



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 2, 2023

Via electronic mail

Mr. Felix Sarver
News Reporter, *Herald News*
2175 Oneida Street
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Via electronic mail

Mr. Timi Tucker
FOIA Officer
Crest Hill Police Department
1610 Plainfield Road
Crest Hill, Illinois 60403
ttucker@cityofcresthill.com

RE: FOIA Request for Review – 2019 PAC 58605; 19-0741

Dear Mr. Sarver and Mr. Tucker:

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)).

On June 3, 2019, Mr. Felix Sarver, a reporter with the *Herald-News*, submitted a FOIA request to the Crest Hill Police Department (Police Department) seeking copies of the police, traffic, crash, and internal investigation reports pertaining to a fatal car crash on May 26, 2019. On June 7, 2019, the Police Department denied Mr. Sarver's request pursuant to section 7(1)(d)(ii) of FOIA, citing a current investigation into the incident.¹ On June 14, 2019, this office received Mr. Sarver's Request for Review challenging the Police Department's denial.

¹5 ILCS 140/7(1)(d)(ii) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018.

Mr. Felix Sarver
Mr. Timi Tucker
October 2, 2023
Page 2

On June 20, 2019, this office sent a copy of Mr. Sarver's Request for Review to the Police Department and asked it to provide this office with unredacted copies of the withheld records and a detailed explanation of the factual and legal bases for the applicability of section 7(1)(d)(ii) of FOIA.² On June 25, 2019, the Police Department provided the responsive records for this office's confidential review and a written answer; the Police Department provided another copy of its response to this office on January 2, 2020. In its written answer, the Police Department clarified it withheld the responsive records pursuant to sections 7(1)(d)(iv) and 7(1)(d)(vii) of FOIA.³ On January 7, 2020, this office forwarded a copy of the Police Department's written answer to Mr. Sarver; he did not reply.

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).

Sections 7(1)(d)(iv) and 7(1)(d)(vii) of FOIA

Sections 7(1)(d)(iv) and 7(1)(d)(vii) of FOIA exempt 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:

* * *

(iv) 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; except that the

²5 ILCS 140/7(1)(d)(ii) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018.

³5 ILCS 140/7(1)(d)(iv), (1)(d)(vii) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018.

Mr. Felix Sarver
Mr. Timi Tucker
October 2, 2023
Page 3

identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

* * *

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

Conclusory statements that the disclosure of requested records would obstruct a law enforcement proceeding 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). In *Day*, the court explained: "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. 17-011, issued August 14, 2017, at 7-8 (public body improperly withheld record under section 7(1)(d)(vii) because it failed to demonstrate that disclosure would interfere with law enforcement); *Baudin v. City of Crystal Lake*, 192 Ill. App. 3d 530, 536 (2d Dist. 1989) ("The 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.").

In its response to this office, the Police Department maintained that it properly withheld the requested records concerning the car crash because of a pending investigation. The Police Department asserted:

Specifically, the incident is actively being investigated and information developed concerning the event; this includes taking witness statements, which are exempt, and locating a person or persons who may have been involved in the incident. Releasing the information you have requested to the public at this time can obstruct these ongoing efforts to investigate what is a criminal matter.^[4]

⁴Letter from Edward Clark, Chief of Police, and Timi Tucker, FOIA Officer, Crest Hill Police Department, to Betty A. Johnson, Administrative Secretary, Office of the Illinois Attorney General (June 25, 2019), at [2].

Mr. Felix Sarver
Mr. Timi Tucker
October 2, 2023
Page 4

Having reviewed the records and the Police Department's response, this office has determined that at the time of the FOIA request, which was submitted only about a week after the car crash, disclosure of witness statements and information identifying and directly linked to a suspect who had not been arrested could have been reasonably expected to interfere with the Police Department's ability to investigate the circumstances surrounding the incident. This office has confirmed that the records describe the Police Department's efforts to identify and interview all individuals who were involved in or had relevant information concerning the incident, and that it had not located all potential suspects. The records indicate that a potential suspect might have information critical to reconstructing the events leading up to the car crash. Because the Police Department had not yet located all individuals who were involved in the incident, disclosure of witness statements and information identifying and directly linked to the suspect posed a likelihood of interfering with Department's ability to corroborate or discount statements and locate the suspect and additional relevant evidence. Accordingly, this office concludes that the Police Department did not violate FOIA by withholding those portions of the records responsive to Mr. Sarver's June 3, 2019, FOIA request pursuant to section 7(1)(d)(vii). The Department, however, provided a largely conclusory explanation that does not demonstrate by clear and convincing evidence that disclosure of the remaining information would have obstructed its ongoing criminal investigation. This office also notes that an individual was arrested, and that section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2022)) requires disclosure of certain information concerning arrestees.^{5 6}

In accordance with the conclusions expressed above, this office requests that the Police Department disclose to Mr. Sarver with redacted copies of the requested records. In addition to redacting witness statements and the identity of the suspect who had not been arrested

⁵Section 2.15(a) of FOIA provides:

a) Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) (blank); and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

⁶Section 2.15(c) of FOIA (5 ILCS 140/2.15(c) (West 2022)) provides the information in items 2.15(a)(iii) through (vi) may be withheld for three enumerated reasons; the Department has not demonstrated that any of those reasons apply.

Mr. Felix Sarver
Mr. Timi Tucker
October 2, 2023
Page 5

at the time of the report, the Department may redact "private information" under section 7(1)(b)⁷ (5 ILCS 140/7(1)(b) (West 2022)), birth dates pursuant to section 7(1)(c)⁸ (5 ILCS 140/7(1)(c) (West 2022)), and the names and other identifying details of witnesses under 7(1)(d)(iv) of FOIA. Given the amount of time that has passed since the incident, the Department may wish to consider whether additional substantive portions of the records may be released at this time.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,



CHRISTINA LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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⁷Section 7(1)(b) of FOIA exempts from disclosure "private information," which FOIA defines 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.

⁸The Attorney General has issued a binding opinion concluding that birth dates are exempt from disclosure pursuant to section 7(1)(c) of FOIA. Ill. Pub. Acc. Op. No. 12-009, issued November 7, 2016, at 12.