



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 17, 2018

Via electronic mail

Mr. Mitch Dudek

Reporter

Chicago Sun-Times

30 North Racine Avenue, 3rd Floor

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Via electronic mail

Ms. Charise Valente

General Counsel

Chicago Police Department

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RE: Request for Review – 2018 PAC 51910; CPD FOIA No.: P43861

Dear Mr. Dudek and Ms. Valente:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Chicago Police Department (CPD) improperly redacted some portions of the records responsive to Mr. Mitch Dudek's January 16, 2018, FOIA request.

On that date, Mr. Dudek, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to CPD seeking copies of records, including police reports and any surveillance videos, related to a break-in and attempted burglary at a named location that occurred in 2007 or 2008. On February 22, 2018, CPD produced copies of the responsive records but extensively redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; and 100-201, effective August 18, 2017). On February 27, 2018, this office received Mr. Dudek's Request for Review contesting CPD's redactions.

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On March 5, 2018, this office forwarded a copy of the Request for Review to CPD and asked it to provide this office with unredacted copies of the requested records for our confidential review, together with a detailed explanation of the factual and legal bases for the applicability of sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv). On March 7, 2018, CPD provided this office with those materials, maintaining that the redactions were proper. On March 8, 2018, this office forwarded a copy of CPD's response to Mr. Dudek; he replied on March 12, 2018.¹

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 2016); *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 2016).

In its response to Mr. Dudek's FOIA request, CPD provided redacted copies of the original Case Incident Report and Case Supplementary Reports concerning the incident. CPD's response stated:

[V]ictim (s) personal information, witness (s) personal information, witness statements, person (s) interviewed personal information, person (s) interviewed statements, Person (s) reporting offense personal information, Chicago Police employee numbers, and private computer numbers are exempt and were properly redacted pursuant to Section 7(1)(b), 7(1)(c), and 7(1)(d)(iv).^[2]

Section 7(1)(b) of FOIA

Section 7(1)(b) 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 2016)) defines "private information" as:

¹Although Mr. Dudek's reply references that CPD did not provide copies of surveillance videos, by March 16, 2018, e-mail to an Assistant Attorney General in the Public Access Bureau, Mr. Dudek declined further review of that issue.

²Letter from P.O. W. Cousins #8107, Freedom of Information Officer, Chicago Police Department, Office of Legal Affairs, to Mitch Dudek (February 22, 2018).

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[U]nique identifiers, including a person's social security number, driver's license number, *employee identification number*, biometric identifiers, personal financial information, passwords or other access codes, medical records, *home or personal telephone numbers*, and personal email addresses. Private information also includes *home address* and *personal license plates*, except as otherwise provided by law or *when compiled without possibility of attribution to any person*. (Emphasis added.)

This office has previously determined that a CPD user identification number is a unique number that identifies an individual who is authorized to access certain CPD recordkeeping systems, and therefore, constitutes a form of "private information" under section 2(c-5). *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 45656, issued July 18, 2017, at 3.*

This office has reviewed an unredacted copy of the records in question and determined that CPD redacted employee identification numbers, home addresses, and personal phone numbers. Such details constitute "private information" under the plain language of that term's definition in section 2(c-5) of FOIA. Additionally, CPD redacted user identification numbers of specific CPD personnel. Because user identification numbers, as well as employee identification numbers, home addresses, and personal phone numbers, constitute "private information," this office concludes that CPD did not improperly redact those details pursuant to section 7(1)(b).

CPD, however, also redacted business addresses and business telephone numbers. This office has previously determined that the address and telephone number of a business is not exempt under section 7(1)(b) because such information does not constitute "private information" within the scope of that exemption. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 22902, issued June 27, 2016, at 3 (finding the telephone number of a business was improperly redacted pursuant to section 7(1)(b) of FOIA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 23125, issued March 26, 2014, at 2 (determining that business addresses are not exempt from disclosure under section 7(1)(b) of FOIA).* Accordingly, this office concludes that CPD improperly redacted this information under section 7(1)(b) of FOIA.

