



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

September 5, 2024

*Via electronic mail*

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*Via electronic mail*

Lieutenant Michael O'Neill  
Support Services Commander  
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RE: FOIA Request for Review – 2024 PAC 82157

Dear Mr. Pirtle and Lieutenant O'Neill:

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.)).

On June 25, 2024, Mr. Alan Pirtle submitted a seven-part FOIA request to the Alton Police Department (Department) seeking copies of records related to an incident in which his client was shot:

- All police reports and reconstruction reports,
- Any photographs, depictions or videos,
- Cruiser/dash camera/body cam videos,
- Computer Aided Dispatch (CAD) reports,

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- Any and all 911 recordings,
- Written or otherwise recorded statements made by any witnesses and/or parties or summaries of witness statements made by anyone
- Any press releases issued by the Alton PD or on their behalf related to the above-referenced incident.<sup>[1]</sup>

On July 2, 2024, the Department denied the request in its entirety pursuant to sections 7(1)(d)(iii) and 7(1)(d)(iv) of FOIA.<sup>2</sup> On July 11, 2024, Mr. Pirtle submitted the above-referenced Request for Review contesting the Department's denial of his request. Mr. Pirtle asserted: "Alton PD did not even attempt to redact the requested information but instead issued a full denial in contrary to the FOIA statute."<sup>3</sup>

On July 15, 2024, this office sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the requested records for this office's confidential review, along with a written explanation of the factual and legal bases for withholding the records. On July 18, 2024, this office received a copy of the case report from the Department, as well as the Department's confidential written response and a non-confidential redacted version for this office to forward to Mr. Pirtle.<sup>4</sup> In the Department's non-confidential response, the Department asserted that it also properly withheld the responsive records pursuant to sections 7(1)(d)(i) and 7(1)(d)(vi) of FOIA.<sup>5</sup> Additionally, the Department clarified that there were no body camera videos from the incident. On July 23, 2024, this office forwarded a copy of the Department's non-confidential response to Mr. Pirtle and notified him of his right to reply; he did not reply.

Meanwhile, this office followed up with the Department about obtaining copies of the remaining responsive records for this office's confidential review, but the Department explained that it had technical difficulties in transmitting the records because of their sheer

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<sup>1</sup>Letter from Alan Pirtle, Brown & Crouppen, P.C., to Alton Police Department, Attn: Records (June 25, 2024).

<sup>2</sup>5 ILCS 140/7(1)(d)(iii), (1)(d)(iv) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

<sup>3</sup>FOIA – Request for Review by Public Access Counselor (PAC) form submitted by Alan Pirtle (July 11, 2024).

<sup>4</sup>See 5 ILCS 140/9.5(d) (West 2023 Supp.) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

<sup>5</sup>5 ILCS 140/7(1)(d)(i), (1)(d)(vi) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

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volume. The Department stated that the responsive digital media items comprise 214 gigabytes, 102,717 files, and 489 folders, which include photographs of the scene and evidence recovery, dash camera videos, surveillance videos from residences and business, 911 call recordings, press releases, photos and videos from a suspect's phone, and video interviews of the victim, witnesses, and suspect. The Department asserted that if its denial of Mr. Pirtle's request was determined to be improper, compliance with Mr. Pirtle's complete FOIA request would be unduly burdensome under section 3(g) of FOIA (5 ILCS 140/3(g) (West 2022)).

### **DETERMINATION**

All public records in the possession or custody 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 "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2022). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 408 (1997).

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

In its response to this office, the Department asserted that it properly withheld the responsive records pursuant to section 7(1)(d)(i) of FOIA. Section 7(1)(d)(i) 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:

(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[.]

"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." *Baudin v. City of Crystal Lake*, 192 Ill. App. 3d 530, 536 (1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *See Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (2009). Rather, a public body must demonstrate *how* disclosure of records would interfere with or obstruct an investigation in order to properly withhold records pursuant to

section 7(1)(d)(i) of FOIA. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 17-001, issued March 14, 2017 (police department did not sustain its burden to withhold records under section 7(1)(d)(i) because it failed to provide a factual basis for its denial).

