

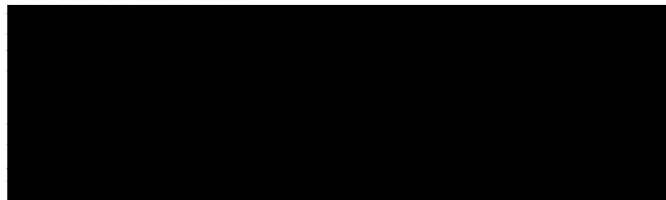


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 8, 2025

Via electronic mail



Via electronic mail

Ms. Sarah Wheeler
FOIA Officer
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
isp.foia.officer@illinois.gov

RE: FOIA Request for Review – 2025 PAC 84839; ISP No. 06271461

Dear [REDACTED] and Ms. Wheeler:

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)). For the reasons that follow, the Public Access Bureau concludes that the Illinois State Police (ISP) improperly withheld documents¹ responsive to [REDACTED] November 22, 2024, FOIA request.

On November 7, 2024, [REDACTED] submitted a FOIA request to ISP seeking copies of police reports, witness statements, communications, and reports on telephone conversations between a named person and staff of the Alton State Mental Hospital related to the death of a named person at the Hospital in 1969. On November 22, 2024, ISP responded by

¹Because this determination letter discusses the meaning of the term "records" in a statute outside of FOIA, this office refers to the responsive materials ISP provided to this office as "documents" throughout this letter.

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asserting that the request was unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2024)) because it encompassed 502 pages of microfilm that ISP would have to go through. ISP extended ██████████ the opportunity to narrow his request. That same day, ██████████ responded to ISP: "I would like to know if I could request the entire file on ██████████ at 100 pages at a time."² On December 2, 2024, ISP acknowledged ██████████ November 22, 2024, request and stated that a response would be forthcoming. On January 16, 2025, ISP again asserted that the request was unduly burdensome because it would have to go through 502 pages of microfilm, which would result in delays for other FOIA requests. On January 27, 2025, ██████████ completed the submission of the above-referenced Request for Review contesting ISP's response to the November 22, 2024, request.

On February 10, 2025, this office sent a copy of the Request for Review to ISP and asked it to provide a detailed explanation of the legal and factual bases for asserting that ██████████ November 22, 2024, request was unduly burdensome. Specifically, this office asked ISP to address whether it met the requirements of section 3(g), including issuing a timely response and offering Mr. Miller an opportunity to confer about narrowing his request to manageable proportions. Additionally, this office asked ISP to explain the estimated amount of time that would be necessary to review and redact the records and why the burden of complying with Mr. Miller's request would outweigh the public interest in disclosure of the information. ISP did not respond. Accordingly, on February 24, 2025, this office sent another letter to ISP seeking a response to the February 10, 2025, inquiry letter.

On March 10, 2025, ISP issued a revised written response to ██████████ and copied this office. Instead of section 3(g), ISP relied on section 7(1)(a) of FOIA³ in connection with section 3(a) of the Mental Health and Developmental Disabilities Confidentiality Act (MHDDCA) (740 ILCS 110/3(a) (West 2024)) to deny the request. ISP separately provided this office with copies of the responsive documents for this office's confidential review, as well as a copy of correspondence between another Assistant Attorney General (AAG) from the Public Access Bureau and ISP regarding ISP's assertion of section 3(a) of the MHDDCA to withhold a separate set of documents for a different requester. On March 11, 2025, the AAG assigned to the matter notified ██████████ of his opportunity to reply; he confirmed to the AAG that he would not submit a substantive reply but has since followed up regarding the status of this determination letter.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from

²E-mail from ██████████ to [Illinois State Police FOIA Officer] (November 22, 2024).

³5 ILCS 140/7(1)(a) (West 2024).

disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2024).

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 or State law." Section 3(a) of the MHDDCA provides:

All **records** and **communications** shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing **mental health or developmental disabilities services** shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship. (Emphasis added.)

Section 2 of the MHDDCA (740 ILCS 110/2 (West 2024)) defines the above-highlighted terms. The "records" made confidential under the MHDDCA include "**any** record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided." (Emphasis added.) The "communications" made confidential under the MHDDCA are:

any communication made by a recipient or other person to a therapist or to or in the presence of other persons **during or in connection with providing mental health or developmental disability services to a recipient**. Communication includes information which indicates that a person is a recipient. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514. (Emphasis added.)

Lastly, "mental health or developmental disabilities services" is defined as including, but not limited to, "examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation, or rehabilitation."

In construing a statute, the primary goal is to ascertain and give effect to the intent of the General Assembly. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 16. "We view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Gutman*, 2011 IL 110338, ¶ 12.

In its revised response to ██████████ ISP recited the language of section 7(1)(a) of FOIA and section 3(a) of the MHDDCA. ISP asserted that its denial was proper because "[i]nformation which indicates that a person is a recipient of mental health or developmental disability services is confidential and prohibited from disclosure."⁴ In the supplemental argument ISP submitted for this office's confidential review, ISP made additional assertions about the restrictions of the MHDDCA as they relate to named residents of mental health facilities.

ISP's response misconstrues the definition of "communications" in section 2 of the MHDDCA to apply to all "information which indicates that a person is a recipient[]" of mental health or developmental disability services. When read in concert with the preceding phrase and the MHDDCA as a whole, "communications" protected by the Act are limited to those that occur "during or in connection with providing mental health or developmental disability services to a recipient." As noted above, the plain language of MHDDCA's confidentiality provision prohibits disclosure of "records and communications made or created in the course of providing mental health or developmental disabilities services[.]" 740 ILCS 110/3(a) (West 2024). The disability services documents within the scope of these provisions are fundamentally different from records generated by a law enforcement agency conducting an investigation. The relevant language of the MHDDCA cannot be reasonably construed to render ISP investigatory records confidential in their entireties merely because they pertain to a named resident of a mental health facility.

Based on this office's careful review of the responsive documents,⁵ a limited portion are exempt because they are "communications" as defined by section 2 of MHDDCA. Specifically, these are documents memorializing what a recipient or other person said to a medical professional during or in connection with the provision of mental health services, such as information on pages 43 and 44 of the Part 6 PDF, as well as the note transmitted to a medical professional on pages 71 through 73 of the Part 6 PDF. The exempt MHDDCA "records" are documents kept by a therapist or an agency pertaining to the provision of mental health services, such as pages 35 through 63 of the Part 6 PDF. On the other hand, there are non-exempt records, such as State agency memorandums and internal correspondence of general applicability (i.e. pages two and three of the Part 1 PDF), coroner and medical examiner reports, and ISP and other agencies' investigative reports. Such documents are not the kinds of recipient-level service documents restricted under section 3(a) of the MHDDCA.

Accordingly, this office requests that ISP provide ██████████ with a copy of the

⁴E-mail from Sarah Wheeler, Freedom of Information Officer, Illinois State Police, to ██████████ and [Katie] Goldsmith (March 10, 2025).

⁵The documents were transmitted to this office in seven separate PDFs numbered parts 1 through 7.

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responsive documents, subject only to permissible redactions under section 7 of FOIA.⁶ If ISP redacts any portion of the documents, it should provide an explanation for those redactions to [REDACTED] in accordance with section 9 of FOIA (5 ILCS 140/9 (West 2024)).

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 matter. If you have any questions, please contact me at katherine.goldsmith@ilag.gov.

Very truly yours,

[REDACTED]
KATIE GOLDSMITH
Assistant Attorney General
Public Access Bureau

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⁶5 ILCS 140/7(1) (West 2024).