

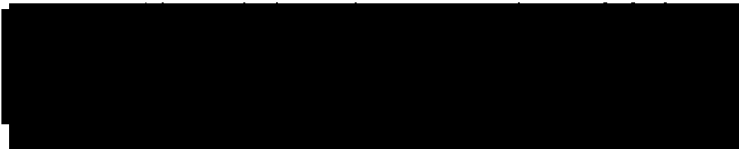


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

March 29, 2019

*Via electronic mail*



*Via electronic mail*

The Honorable Vanessa Moritz  
Village Clerk  
Village of Forest Park  
517 Desplaines Avenue  
Forest Park, Illinois 60130  
vmoritz@forestpark.net

RE: FOIA Request for Review – 2014 PAC 32130

Dear [REDACTED] and Ms. Moritz:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)).<sup>1</sup> For the reasons stated below, the Public Access Bureau concludes that the Village of Forest Park (Village) did not improperly deny [REDACTED] and [REDACTED] October 6, 2014, FOIA request at the time that it was submitted.

On October 6, 2014, [REDACTED] submitted a FOIA request to the Village seeking copies of all videos from June 1, 2, and 3, 2014, regarding a June 1, 2014, hit and run incident. On that same date, the Village denied the request pursuant to sections 7(1)(b), 7(1)(d)(i), 7(1)(d)(ii), and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(b), (1)(d)(i), (1)(d)(ii), (1)(d)(vii) (West 2014)). The Village stated: "These are videos taken during questioning for this

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<sup>1</sup>In issuing this letter, we recognize that it is coming long after the FOIA dispute took place. Because it raises a legal question that may reoccur, however, this letter is intended to provide guidance to the requester and public body.

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fatal hit and run. All videos are evidence that will likely be used during this upcoming trial."<sup>2</sup> On October 31, 2014, this office received [REDACTED] Request for Review contesting the Village's denial. They stated that their son was killed during the hit and run, and that the suspect had been indicted.

On November 13, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the Village and asked it to provide copies of the withheld records for this office's confidential review, together with a detailed explanation of the factual and legal bases for withholding the requested videos in their entirety. On November 26, 2014, the Village provided this office with those materials. Certain portions of the Village's answer were submitted under a claim of confidentiality, restricting this office from disclosing that information to [REDACTED]. On December 3, 2014, this office forwarded a copy of the Village's response letter to the requesters; on December 22, 2014, this office received their reply.

#### 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 Dep't 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). The exemptions from disclosure are to be construed narrowly. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

Although the Village did not expressly cite section 7(1)(d)(iii) of FOIA (5 ILCS 140/7(1)(d)(iii) (West 2014)), the Village's argument clearly invoked that exemption. Section 7(1)(d)(iii) 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:

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<sup>2</sup>E-mail from Vanessa Moritz to [REDACTED] (October 6, 2014).

<sup>3</sup>5 ILCS 140/9.5(d) (West 2016) ("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.").

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(iii) create a substantial likelihood that a person will be deprived of a fair trial or impartial hearing[.]

To demonstrate that records are exempt from disclosure under the corresponding provision of the Federal FOIA (5 U.S.C. §552(b)(7)(B) (2018)), an agency must establish: "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Washington Post Co. v. U.S. Dep't of Justice*, 863 F.2d 96, 102 (D.C. Cir. 1988).

In the non-confidential part of its response to this office, the Village confirmed that the indicted suspect was awaiting trial and stated: "In consultation with the Cook County State's Attorney's Office, the Village determined that disclosure of these requested records to [REDACTED] during the pendency of this prosecution would greatly interfere with these law enforcement proceedings."<sup>4</sup> The Village further asserted:

[B]ecause the records requested in [REDACTED] FOIA request contain evidence that will likely be introduced at trial, disclosure of these records would interfere with the Cook County State's Attorney's pending prosecution, as well as deprive the defendant of a fair trial by exposing information that could impair jurors' ability to decide this case fairly.<sup>[5]</sup>

In the confidential portions of its response, the Village elaborated on why disclosure of the videos at the time of the request would have jeopardized the fairness of the impending trial.

Due to the nature of the videos and the timing of the FOIA request, it is apparent there was a substantial likelihood that disclosure of the videos at that time would have interfered with the fairness of the impending trial. In particular, videos of statements by the defendant and other witnesses could have provided insights that had the potential to alter or otherwise affect the testimony of the defendant or other witnesses if called to testify. Accordingly, this office concludes that the Village did not improperly deny the FOIA request at the time that it was submitted. Nonetheless, if the requesters still seek copies of the videos, they may wish to submit

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<sup>4</sup>Letter from Erin C. Moriarty, One of the attorneys for the Village of Forest Park, Storino, Ramello & Durkin, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 26, 2014), at 2.

<sup>5</sup>Letter from Erin C. Moriarty, One of the attorneys for the Village of Forest Park, Storino, Ramello & Durkin, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 26, 2014), at 2.

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a new FOIA request to the Village, as the same rationale for withholding the videos in their entireties no longer applies.

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 (312) 814-8413, [jjones@atg.state.il.us](mailto:jjones@atg.state.il.us), or at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]  
JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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