OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 31, 2024

*Via electronic mail*
[redacted]

*Via electronic mail*
Ms. Betsy Gates-Alford
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RE: FOIA Request for Review – 2024 PAC 82640

Dear [redacted] and Ms. Gates-Alford:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)). For the reasons stated below, the Public Access Bureau concludes that the Lake County Forest Preserve District (District) improperly denied [redacted] July 18, 2024, FOIA request.

On that date, [redacted] submitted a FOIA request to the District seeking I-Pass transponder information for Ron Davis and his associated license plate for January 1, 2024, through July 18, 2024. On July 25, 2024, the District responded that the request as written posed an undue burden under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2022)) and offered [redacted] the opportunity to narrow it. On that same date, [redacted] conferred with the District and attempted to narrow his request. On August 1, 2024, the District responded that the narrowed request still posed an undue burden under section 3(g) and offered [redacted] the opportunity to further narrow it. On August 8, 2024, the District denied [redacted] request as unduly burdensome under section 3(g), and also stated that the records were exempt under sections

7(1)(c), 7(1)(d)(i), 7(1)(d)(vi), and 7.5(w) of FOIA.[1] On August 17, 2024, [redacted] submitted the above-referenced Request for Review contesting the District's response.

On August 28, 2024, this office forwarded a copy of the Request for Review to the District and asked it to provide unredacted copies of the contested records for this office's confidential review, together with a detailed explanation of the factual and legal bases for its denial. On September 9, 2024, this office received the requested materials. On September 16, 2024, this office forwarded a copy of the District's written response to [redacted] He replied on September 23, 2024.

## 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 contained in section 7 of FOIA (5 ILCS 140/7 (West 2023 Supp.)) are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Furthermore, section 2.5 of FOIA (5 ILCS 140/2.5 (West 2022)) provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public," and article VIII, section 1(c) of the Illinois Constitution of 1970 provides that "records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law."

### Sections 7(1)(c) and 7.5(w) 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, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as:

> [T]he disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's

[1]5 ILCS 140/7(1)(c), (1)(d)(i), (1)(d)(vi) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024; 5 ILCS 140/7.5(w) (West 2023 Supp.), as amended by Public Acts 103-592, effective June 7, 2024; 103-605, effective July 1, 2024; 103-636, effective July 1, 2024; 103-786, effective August 7, 2024; 103-859, effective August 9, 2024; 103-991, effective August 9, 2024; 103-1049, effective August 9, 2024.

> right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of **information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.** (Emphasis added.)

The General Assembly's use of the language "**clearly unwarranted invasion** of personal privacy" evinces the "strict standard" that a public body must meet to claim the section 7(1)(c) exemption. (Emphasis in original.) *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (1994).

Section 7.5(w) of FOIA exempts from disclosure "[p]ersonally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act." Section 19.1(g) of the Toll Highway Act (605 ILCS 10/19.1(g) (West 2022)) provides, in pertinent part:

> Personally identifiable information generated through the Authority's toll collection process that reveals the date, time, location or direction of travel by an electronic toll collection system user shall be exempt from release under the Illinois Freedom of Information Act. **The exemption in this subsection shall not apply to information that concerns (i) the public duties of public employees and officials[.]** (Emphasis added.)

In its response to this office, the District argued that, although both section 7(1)(c) and section 7.5(w) do not apply to records bearing on or concerning the public duties of public employees, both exemptions are applicable to portions of the records of Mr. Davis's toll use. The District argued:

> Although the vehicle and transponder in question are made available to Chief Davis in connection with his employment, not all use of the vehicle concerns his public duties. A full review of the Responsive Records would be required to determine the extent to which transponder information is subject to this exemption but, at a minimum, travel data related to permissible off-duty vehicle use, such as commuting to and from work, is exempt from public disclosure.[2]

[2]Letter from Betsy Gates-Alford to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (September 9, 2024), at 4.

Examining the "public duties" provision in section 7(1)(c), this office previously determined that records revealing the identity of a 9-1-1 caller were exempt from disclosure, even though the caller was an off-duty police officer because the officer was acting as a member of the general public at the time. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 64579, issued January 8, 2021, at 3 ("It is clear from the recording that the caller did not attempt to execute a traffic stop or otherwise respond to the incident in an official capacity. Instead, the caller provided information to enable on-duty police officers to respond, as a member of the public would have.").

On the other hand, by its plain language, the limitation in section 7(1)(c) applies not only to an employee's on-duty conduct, but to any "information that **bears** on the public duties of public employees." (Emphasis added.) Section 19.1(g) of the Toll Highway Act similarly does not apply to "information that **concerns** the public duties of public employees." (Emphasis added.) Thus, this office has previously determined that some off-duty conduct may nonetheless bear on public duties where there is a nexus to the individual's employment. *See, e.g.*, Att'y Gen. PAC Req. Rev. Ltr. 56428, issued February 6, 2023, at 3 (concluding records concerning the off-duty conduct of firefighter were not exempt from disclosure where conduct nonetheless led to employment-related discipline); Att'y Gen. PAC Req. Rev. Ltr. 78194, issued December 5, 2023, at 6-7 (concluding records concerning police officer's off-duty involvement in K-9 officer's death were not exempt where officer was responsible for K-9 officer even while off-duty).

