

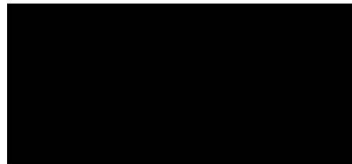


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

December 2, 2025

*Via electronic mail*



*Via electronic mail*

Deputy Chief McGrath  
Homewood Police Department  
17950 Dixie Highway  
Homewood, Illinois 60430  
dmcgrath@homewoodil.gov

RE: FOIA Request for Review – 2020 PAC 64491

Dear [REDACTED] and Mr. McGrath:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2024)).

On August 18, 2020, [REDACTED] submitted a FOIA request to the Homewood Police Department (Police Department) seeking copies of:

1. Any audio and/or video recording of viewing of [the] photo array administered by independent administrator, Detective Neitzel, on [April 17, 2018], at approximately 1533 hours[.]
2. The recording from the E-Lineup computer, the photo array, including [a named individual] and the five fillers[.] and

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3. The demographics and line-up report that was placed into evidence, as well as any other corresponding reports.<sup>[1]</sup>

On August 25, 2020, the Police Department provided ██████████ with a copy of police report H18-04521, but redacted certain information pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.<sup>2</sup> However, the Police Department denied ██████████ request for the remaining video and audio records pursuant to section 7(1)(d)(v) of FOIA.<sup>3</sup> On August 26, 2020, this office received ██████████ Request for Review contesting the Police Department's denial of the requested audio and/or video recordings.

On September 9, 2020, this office sent a copy of this Request for Review to the Police Department and asked it to provide this office with unredacted copies of any responsive records for this office's confidential review, together with a detailed description of the applicability of section 7(1)(d)(v). On September 29, 2020, this office received the Police Department's written response and the requested materials. In its written response, the Police Department claimed that responsive records involved a law enforcement lineup, which are prohibited from being disclosed pursuant to section 107A-2(k) of the Code of Criminal Procedure of 1963 (Criminal Code).<sup>4</sup> On October 1, 2020, this office forwarded a copy of the Police Department's response to ██████████ he replied on October 2, 2020.

### 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 2024); *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 2024).

#### Section 7(1)(a) of FOIA and the Code of Criminal Procedure

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal

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<sup>1</sup>Public Records Request submitted by ██████████, to Village of Homewood (August 18, 2020).

<sup>2</sup>5 ILCS 140/7(1)(b), (1)(c) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019.

<sup>3</sup>5 ILCS 140/7(1)(d)(v) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019.

<sup>4</sup>25 ILCS 5/107A-2(k) (West 2020).

or State law."<sup>5</sup> In connection with section 7(1)(a), the Police Department quoted the section 107A-2(k) of the Criminal Code, which provides:

**Any electronic recording made during a lineup** that is compiled by any law enforcement agency as required by this Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the recording shall not be transmitted to any person except as necessary to comply with this Section. (Emphasis added).

Section 107A-2(a) of the Criminal Code requires law enforcement agencies to use one of four specified methods when conducting a line-up.<sup>6</sup> In pertinent part, these methods include the use of "independent administrator" or an "automated computer program or other device that can automatically display a photo lineup to an eyewitness in a manner that prevents the **lineup administrator** from seeing which photograph or photographs the eyewitness is viewing until after the lineup is completed." (Emphasis added)

Section 107A-0.1 of the Criminal Code<sup>7</sup> defines an independent administrator as "a line up administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspected perpetrator." Further, section 107A-0.1 simply defines a lineup administrator as "the person who conducts a lineup."

The Police Department withheld the photo arrays and the recordings of ██████████ reviewing electronic line-up software on a Police Department computer. ██████████ disputed the Police Department's assertion that section 107A-2(k) of the Criminal Code prohibited disclosure of those records. ██████████ claimed that Detective Neitzel cannot be classified as an independent administrator because "he was an actively investigating detective that interviewed the offender[.]"<sup>8</sup>

The plain language of section 107A-2(k) of the Criminal Code prohibits disclosure of any electronic recording made during a lineup that is compiled by any law

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<sup>5</sup>5 ILCS 140/7(1)(a) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019.

<sup>6</sup>725 ILCS 5/107A-2(a) (West 2020).

