



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

January 21, 2020



*Via electronic mail*

Mr. Thomas D. Mulcrone  
Associate General Counsel  
Illinois Department of Human Services  
100 West Randolph, Suite 6-400  
Chicago, Illinois 60601  
DHS.FOIAOfficer@illinois.gov

RE: FOIA Request for Review – 2018 PAC 51630

Dear [REDACTED] and Mr. Mulcrone:

This determination 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 Illinois Department of Human Services (Department) improperly redacted certain records responsive to [REDACTED] December 12, 2017 FOIA request.

On December 12, 2017, [REDACTED] submitted a FOIA request to the Department seeking copies of twelve Elgin Mental Health Center and Forensic Treatment Program policies and one of its policy indexes. On January 9, 2018, the Department provided [REDACTED] with ten of the requested policies but redacted certain information from policy 2731 and 2735 pursuant to section 7(1)(e) of FOIA (5 ILCS 140/7(1)(e) (West 2016), as amended by Public Act 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). On January 24, 2018, [REDACTED] submitted this Request for Review disputing the denial of (1) the "FTP policy index"; (2) "Ppm 1703 Medication and Ppm 3510 Interpersonal relations between staff and patients[;]" and (3) Ppm 2735 Incident reporting of allegations of abuse and neglect."<sup>1</sup>

<sup>1</sup>Letter from [REDACTED] to Public Access Counselor (January 24, 2018).

██████████  
Mr. Thomas D. Mulcrone

January 21, 2020

Page 2

On February 23, 2018, this office sent a copy of the Request for Review to the Department and asked it to provide unredacted copies of the records that it redacted or withheld pursuant to section 7(1)(e) for our confidential review. This office also requested a detailed explanation of the factual and legal bases for the assertion of section 7(1)(e). On March 6, 2018, the Department provided this office with unredacted copies of the records at issue and its written answer. In this response, the Department acknowledged that it originally failed to send ██████████ a copy of the Elgin Mental Health Center Forensic Treatment Program Policy Index. That same day, DHS provided ██████████ with this document as well as a copy of policy 3510 and a redacted version of policy 1703. On April 23, 2018, this office forwarded a copy of DHS' response letter to ██████████; he did not reply.

#### DETERMINATION


All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). 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 2018).

#### Sections 7(1)(e) of FOIA

Section 7(1)(e) of FOIA exempts from disclosure "[r]ecords that relate to or affect the security of correctional institutions and detention facilities." The Public Access Counselor has determined that disclosure of a requested record must pose a security risk to a correctional facility to fall within the scope of section 7(1)(e). *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 32159*, issued April 17, 2015, at 3 ("Construing section 7(1)(e) in light of the purpose of FOIA and its other provisions, it better comports with FOIA to conclude that section 7(1)(e) applies to records that could jeopardize the security of a correctional institution if disclosed, rather than any records merely pertaining to security in any manner whatsoever.").

In this matter, ██████████ argues that section 7(1)(e) does not apply to Elgin Mental Health Center because it is a hospital rather than a correctional institution or detention facility. DHS' response to this office asserts that:

Certain portions of EMHC \* \* \* are designated for inpatient and outpatient treatment for individuals referred through the court system who are found "not guilty by reason of insanity" or "unfit to stand trial." These patients, also referred to as forensic patients, reside on secure units and receive court-ordered treatment. As a result, the Department may exempt records related

  
Mr. Thomas D. Mulcrone  
January 21, 2020  
Page 3

to the security and safety of Elgin Mental Health Center under  
Section 7(1)(e) of FOIA.<sup>[2]</sup>

Section 7(1)(e) of FOIA encompasses detention facilities as well as correctional institutions such as prisons. Even though Elgin Mental Health Center does operate as a hospital, it detains patients pursuant to court orders and therefore unquestionably serves as a detention facility for forensic patients; the plain language of section 7(1)(e) does not restrict its applicability to facilities run solely by the Illinois Department of Corrections. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 35184*, issued July 22, 2015, at 2 (treatment center that detains individuals under civil commitment orders constitutes a detention facility for purposes of section 7(1)(e) of FOIA).

In its response to this office, the Department stated that the redacted information contains details about searching for weapons and contraband, procedures for responding to criminal activity, serious incidents and resident deaths, and the locations of psychotropic medications and procedures for validating medication orders. The Department asserted that all of the redacted information directly relates to security and that disclosure of the information would endanger security by enabling patients' to evade detection of weapons and contraband, frustrate investigations, and gain unauthorized access to medications.

This office has reviewed the redacted portions of the requested policies, which contain detailed information of how the Elgin Mental Health Center conducts contraband searches, the location and security of controlled substances within the facility, and measures taken by staff in response to certain types of incidents. Our office agrees with the Department that the policies on conducting contraband searches and the location and security of controlled substances within the facility fall within the scope of section 7(1)(e) of FOIA. Disclosure of this detailed information about how the Department searches for contraband and secures medications would provide insights that detainees could be used to undermine the security of the Elgin Mental Health Center. Therefore, this office concludes that the Department has sustained its burden of demonstrating that information redacted from these two policies is exempt from disclosure under section 7(1)(e) of FOIA.

However, the redacted portions of the policy on how staff responds to certain types of incidents consists of general information about routine steps such as gathering information and evidence and contacting certain employees or agencies. Unlike the redacted portions of the two other policies, the redacted portions of this policy do not appear to contain specific details of confidential procedures that could be exploited by patients to jeopardize the security of the Elgin Mental Health Center. Accordingly, this office concludes that the

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<sup>2</sup>E-mail from Thomas Mulcrone, Associate General Counsel/FOIA Officer, Illinois Department of Human Services, to S. Piya Mukherjee, Esq., Office of the Illinois Attorney General, Public Access Bureau (March 6, 2018).

[REDACTED]  
Mr. Thomas D. Mulcrone

January 21, 2020

Page 4

Department has not met its burden of demonstrating that the redacted portions of this policy are exempt from disclosure under section 7(1)(e) of FOIA.

In accordance with the conclusions expressed in this letter, this office requests that the Department provide [REDACTED] with an unredacted copy of policy 2735. 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 file. Please contact me at (312) 814-5383 or the Chicago address on the first page of this letter if you have any questions.

Very truly yours

[REDACTED]  
CHRISTINA M. LUCENTE-MCCULLOUGH  
Assistant Attorney General  
Public Access Bureau

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