



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 30, 2024

Via electronic mail
Ms. Farrah Anderson
Invisible Institute
[REDACTED]

Via electronic mail
Ms. Kelsey Reid
FOIA Administrator
Will County Sheriff's Office
16911 West Laraway Road, Suite 101
Joliet, Illinois 60433
kpaulsen@willcosheriff.org

RE: FOIA Request for Review: 2024 PAC 81145

Dear Ms. Anderson and Ms. Reid:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons stated below, the Public Access Bureau concludes that the response by the Will County Sheriff's Office (Sheriff's Office) to Ms. Farrah Anderson's April 10, 2024, FOIA request violated FOIA.

On that date, Ms. Anderson, on behalf of the Invisible Institute, submitted a FOIA request to the Sheriff's Office seeking, relevant to this Request for Review, "[a] list of officers from Will County Sheriff's Office who are cross-listed as U.S. Marshals and operate in the region."² The Sheriff's Office denied that portion of the request in its entirety pursuant to section 7(1)(d)(vi) of FOIA on the basis that disclosure would endanger the life or physical safety of law

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

²Freedom of Information Act Request from Farrah Anderson (April 10, 2024).

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enforcement personnel.³ On April 23, 2024, Ms. Anderson submitted this Request for Review challenging the Sheriff's Office's denial.

On April 30, 2024, this office sent a copy of the Request for Review to the Sheriff's Office and asked it to provide un-redacted copies of the records responsive to Ms. Anderson's request along with a detailed explanation of the factual and legal bases for the applicability of section 7(1)(d)(vi) to the withheld information. On May 7, 2024, the Sheriff's Office provided the requested materials and a written response. On May 10, 2024, this office forwarded the Sheriff's Office's response to Ms. Anderson and notified her of her opportunity to reply. She did not submit a reply, other than to correct a portion of her Request for Review.

DETERMINATION

Under FOIA, "[a]ll 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); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that denies a record "has the burden of proving by clear and convincing evidence" that the 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, 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[.]

To sustain its burden under the provision of Federal FOIA that corresponds to section 7(1)(d)(vi),⁴ "[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.*

³5 ILCS 140/7(1)(d)(vi) (West 2023 Supp.).

⁴Exemption 7(F) of Federal FOIA (5 U.S.C. § 552(b)(7)(F) (2018)) exempts from disclosure records that "could reasonably be expected to endanger the life or physical safety of any individual."

United States Dep't of Justice, 245 F. Supp. 3d 153, 162 (D.D.C. 2017)) and "demonstrate that it reasonably estimated that sensitive information could be misused for nefarious ends." *Public Employees for Environmental Responsibility v. United States Section, International Boundary & Water Comm'n*, 740 F.3d 195, 206 (D.C. Cir. 2014);⁵ 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 Req. 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 Req. Rev. Ltr. 39298, 39299, issued December 6, 2017, at 4-5 (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 be expected to endanger any individual. See Ill. Att'y Gen. PAC Req. 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 could endanger officers' lives or physical safety).

In its response to this office, the Sheriff's Office maintained that disclosure of the identities of the deputies cross-designated to the U.S. Marshall's Office would present a security threat to those deputies. The Sheriff's Office argued:

[T]he deputies who are cross designated are responsible for apprehending fugitives. By definition these individuals are not complying with the law and have failed to appear in court or have otherwise escaped. To apprehend these individuals, deputies must often conduct long surveillance operations to establish patterns, locations, and other information which will allow for safe arrest for the deputy, suspect, and bystanders. Furthermore, in almost all cases the offender being sought is either a violent felon or gang

⁵Because 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 (1989).

member. * * * [T]he name of the cross designated deputies must be kept confidential so that an individual cannot use the name to discover other information about the deputies, such as images, so that they can avoid arrest and prosecution. If these deputies were readily recognizable the danger level would be exponentially increased.^[6]

The Sheriff's Office argued that its position was consistent with Federal precedent interpreting exemption 7(F) of Federal FOIA (5 U.S.C. § 552(b)(7)(F) (2018)). The Sheriff's Office cited an unpublished decision, *Garza v. U.S. Marshals Service*, No. 16-CV-0976, 2018 LEXIS 167379, at *47 (D.D.C. September 28, 2018), concluding that the United States Drug Enforcement Agency (DEA) could withhold the names of DEA special agents pursuant to Exemption 7(F). The court found "that these agents are often involved with dangerous undercover operations, and often investigate individuals with propensity for violence. [Citation.] These agents constitute the textbook definition of persons who warrant protection under Exemption 7(F)." *Garza*, at *47. The Sheriff's Office cited another case in which a court upheld the denial of information about DEA agents pursuant to Exemption 7(F), though the opinion did not otherwise describe the documents at issue. *Rugiero v. United States Department of Justice*, 257 F.3d 534, 552 (6th Cir. 2001).

