

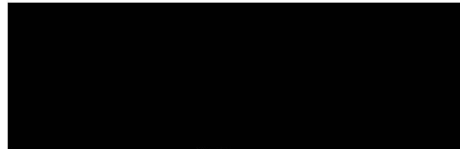


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 1, 2021

Via electronic mail



Via electronic mail

Ms. Lisa A. Farrington
Staff Attorney/FOIA Officer
Village of Arlington Heights
33 South Arlington Heights Road
Arlington Heights, Illinois 60005
lfarrington@vah.com

RE: FOIA Request for Review – 2018 PAC 56184

Dear [REDACTED] and Ms. Farrington:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the Village of Arlington Heights Police Department (Police Department) improperly withheld records responsive to [REDACTED]'s November 29, 2018, FOIA request in their entirety.

On that date, [REDACTED] submitted a FOIA request to the Police Department seeking copies of all police reports related to his name. On December 13, 2018, the Police Department denied the request in its entirety pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(vi) (West 2018)). [REDACTED] Request for Review disputed the denial of his request.

On December 27, 2018, this office sent a copy of the Request for Review to the Police Department and asked it to provide copies of the records responsive to [REDACTED] request, for our confidential review, along with a detailed explanation of the factual and legal bases for its

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response. On January 18, 2019, the Police Department provided the requested materials and both a confidential and redacted written answer. On January 22, 2019, this office forwarded a copy of the Police Department's redacted answer to ██████████ he did not reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2018). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018)) further provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2018)) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(d)(vi) 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:

* * *

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

Under FOIA, "[t]o meet its burden" for withholding responsive records, "the public body must provide a detailed justification for its claim of exemption, addressing the requested records specifically and in a manner allowing for adequate adversarial testing." *Rockford Police Benevolent and Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 150 (2d Dist. 2010). Conclusory statements are insufficient to demonstrate that law enforcement records are exempt from disclosure under FOIA. *See Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009). Rather, a public body must demonstrate *how* disclosure of records would endanger the life or physical safety of law enforcement personnel pursuant to section 7(1)(d)(vi) of FOIA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39298 39299, issued December 6, 2017 (conclusory explanation as to why disclosure of information concerning technology purchased by police department would endanger the life or physical safety of officers fell short of FOIA's "clear and convincing evidence" standard).

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To demonstrate that records are exempt under the provision of Federal FOIA that corresponds to section 7(1)(d)(vi),¹ "[a]n agency must identify and explain the reasonable threat of harm imposed on the individuals identified in the records the agency is seeking to exempt." *King v. United States Department of Justice*, 245 F. Supp. 3d 153, 162 (D.D.C. 2017);² *see also Center for National Security Studies v. United States Department of Justice*, 331 F.3d 918, 948 (D.C. Cir. 2003) (records not exempt because agency did identify reasons that disclosure of information would pose a threat). This office has previously determined that section 7(1)(d)(vi) could be applied to highly specific information, the disclosure of which would provide the public with information that could be exploited to cause identifiable harm to certain individuals. *See* Ill. Att'y Gen. PAC Rev. Ltr. 49142, issued November 21, 2017, at 4 (concluding that disclosure of the specific duty times and locations of correctional officers "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."); Ill. Att'y Gen. PAC Rev. Ltr. 39298, 39299, issued December 6, 2017, at 4-5 (noting that this office has consistently determined that information that could be used to identify undercover officers is exempt from disclosure). By contrast, this office has found that public bodies failed to meet their burden under section 7(1)(d)(vi) when their assertions were conclusory and they did not explain, nor was it apparent, how disclosure would endanger any individual. *See* Ill. Att'y Gen. PAC Rev. Ltr. 38173, issued February 13, 2018, at 3 (determining that city had failed to demonstrate how disclosure of a use of force report would endanger any individual's safety); Ill. Att'y Gen. PAC Rev. Ltr. 25887, issued January 11, 2019, at 3 (concluding that police department failed to identify specific circumstances from which this office could conclude that disclosure of individual police officers' photographs would endanger officers' lives or physical safety).

The Police Department's answer to this office indicated that it withheld the records responsive to ██████████ request pursuant to section 7(1)(d)(vi) of FOIA. In its confidential answer to this office, the Police Department provided additional information explaining its reliance on this provision. Because the Police Department provided its explanation confidentially, this office is prohibited from further disclosing that information.³ However, this office has determined that the Police Department's answer failed to meet its burden of establishing that the responsive police reports would endanger the life or physical safety of law

¹Exemption 7(F) of Federal FOIA (5 U.S.C. § 552(b)(7)(F) (2012)) exempts from disclosure records that "could reasonably be expected to endanger the life or physical safety of any individual."

²Because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. *Margolis v. Director, Ill. Department of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

³5 ILCS 140/9.5(d) (West 2018).

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enforcement personnel, or any other person. Accordingly, this office concludes that the Police Department improperly withheld the reports in their entirety under section 7(1)(d)(vi).

This office requests that the Police Department furnish ██████████ with copies of the records responsive to his request. The Police Department may permissibly redact from those records "private information" under section 7(1)(b) of FOIA⁴. The Police Department may also redact, pursuant to 7(1)(c) of FOIA,⁵ highly personal information that would constitute an unwarranted invasion of personal privacy if disclosed. Examples of such information includes individuals' birthdates, races, and the names of third parties who were mentioned incidentally in the reports. In addition, the Police Department may redact the name, date of birth, and other identifying information of any juvenile pursuant to section 7(1)(c) of FOIA. Further, section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2018)) exempts from disclosure information that would "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." The 7(1)(d)(iv) exemption allows police departments to protect the anonymity of persons who provide them with information. *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). Therefore, the Police Department may withhold complainants' names and other personally-identifying

⁴Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2018)) defines "private information" as:

unique 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.

⁵Section 7(1)(c) defines "unwarranted invasion of personal privacy" as:

the 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.

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information pursuant to section 7(1)(d)(iv).⁶ To the extent that the contents of the complainants' statements would unavoidably disclose those individuals' identities, the Police Department may also withhold those statements. *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994) (Witness statements may be withheld in their entirety only if disclosure of the contents "would necessarily result in the disclosure of the identity of that source" of the information and, therefore, "redaction of the [records] cannot be meaningfully accomplished.").

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes this matter. If you have questions, you may contact me Shannon.Barnaby@Illinois.gov.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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⁶This office, however, has previously determined that sections 7(1)(c) and 7(1)(d)(iv) generally do not encompass information identifying public employees, such as school personnel, who provided the police with information that they obtained while performing public duties. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39699, issued July 10, 2018, at 4-7.