<sup>7</sup>725 ILCS 5/107A-0.1 (West 2020).

<sup>8</sup>E-mail from ██████████ to Christina Lucente-McCullough, Assistant Attorney General, Public Access Bureau (October 2, 2020).

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enforcement agency for the purpose of complying with the requirements of section 107A-2. An independent administrator is not required to be present when an individual uses an automated computer program, and the prohibition against disclosure of any recordings made during a lineup applies regardless of whether an independent administrator oversees the lineup. You also asserted that you are entitled to the recording because it will demonstrate that the Police Department did not comply with the requirements of section 107A-2 of the Criminal Code. However, the consequences for alleged noncompliance do not include waiving the ability to withhold a recording within the scope of section 107A-2(k). *See* 725 ILCS 5/107A-2(j) (West 2020). Nor do you fall under the exception that permits the Police Department to disclose the recording because it is "necessary to comply with this Section." 725 ILCS 5/107A-2(k) (West 2020). Therefore, the Police Department demonstrated by clear and convincing evidence that section 107A-2(k) of the Criminal Code specifically prohibits it from disclosing the requested recordings.

On the other hand, this office determines that the requested photo array and lineup report do not fall within the scope of section 107A-2(k) of the Criminal Code. The plain language of that provision prohibits disclosure of any electronic recordings made during a lineup. Despite the fact that the photo array was used during the lineup in question, it is not an electronic recording of the lineup and neither is the corresponding report. The narrowly tailored disclosure prohibition in section 107A-2(k) is further supported by corresponding language in section 107A-2(i),<sup>9</sup> which distinguishes three types of records prepared in connection with a lineup:

The photographs, **recordings**, and the official report of the lineup required by this Section shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. All photographs of suspected perpetrators shown to an eyewitness during a lineup shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. (Emphasis added).

Because the plain language of section 107A-2(k) of the Criminal Code only applies to electronic recordings, the Police Department has not sustained its burden of demonstrating by clear and convincing evidence that photo arrays and lineup report are exempt from disclosure under section 7(1)(a) of FOIA.

### **Section 7(1)(d)(v) of FOIA**

Section 7(1)(d)(v) of FOIA exempts from disclosure:

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<sup>9</sup>725 ILCS 5/107A-2(i) (West 2020).

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:

\* \* \*

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request[.]

In its response, the Police Department asserted that it properly withheld the requested records, including the photo arrays and line-up report, pursuant to section 7(1)(d)(v) to protect the disclosure of "special investigative techniques."<sup>10</sup> Bare assertions without a detailed rationale do not satisfy a public body's burden of explaining how exemptions are applicable. *See Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 151 (2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)). "The public body satisfies its burden when it provides a detailed justification for the claimed exemption which addresses the specific documents requested and allows for adequate adversarial testing." *Turner v. Joliet Police Department*, 2019 IL App (3d) 170819, ¶ 10.

The Police Department's sparse explanation for the section 7(1)(d)(v) exemption is generalized and conclusory. The Police Department did not set forth facts suggesting that any unique or specialized techniques are depicted in the withheld records. The use of photographs and lineups during a law enforcement investigation is a common and generally-known technique. Further, the Police Department did not explain how or why disclosure of the photographs and the lineup report would cause it to endure demonstrable harm. Accordingly, the Police Department failed to prove by clear and convincing evidence that the withheld photo array and lineup report are exempt from disclosure under section 7(1)(d)(v).

Accordingly, this office requests that the Police Department provide [REDACTED] with copies of the photo array and line-up report, subject to the redaction of any discrete portions

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<sup>10</sup>Letter from Deputy Chief McGrath, Homewood Police Department, to Christina Lucente-McCullough, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (September 17, 2020).

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that fall within the scope of exemptions listed in section 7 of FOIA.<sup>11</sup> If the Police Department does elect to redact any information, it shall provide [REDACTED] with a notice of partial denial that meets the requirements of section 9 of FOIA.<sup>12</sup>

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,

[REDACTED]  
CHRISTINA LUCENTE-MCCULLOUGH  
Assistant Attorney General  
Public Access Bureau

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<sup>11</sup>5 ILCS 140/7 (West 2024).

<sup>12</sup>5 ILCS 140/9 (West 2024).