On November 18, 2024, this office asked the District to provide additional information regarding employees' use of District-issued toll passes, including whether portions of travel are repaid by employees. On December 10, 2024, the District provided this office with a copy of its policies regarding vehicle use and confirmed that, consistent with its policies, toll charges are paid by the District. The District further stated that the District allows use of the transponder for commuting to and from work, but not for personal travel.

Mr. Davis has been provided with a benefit in connection with his employment, the use of which obligates the District to expend public funds. The contents of the withheld records document the use of those public funds and thus are subject to the specific provisions of section 2.5 of FOIA and article VIII, section 1(c) of the State constitution. Further, the records do not contain highly personal details about Mr. Davis, such as his home address. Instead, the records show general information about toll sites he has passed while using District equipment. Pursuant to District policy, the records should only reflect the date, time, location, and direction of travel used for commuting to and from work. The District has not established that any of the entries in the records concern personal travel unrelated to Mr. Davis' employment. Even if the transponder was used for personal travel in violation of District policy, it is unclear how disclosure of records reflecting a public employee's improper use of a transponder would constitute an unwarranted invasion of personal privacy. Like the section 7(1)(c) exemption, the

exemption for "personally identifiable information" under the Toll Highway Act expressly excludes information that concerns the public duties of public employees. The use of the I-Pass transponder issued to Mr. Davis as a publicly-funded benefit of his employment to travel to and from work both bear on and concern his public duties. Accordingly, this office concludes that the District has not demonstrated by clear and convincing evidence that the information in the contested records is exempt from disclosure pursuant to section 7(1)(c) or 7.5(w) of FOIA.

**Sections 7(1)(d)(i) and 7(1)(d)(vi) of FOIA**

Section 7(1)(d)(i) and (1)(d)(vi) of FOIA exempt from disclosure:

> (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:
>
> > (i) 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;
> >
> > * * *
> >
> > (vi) endanger the life or physical safety of law enforcement personnel or any other person[.]

Conclusory statements that the disclosure of requested records would obstruct a law enforcement proceeding are insufficient to demonstrate that law enforcement records are exempt from disclosure under FOIA. *See Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (2009). In *Day*, the court explained: "Simply saying there is an 'ongoing criminal investigation because the case has not been cleared,' with little additional explanation, is not 'objective indicia' sufficient to show the ongoing investigation exemption applies." *Day*, 388 Ill. App. 3d at 76; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 17-011, issued August 14, 2017, at 7-8 (public body improperly withheld record under section 7(1)(d)(vii) because it failed to demonstrate that disclosure would interfere with law enforcement). Rather, a public body must demonstrate *how* disclosure of the records would interfere with or obstruct an investigation. *See Baudin v. City of Crystal Lake*, 192 Ill. App. 3d 530, 536 (1989) ("The classification of information as 'law enforcement' or 'investigatory' does not necessarily foreclose access unless it can be shown, in a particular case, that disclosure would interfere with law enforcement and would, therefore, not be in the public interest.").

To demonstrate that records are exempt under the provision of Federal FOIA that corresponds with section 7(1)(d)(vi),[3] "[a]n agency must identify and explain the reasonable threat of harm imposed on the individuals identified in the records the agency is seeking to exempt." *King v. United States Department of Justice*, 245 F. Supp. 3d 153, 162 (D.D.C. 2017); *see also Center for National Security Studies v. United States Department of Justice*, 331 F.3d 918, 948 (D.C. Cir. 2003) (records not exempt because agency did not identify reasons that disclosure of information would pose a threat).[4] This office has previously determined that section 7(1)(d)(vi) may be applied to highly specific information, the disclosure of which would provide the public with information that could be exploited to cause identifiable harm to certain individuals. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39298, 39299, issued December 6, 2017, at 4-5 (noting that this office has consistently determined that information that could be used to identify undercover officers is exempt from disclosure). By contrast, this office has found that public bodies failed to meet their burden under section 7(1)(d)(vi) when their assertions were conclusory and they did not explain, nor was it apparent, how disclosure would endanger any individual. *See e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 38173, issued February 13, 2018, at 3 (determining that a city had failed to demonstrate how disclosure of a use of force report would endanger any individual's safety).

