



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 25, 2023

Via electronic mail

Mr. Felix Sarver
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Via electronic mail

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Legal Department
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RE: FOIA Request for Review – 2019 PAC 58607; City FOIA No.: P008202

Dear Mr. Sarver and Ms. Spano:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)).

On June 14, 2019, Mr. Felix Sarver, on behalf of *The Herald-News*, submitted a Request for Review to the Public Access Bureau disputing the response by the Joliet Police Department (Department) to his June 4, 2019, FOIA request. That request sought copies of police reports and complaints related to a named person for the timeframe of January 1, 2017, through June 4, 2019. The Department provided a case report and supplemental report responsive to his request, but redacted portions of the narrative sections of those records pursuant to sections 7(1)(b), 7(1)(b-5), 7(1)(c), 7(1)(d)(iii), and 7(1)(d)(iv) of FOIA.¹

¹5 ILCS 140/7(1)(b), (1)(b-5), (1)(c), (1)(d)(iii), (1)(d)(iv) (West 2018).

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On July 3, 2019, this office requested that the Department provide un-redacted copies of the records at issue for this office's confidential review, together with a detailed legal and factual explanation of its basis for asserting the above-referenced exemptions. On July 22, 2019, the Department provided the requested materials. This office forwarded the Department's written answer to Mr. Sarver on July 23, 2019; he did not reply.

Under FOIA, "[a]ll 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 2018); *see also Southern Illinoisan v. Illinois Dep't 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 2018). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

The Department's answer to this office stated that it redacted from the narrative portions of the responsive reports the name and other identifying information, such as personal telephone numbers and home addresses, of a victim, witness, and third-party individuals.² The Department also stated it redacted "descriptions of specific injuries"³ as well as information regarding the "physical or mental status of one or more individual subjects."⁴

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2018)) defines "private information" as "unique identifiers," including "home or personal telephone numbers" and "home address." The home addresses and personal telephone numbers that the Department redacted constitute "private information" under the plain language of section 2(c-5) of FOIA. However, the Department redacted two telephone numbers on page 6 which appear to belong to Help at Home, the company that provided staffing for the group home. The Public Access Bureau has consistently determined that phone numbers of businesses are not exempt from disclosure under section 7(1)(b) because the definition of "private information" is limited to unique identifiers of persons. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 48461, issued December 18, 2017, at 3-4.

²Although the Department's answer indicated it redacted the name a suspect who was not arrested, this does not appear to be the case based on this office's confidential review of the unredacted records.

³Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Laura Harter, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (July 22, 2019).

⁴Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Laura Harter, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (July 22, 2019).

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Accordingly, if the phone numbers are associated with Help at Home, rather than a private individual's personal phone, they are not exempt from disclosure under section 7(1)(b).

Section 7(1)(b-5) of FOIA exempts from disclosure "[f]iles, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects." By its plain language, section 7(1)(b-5) applies only to information specifically intended to inform law enforcement agencies about the physical or mental status of subjects.⁵ Although some portions of the narrative sections of the police reports contain information about an individual's mental or physical health, there is no indication that this information was included within the report in order to alert other law enforcement officers, or members of the public, about potential dangers resulting from those mental or physical conditions that they may encounter when interacting with this individual. Therefore, the Department has not sustained its burden of proof that this information is exempt from disclosure under 7(1)(b-5) of FOIA. Nonetheless, this information is exempt from disclosure under section 7(1)(c), as discussed below.

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."⁶ The Public Access Bureau has previously determined that information identifying an individual as having a physical or mental health issue is highly personal and the disclosure of such information would cause a substantial invasion of the individual's personal privacy. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 53479, issued July 25, 2018, at 4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 53087, issued July 11, 2018, at 4. Here, the subject has a strong right to privacy in the highly personal information regarding that person's health and welfare documented in the reports. At the time the Department received Mr. Sarver's

⁵The legislative history of section 7(1)(b-5) confirms that it pertains to "data for law enforcement regarding mental and physical disabilities that is maintained for the safety of responding officers and the individuals and the public." Remarks of Sen. Millner, May 15, 2009, Senate Debate on House Bill No. 47 (which, as Public Act 96-558, effective January 1, 2010, enacted section 7(1)(b-5) of FOIA), at 59.

⁶Section 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 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.

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request, the underlying incident did not result in any arrests or criminal charges. Accordingly, this office concludes that the Department did not improperly redact those portions of the narratives pursuant to section 7(1)(c).

It is not entirely clear to this office, which "descriptions of specific injuries"⁷ the Department redacted pursuant to section 7(1)(c). However, based on this office's confidential review, the portions of the narrative containing the name of the treating hospital or medical facility do not constitute "personal information" within the context of section 7(1)(c) of FOIA. This information, by itself, represents standard nondescript information that could apply to any person, and therefore, the disclosure would not cause an unwarranted invasion of personal privacy. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 37628, issued April 25, 2016, at 4.

Section 7(1)(d)(iv) of FOIA permits a police department to withhold law enforcement records to the extent that disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]" This provision allows law enforcement agencies to protect the anonymity of persons who provide them with information. *See, for example, Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department). The names of individuals who file complaints with police departments are generally exempt from disclosure pursuant to section 7(1)(d)(iv). *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 56481, issued January 25, 2019. Further, the contents of such statements to the police may be withheld if disclosure "would necessarily result in the disclosure of the identity of the source" of information and, therefore, "redaction * * * cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App 3d 421, 426 (4th Dist. 1994). The Department's response to this office stated it redacted the identity and other identifying information of the complainant, witnesses, and other third parties pursuant to this exemption.

Section 7(1)(d)(iv) of FOIA permitted the Department to redact the names, addresses, contact information, and other identifying information of the alleged victim and the other individuals who provided the Department with information related to the underlying incident. Additionally, based on this office's review of the un-redacted portion of the victim's statement, we have determined that the identity of this individual could be discerned from the content even after redaction of that individual's name. Given the limited number of sources of

⁷Letter from Sabrina Spano, Assistant Corporation Counsel, City of Joliet, to Laura Harter, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (July 22, 2019).

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information and press coverage⁸ "it is readily apparent from an examination of the material in the file that the information provided by each individual interviewee would necessarily result in the disclosure of the identity of that source." *Copley Press, Inc.*, 266 Ill. App. 3d at 426.

In accordance with the conclusions expressed in this determination, this office requests that the Department provide Mr. Sarver with copies of the non-exempt portions of the narrative sections in the responsive case report and supplemental report, including the name of the treating hospital and any phone numbers associated with Help at Home.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,



SHANNON BARNABY
Senior Assistant Attorney General
Public Access Bureau

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⁸See, for example, Plainfield Masked Stabbing Suspect Faces New Aggravated Battery Charges, <https://www.shawlocal.com/2019/07/09/plainfield-masked-stabbing-suspect-faces-new-aggravated-battery-charge/a3c54kt/>