

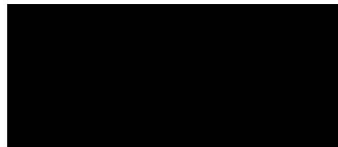


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 22, 2024

Via electronic mail



Via electronic mail

Ms. Karla Gifford
FOIA Officer
City of Kankakee
304 South Indiana Avenue
Kankakee, IL 60901-3904
kjgifford@citykankakee-il.gov

RE: FOIA Request for Review – 2024 PAC 80655

Dear [REDACTED] and Ms. Gifford:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons stated below, the Public Access Bureau concludes that the City of Kankakee (City) improperly denied [REDACTED] March 18, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the City seeking surveillance video from a specified incident involving a shooting that occurred on or about April 29, 2023. On March 19, 2024, the City denied the request in its entirety pursuant to section 7(1)(d)(iii) of FOIA.¹ The City's response stated that "[t]he information pertaining to [the]

¹ 5 ILCS 140/7(1)(d)(iii) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

request continues to be part of an open case with the Kankakee County Circuit Court² and also invoked language from section 7(1)(d)(i) of FOIA.³ On March 23, 2024, this office received [REDACTED] complete Request for Review contesting the City's denial of his request.

On April 9, 2024, this office sent a copy of the Request for Review to the City and asked it to provide unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for its denial. On May 1, 2024, this office received the City's response. One May 2, 2024, this office forwarded a copy of the City's response to [REDACTED]; he replied on May 7, 2024, maintaining that the City failed to demonstrate that the footage falls within the section 7(1)(d)(i) or 7(1)(d)(iii) exemptions.

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 2022). 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 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(d) 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; [or]

* * *

²Letter from Karla Gifford, FOIA Officer, City of Kankakee, to [REDACTED] (March 19, 2024), at [1].

³5 ILCS 140/7(1)(d)(i) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

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

In its response to this office, the City again cited section 7(1)(d)(iii) and reiterated the explanation it provided in its denial letter:

7(1)(d)(iii): Allows a public body to withhold records to the extent disclosure would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing. that would interfere with pending or actually or reasonably contemplated law enforcement proceedings conducted by the law enforcement agency that received the FOIA request. 5 ILCS 140/7(1)(d)(iii) (West 2010). There are reasonably contemplated law enforcement proceedings that will be conducted that would be interfered with if said records were released.^[4] (Emphasis in original.)

The City did not provide further information regarding any law enforcement proceedings, a trial or a hearing related to the matter underlying the contested records, but argued in part that it could not provide [REDACTED] the video because he did not provide an explanation as to his involvement in the incident.

Under section 7(1)(d)(i), "[t]he 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. *Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (2009). "Simply saying there is an 'ongoing criminal investigation because the case has not been cleared,' with little additional explanation, is not 'objective indicia' sufficient to show the ongoing investigation exemption applies." *Day*, 388 Ill. App. 3d at 76; see also Ill. Att'y Gen. Pub. Acc. Op. No. 17-001, issued March 14, 2017 (the mere commencement of an investigation or prosecution does not constitute clear and convincing evidence that any records are exempt from disclosure).

Section 7(1)(d)(iii) of FOIA corresponds with a provision of Federal FOIA (5 U.S.C. 552(b)(7)(B) (2018)) that exempts records compiled for law enforcement purposes to the extent that disclosure would "deprive a person of a right to a fair trial or an impartial adjudication." In order to demonstrate that records are exempt pursuant to section 7(1)(d)(iii), a

⁴Letter from Karla Gifford, FOIA Officer, City of Kankakee, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (May 1, 2024), at [1].

