

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

November 21, 2017

[REDACTED]

Mr. Jordan J. Garrison  
Assistant State's Attorney  
Macoupin County State's Attorney's Office  
P.O. Box 287  
Carlinville, Illinois 62626

RE: FOIA Request for Review – 2017 PAC 49142

Dear [REDACTED] and Mr. Garrison:

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 Macoupin County Sheriff's Department (Sheriff's Department) did not improperly withhold records responsive to [REDACTED] July 23, 2017, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Sheriff's Department seeking a copy of its annual jail inspection for 2017 and the electronically recorded rounds for three time periods: January 1, 2015, through January 7, 2015; April 1, 2015, through April 7, 2015, and; July 1, 2015, through July 7, 2015. On July 27, 2017, the Sheriff's Department denied the electronically recorded rounds pursuant to section 2.15(c) of FOIA (5 ILCS 140/2.15(c) (West 2016)) and stated that the annual inspection for 2017 had yet to be scheduled.

On August 10, 2017, this office received [REDACTED] Request for Review disputing the denial of his request for the electronically recorded rounds. He asserted that the rounds occurred more than two years ago and thus that disclosure of the information would not pose a security risk to the jail. He also stated that he sought the information in connection with a potential legal action against the Sheriff's Department and that the records would assist him in demonstrating that he had completed his required rounds while employed with the Sheriff's Department.

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On August 16, 2017, this office forwarded a copy of the Request for Review to the Sheriff's Department and asked it to provide copies of the records that were withheld for this office's confidential review, together with a detailed explanation of the legal and factual basis for the asserted exemption. On August 28, 2017, this office received those materials from the Macoupin County's State's Attorney's Office (State's Attorney's Office) on behalf of the Sheriff's Department, including both a complete and a redacted version of its written response.<sup>1</sup> The State's Attorney's Office maintained that the requested records were exempt from disclosure under section 2.15(c) of FOIA but asserted that the records were further exempt pursuant to section 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(d)(vi) (West 2016)). On September 1, 2017, this office forwarded a copy of the State's Attorney's Office's redacted response to ██████████. He replied on September 10, 2017, asserting that as a former correctional officer who had worked for the Sheriff's Department for 26 years, he "ha[d] no reason to cause harm or try to get someone out of the facility."<sup>2</sup>

#### 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 Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2016). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

As an initial matter, this office notes that section 2.15(c) of FOIA pertains only to arrest reports. Section 7(1)(d)(vi) of FOIA, however, contains the same language as section 2.15(c)(ii) of FOIA (5 ILCS 140/2.15(c)(ii) (West 2016)), and section 7(1)(d)(vi) is not limited to arrest reports.<sup>3</sup>

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<sup>1</sup>See 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.").

<sup>2</sup>Letter from ██████████ to Teresa Lim, Assistant Attorney General, Attorney General Office, State of Illinois (September 10, 2017).

<sup>3</sup>Similarly, section 7(1)(e) of FOIA (5 ILCS 140/7(1)(e) (West 2016)), which exempts from disclosure "[r]ecords that relate to or affect the security of correctional institutions and detention facilities[.]" is analogous to section 2.15(c)(iii) of FOIA (5 ILCS 140/2.15(c)(iii) (West 2016)).

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### Section 7(1)(d)(vi) of FOIA

Section 7(1)(d)(vi) of FOIA exempts from disclosure:

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:

\* \* \*

(vi) endanger the life or physical safety of law enforcement personnel or any other person[.]

In its redacted response, the State's Attorney's Office stated that the Sheriff's Department's current staffing and jail monitoring policies and procedures are the same as those in effect in 2015. According to the State's Attorney's Office, the Macoupin County jail consists of two levels with five general population rooms for men, two for women, and a work release room. The Sheriff's Department's policy is to check each room every 30 minutes. During these checks, the State's Attorney's Office stated, the correctional officer on duty records his or her round through an electronic machine, which documents the officer's time, location, and status of the room. The State's Attorney's Office asserted that disclosure of the recorded information would reveal "the times and locations of our correctional officers while on duty[.]" including when the control room is occupied by only one correctional officer and when officers are away from certain rooms.<sup>4</sup> The State's Attorney's office further asserted:

The information can be used to aid in breaking individuals out of our jail or knowing where a correctional officer is isolated to harm him or her. Furthermore, it can be used to help inmates learn the pattern of our correctional officers to gain opportunities to harm each other or staff.<sup>[5]</sup>

This office has reviewed copies of the records documenting the rounds at issue and determined that the records contain detailed information about jail staffing and scheduling. The information includes the specific times and locations of the correctional officers on duty for each shift and

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<sup>4</sup>Letter from Jordan J. Garrison, Assistant State's Attorney, State's Attorney of Macoupin County, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 28, 2017).

<sup>5</sup>Letter from Jordan J. Garrison, Assistant State's Attorney, State's Attorney of Macoupin County, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 28, 2017).

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vacant areas of the jail not covered by officers. This office agrees that the disclosure of such detailed information could endanger the life or physical safety of the correctional officers monitoring the jail by identifying their locations and potential vulnerable spots where officers are less supported. Although ██████████ sought records of rounds from two years ago, the State's Attorney's Office explained that the shift policies and duties of the correctional officers have not changed since 2015. Consequently, jail round records from 2015 would still reveal relevant details about staffing that, if released, could pose a risk to the safety of correctional officers who currently work at the jail as well as the detainees. While ██████████ may not have intended to use the records in a manner that would pose any type of safety risk, the disclosure and potential further dissemination of the records may lead, inadvertently or otherwise, to a person using the records in a manner that would pose a significant safety risk to law enforcement personnel. Accordingly, this office concludes that the records are exempt from disclosure pursuant to section 7(1)(d)(vi) of FOIA.


In his reply to this office, ██████████ offered an alternative option to resolve his complaint. He stated, in pertinent part:

Due to the business of my request and trying to work with the sheriff department I will alter my request to the following conditions that I think we can all agree to. If the sheriff department will in writing state that all rounds were made in my request for a total of 48 rounds in a calendar day for all days that I originally requested. That they will run the print offs on the computer program stating the rounds for your review to verify that the rounds were made. I do not need the actual copies of the rounds from the program. \* \* \* If you see the print outs and all the rounds were made on all the days I originally requested then I will be satisfied. If there are rounds not made that the program shows I need to know the dates and times of the incident and who the officers were on that day and time.<sup>[6]</sup>

While the Sheriff's Department may elect to confirm whether or not the rounds at issue were made, it is not obligated to do so under FOIA, nor is this office authorized to reveal the specific contents of the records the Sheriff's Department provided for this office's confidential review. FOIA does not require a public body to answer questions or create records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).

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<sup>6</sup>Letter from ██████████ to Teresa Lim, Assistant Attorney General, Attorney General Office, State of Illinois (September 10, 2017).

  
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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 letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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