is limited to

¹²Letter from Rhiann Martynowski, FOIA Appeals Manager, Illinois State Police, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 7, 2023), at [1-2].

¹³E-mail from Samah Assad, Investigative Producer, CBS Chicago, to PAC (January 10, 2024).

¹⁴E-mail from Samah Assad, Investigative Producer, CBS Chicago, to PAC (January 10, 2024).

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"names and information of people" and does not encompass anonymized data, the clause that exempts "[n]ames and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Act" is separate and distinct from the clause of the exemption that applies to "databases under the Firearm Concealed Carry Act[.]"¹⁵ Therefore, section 7.5(v) exempts from disclosure, among other records, both (1) names and information of FOID card applicants and recipients, and (2) the contents of the FLARES database, in which the requested data is maintained. Additionally, although Ms. Assad contends that ISP's previous disclosure of similar information to the media casts doubt on ISP's privacy arguments, ISP's denial of her request is based on the language of section 7.5(v) of FOIA that encompasses "databases under the Firearm Concealed Carry Act," rather than privacy reasons. ISP's past disclosures of similar data—whether pursuant to FOIA or not—do not bear on its denial here. *Warren v. Department of Corrections*, 2022 IL App (4th) 210667-U, ¶ 52 ("The mere fact [a public body] voluntarily disclosed records of a similar nature in [one] case has no bearing on whether the exemption is applicable" in another case.). Because FOIA sets forth a statutory prohibition against release of the data Ms. Assad seeks pursuant to FOIA, the Public Access Bureau concludes that ISP's denial did not violate FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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¹⁵ 5 ILCS 140/7.5(v) (West 2022), as amended by Public Acts 103-008, effective June 7, 2023; 103-034, effective June 9, 2023; 103-508, effective July 1, 2023.