Additionally, CPD redacted a reference to a personal license plate number. Generally, under the plain language of section 7(1)(b), a personal license plate number is exempt from disclosure. However, in this instance, the redacted portion contains only two numbers of the license plate number in question. The disclosure of two numbers of a personal license plate number does not allow for that license plate number to be attributed to any particular person. Therefore, because the plain language of section 7(1)(b) also states that personal license plate numbers are not exempt from disclosure "when compiled without possibility of attribution to any

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person" this office concludes that CPD improperly redacted the partial personal license plate number pursuant to section 7(1)(b) of FOIA.

Section 7(1)(c) 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 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.

A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). This office has consistently determined that the disclosure of information identifying a victim of a criminal offense would constitute a clearly unwarranted invasion of personal privacy and therefore that such information may be redacted from a record pursuant to section 7(1)(c). *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 26904, issued April 16, 2014, at 2. Likewise, this office has previously determined that the disclosure of the names of third parties mentioned in police reports, such as suspects who were never arrested and other persons referenced incidentally, constitutes a clearly unwarranted invasion of personal privacy. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 31526, issued November 26, 2014, at 6; *see also Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (the right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'" (quoting *American Civil Liberties Union v. United States Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011))). Additionally, this office has previously determined that an individual's race is highly personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 18274, issued March 27, 2012.

This office's review of the responsive records confirmed that CPD redacted the name of a victim of an alleged crime and that victim's identifying information, including the victim's personal contact details and race. CPD also redacted information related to uninvolved

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third parties. Because disclosure of this information would constitute a clearly unwarranted invasion of personal privacy, this office concludes that CPD did not improperly redact this information pursuant to section 7(1)(c).

CPD also redacted the ages of individuals identified in the responsive records. As opposed to dates of birth, this office has determined that ages are not exempt from disclosure under section 7(1)(c) of FOIA. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. 22982, issued July 29, 2013, at 4. Additionally, CPD redacted the names of uninvolved businesses that were incidentally mentioned in the reports in question. Unlike the names of individuals, the disclosure of the names of businesses would not cause an unwarranted invasion of any individual's *personal* privacy. Accordingly, this office concludes that CPD improperly redacted these details under section 7(1)(c) of FOIA.

Section 7(1)(d)(iv) of FOIA

Section 7(1)(d)(iv) of FOIA exempts 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:

* * *

(iv) 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 police departments to protect the anonymity of both confidential informants and other persons who provide them with information. *See, e.g.*, *Chicago Alliance for Neighborhood Safety v. Town 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). A witness statement may be withheld in its entirety only if disclosure of its contents "would necessarily result in the disclosure of the identity of that source" of information and, therefore, "redaction of the [statement] cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).


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This office's review confirmed that certain portions that CPD redacted from the narrative sections of the reports contain discrete information that would unavoidably identify persons who provided information to CPD, such as those individuals' names, titles, addresses, and telephone numbers. Under the plain language of section 7(1)(d)(iv), CPD did not improperly redact this identifying information. Portions of the redacted responsive records, however, also document the manner in which the police handled the matter, descriptions of the general nature of the crime under investigation, and a description of images that the police officers viewed on security surveillance footage. Such information does not fall within the scope of section 7(1)(d)(iv) because there is no indication that the disclosure of that information would reveal the identity of the persons who provided information to CPD.

In accordance with the conclusions expressed in this determination, this office requests that CPD provide Mr. Dudek with copies of the non-exempt portions of the responsive records. With this letter to CPD, this office has attached a copy of the records in which we have highlighted the portions of the records for which this office has concluded that CPD has sustained its burden of demonstrating are exempt from disclosure; the remaining portions should be provided to Mr. Dudek. The highlighted copy of the report is not included with the letter to Mr. Dudek.

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, you may contact me by mail at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thank you.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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