The Public Access Bureau has consistently determined disclosing the identities of undercover officers could endanger their lives or physical safety. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 66594 66596, issued September 20, 2021, at 5; Ill. Att'y Gen. PAC Req. Rev. Ltr. 14982, issued June 5, 2012, at 4. The dangers faced by undercover officers may vary widely depending on factors such as the crimes being investigated and the length of time undercover. Revealing the name of an undercover officer in one investigation could jeopardize the safety of the same officer in a future investigation that carries greater risks by identifying him or her as a police officer who works in an undercover capacity. Ill. Att'y Gen. PAC Req. Rev. Ltr. 66594 66596, issued September 20, 2021, at 5.

By contrast, where the officers are not engaged in undercover activities, this office has concluded that to withhold those officers' identities pursuant to section 7(1)(d)(vi), the public body must establish that the disclosure of the records would endanger officers' lives or physical safety "beyond the risks that are inherent in police work." Ill. Att'y Gen. PAC Req. Rev. Ltr. 26630, issued January 23, 2014, at 4. In 2020 PAC 65941, this office concluded that a police department could not withhold a roster of police officers who were assigned to Northern Illinois Police Alarm System (NIPAS), "a joint venture of suburban municipal police departments in the Chicago metropolitan area" that provides member agencies with "assistance

⁶Letter from K. Reid, FOIA Administrator, Will County Sheriff's Office, to Deputy Bureau Chief [Laura] Harter (undated), at [1].

for any situation its command staff believes the agency cannot handle with its own resources."⁷ In that matter, the department argued that the NIPAS officers face a heightened risk similar to that of undercover officers. This office was not persuaded by that argument, explaining that unlike undercover officers, whose physical safety would be starkly compromised if their true identities as police officers were revealed to the targets of their investigations, NIPAS officers openly interacted with the public in full uniform. This office noted that "there is no indication that the General Assembly intended the section 7(1)(d)(vi) exemption to broadly apply to the identities of uniformed police officers performing their public duties in public settings." Ill. Att'y Gen. PAC Req. Rev. Ltr. 65941, issued December 20, 2023, at 6.

In 2013 PAC 26630, this office reviewed a partial denial by a police department of a FOIA request that sought, in part, records related to personnel who were on duty for two dates. The department released responsive records but redacted the identities of officers who were dispatched to an assisted living facility on those dates, including an officer who fatally wounded a resident while attempting to subdue him. Ill. Att'y Gen. PAC Req. Rev. Ltr. 26630, issued January 23, 2014, at 2. Although the police department demonstrated that members of the public had made violent threats against the police department and its officers as a result of the incident, this office concluded that the police department had failed to prove that disclosure of the records would endanger officers beyond the risks inherent in police work. Ill. Att'y Gen. PAC Req. Rev. Ltr. 26630, at 4.

This office acknowledges that the cross-designated deputies are engaged in dangerous duties when serving in their roles with the U.S. Marshals. Although the Sheriff's Office asserts that disclosure of the cross-designated officers' identities could lead fugitives to identify the officers and evade arrest or cause harm to the officers, as discussed above, this office has previously rejected that argument alone as a basis to withhold officers' identities. This office has explained that "[f]acing threats, at times violent, is an unfortunate aspect of public service for many public officials, whether engaged in law enforcement or not. Despite such threats, the public's ability to identify its public officials fosters transparency, efficiency, and accountability." Ill. Att'y Gen. PAC Req. Rev. Ltr. 26630, at 4.

Although the Sheriff's Office explained that the cross-designated deputies conduct long-term surveillance operations, there is no indication that such operations are currently ongoing in an undercover capacity. Federal courts have concluded that the identities of DEA agents and other law enforcement personnel working on those drug enforcement cases may be withheld pursuant to Exemption 7(F) because of the covert nature of the operations. *See Albuquerque Pub. Co. v. United States Dep't of Justice*, 726 F. Supp. 851, 858 (1989) (upholding Exemption 7(F) to withhold DEA special agents and other law enforcement officers' identities based on an affidavit establishing that the officers worked in a covert capacity and disclosure of their identities could be expected to result in harm). The Sheriff's Office has not provided this

⁷Ill. Att'y Gen. PAC Req. Rev. Ltr. 65941, issued December 20, 2023, at 3.

Ms. Farrah Anderson
Ms. Kelsey Reid
December 30, 2024
Page 6

office with any facts to establish that the cross-listed deputies are engaged in similar covert operations. The notion that disclosure of the names of cross-designated deputies to Ms. Anderson could lead to those deputies being identified while conducting surveillance activities is largely speculative.

Despite the dangers the cross-designated deputies face when serving as U.S. Marshals, the Sheriff's Office did not illustrate that disclosure of the deputies' names would endanger the lives or safety of its officers beyond the risks already inherent in their duties. Accordingly, the Sheriff's Office did not demonstrate by clear and convincing evidence that the records fall within the scope of section 7(1)(d)(vi). This office requests that the Sheriff's Office provide Ms. Anderson with copies of the responsive records.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at laura.harter@ilag.gov. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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