In its response to this office, the District stated that the data would reveal patterns regarding Mr. Davis's travel and argued that this is "information related to criminal investigations and other law enforcement proceedings."[5] The District also argued in general terms that this "could be used to maliciously target an individual and, particularly given the nature of Chief Davis's duties, this is a meaningful concern that outweighs any minimal public interest in tracking his travel."[6] However, the section 7(1)(d)(i) and 7(1)(d)(vi) exemptions do not weigh the public interest in disclosure against law enforcement's interest in withholding the records. Rather, the exemptions place a burden on the public body to prove by clear and convincing *how* disclosure of the records would interfere with or obstruct an investigation under section 7(1)(d)(i) or "identify and explain the reasonable threat of harm imposed on the individuals identified in the records the agency is seeking to exempt" under section 7(1)(d)(vi). The District's response is conclusory and does not explain how release of information reflecting

[3]Exemption 7(F) of Federal FOIA (5 U.S.C. § 552(b)(7)(F) (2012)) exempts from disclosure records that "could reasonably be expected to endanger the life or physical safety of any individual."

[4]Because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. *Margolis v. Director, Ill. Department of Revenue*, 180 Ill. App. 3d 1084, 1087 (1989).

[5]Letter from Betsy Gates-Alford to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (September 9, 2024), at 5.

[6]Letter from Betsy Gates-Alford to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (September 9, 2024), at 4.

that Mr. Davis previously passed through certain toll sites would interfere with any pending or contemplated law enforcement proceeding, nor does it establish a reasonable threat of harm against any individual. Accordingly, the District has not met its burden of demonstrating that any portion of the records is exempt under section 7(1)(d)(i) or 7(1)(d)(vi) of FOIA.

**Section 3(g) of FOIA**

Section 3(g) of FOIA provides, in pertinent part:

> Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

"A request that is overly broad and requires the public body to locate, review, redact and arrange for inspection a vast quantity of material that is largely unnecessary to the [requester's] purpose constitutes an undue burden." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 17 (2010). "[A] public body asserting a section 3(g) exemption must make a clear and convincing showing that the burden of compliance outweighs public interest in the disclosure of the requested records." *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, ¶ 38. Thus, section 3(g) necessarily involves a case-by-case analysis in which the public body must demonstrate the extent of the burden of compliance on its operations and show that the burden outweighs the public interest in disclosure. *Sargent Shriver*, 2018 IL App (1st) 171846, ¶ 38 ("What constitutes a clear and convincing showing of undue burden will likely vary from case to case, depending on the broadness of the request, the level of detail provided in the public body's response, and the nature of the parties' exchange.").

The Public Access Bureau has previously determined that a request seeking all records in a category over an extended period, which would require a public body to review a large quantity of responsive records, is unduly burdensome under section 3(g) of FOIA in the

absence of an identified public interest in disclosure of all the records that outweighs the burden of compliance with the request. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 54377, issued May 18, 2021, at 4 (request for all e-mails in a principal's account, totaling more than 500 e-mails, was unduly burdensome because although a matter of public interest occurred during the time period, the request was not limited to that subject matter, and compliance would impose a significant burden on the school district's operations); Ill. Att'y Gen. PAC Req. Rev. Ltr. 37598, issued October 27, 2015, at 2-3 (request for two-months' worth of e-mail, requiring a school district to de-duplicate, review, and redact over 2,000 e-mails, was unduly burdensome).

However, a request for a substantial volume of records is not unduly burdensome when there is a compelling public interest in disclosure that outweighs the public body's burden. *National Ass'n of Criminal Defense Lawyers*, 399 Ill. App. 3d at 17. *See, for example,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 80244, issued July 15, 2024, at 6 (village improperly denied as unduly burdensome a request for a set of police policies and procedures, totaling 420 pages, because there was a compelling public interest in the information); Ill. Att'y Gen. PAC Req. Rev. Ltr. 74214, issued March 8, 2023, at 6 (police department improperly denied as unduly burdensome a request for e-mails, totaling more than 500 pages, pertaining to traffic stops because there was a compelling public interest in the topic, and the request was reasonably tailored to that topic).

The District asserts that this request is unduly burdensome because it would require Mr. Davis to compare approximately 600 lines in thirteen pages of toll data against his personal schedule to determine if the record of travel was potentially subject to a FOIA exemption. As discussed above, that comparison is not necessary, as the data in question is not exempt from disclosure under FOIA. Even if it were, the District has not established how comparing the toll data to Mr. Davis's work schedule would unduly burden its operations. The District estimates that this would take two full work days by Mr. Davis but does not provide any basis for that estimate, and it's not clear to this office why review of thirteen pages would require days of work.[7] On the other hand, there is a legitimate public interest in information that sheds light on Mr. Davis's publicly-funded work-related travel. Under these circumstances, this office concludes that the District did not demonstrate that the burden of compliance with [redacted] request outweighs the public interest in disclosure of the requested records related to the use of public funds.

In accordance with the conclusions expressed in this letter, this office requests that the District provide [redacted] with unredacted copies of the requested records. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a

[7]*See, e.g., Greer v. Board of Education*, 2021 IL App (1st) 200429, ¶ 12 (rejecting as "unrealistic" the public body's estimate that every three pages of the estimated 28,000 pages of records would require five minutes to review for privileged material, as "[a] glance at the head of each document should quickly determine whether the exemption applied.").

binding opinion. This file is closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,

[redacted]

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Supervising Attorney
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