In its non-confidential response, in support of the applicability of section 7(1)(d)(i) of FOIA to the records, the Department asserted: "[T]his investigation is still active \* \* \*. Even after charges were filed against Pearson in January 2023, it is clear through the reports that the investigation has not concluded. There has been consistent activity since the filing of charges, with the last documented activity being March 2024, with no finality."<sup>6</sup> The Department provided more information in its confidential response about that law enforcement activity, then concluded in its non-confidential response that "[t]he disclosure of the information to the public would likely jeopardize that part of the continued investigation."<sup>7</sup>

This office has reviewed the confidential records and explanation the Department provided. Because the Department submitted a portion of its explanation confidentially, this office is prohibited from commenting on its confidential reasoning in this determination letter (*see* 5 ILCS 140/9.5(d) (West 2023 Supp.)), other than to note that it establishes with clear and convincing evidence that disclosure of the case report at this time would interfere with pending law enforcement proceedings. Accordingly, the Department did not improperly withhold the case report pursuant to section 7(1)(d)(i) of FOIA.

Even if the denial of the case report was improper, however, section 3(g) of FOIA provides, in relevant 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

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<sup>6</sup>Letter from Lieutenant Mike O'Neill, Alton Police Department, to Illinois Assistant Attorney General Katie Goldsmith (July 18, 2024), at [1].

<sup>7</sup>Letter from Lieutenant Mike O'Neill, Alton Police Department, to Illinois Assistant Attorney General Katie Goldsmith (July 18, 2024), at [1].

burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

While the plain language of section 3(g) requires a public body that wishes to rely on the exemption to respond to the request by explaining why compliance would be unduly burdensome and offering the requester an opportunity to narrow the request, the Illinois Appellate Court has ruled that a public body's failure to do so in its initial response does not necessarily waive the ability to assert section 3(g). *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780, ¶¶ 42-49. In *Kelly*, the Illinois Appellate Court examined whether a public body that did not sustain its burden of proving that records were exempt from disclosure in their entirety pursuant to exemptions enumerated in section 7(1)(d) of FOIA (5 ILCS 140/7(1)(d) (West 2016)) could rely on section 3(g) of FOIA as an alternative basis to deny the request even though it had not raised the section 3(g) exemption in its response to the request. *Kelly*, 2019 IL App (1st) 170780, ¶¶ 42-49. The court concluded that the public body could assert section 3(g) after the court struck down the public body's original rationale for denying the request as long as the public body still afforded the requester the opportunity to confer about narrowing the request. *Kelly*, 2019 IL App (1st) 170780, ¶ 49.

To the extent that responsive records other than the case report were not properly withheld pursuant to section 7(1)(d)(i) of FOIA or the other exemptions asserted by the Department, it is evident that Mr. Pirtle's request is unduly burdensome. In order for the Department to review each of the records, including 102,717 files, and determine appropriate redactions, it would take an unidentified but clearly excessive amount of time to review. It is to be expected that the records in this file would warrant a significant amount of redactions, such as information that would unavoidably identify witnesses under section 7(1)(d)(iv). Given the broad scope of Mr. Pirtle's request, the Department appears to have a rational basis for asserting that it would be unduly burdensome to review and redact the responsive records. Therefore, in accordance with *Kelly*, the Department should issue a revised response to Mr. Pirtle in which it articulates why the request is unduly burdensome as written and offers him the opportunity to narrow his request to manageable proportions.<sup>8</sup> If the parties are then unable to reach an agreement on what constitutes a manageable request for the information at issue, the Department may deny the request as unduly burdensome only if it can prove by clear and convincing evidence that the burden of compliance with the request outweighs the public interest in disclosure.

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<sup>8</sup>This office notes that in e-mail correspondence from Lieutenant O'Neill, he appeared to be amenable to receiving and reviewing a narrowed request from Mr. Pirtle.

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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, please contact me at [katherine.goldsmith@ilag.gov](mailto:katherine.goldsmith@ilag.gov).

Very truly yours,



KATIE GOLDSMITH  
Assistant Attorney General  
Public Access Bureau

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