

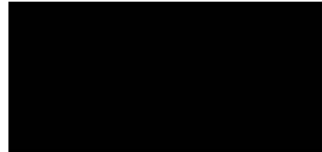


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 10, 2025

Via electronic mail



Via electronic mail

Ms. Nicole Thomas
Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
Nicole.thomas@illinois.gov

RE: FOIA Request for Review – 2024 PAC 83854; 24-F-08-540

Dear [REDACTED] and Ms. Thomas:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA).¹ For the reasons that follow, the Public Access Bureau concludes that the Illinois Department of Natural Resources ("Department" or "IDNR") did not improperly redact portions of research data responsive to [REDACTED] August 7, 2024, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the Department seeking:

Report of all waterfowl banding activities (for example, but not exclusive, attaching a unique identifying band to waterfowl) by

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

Illinois Department of Natural Resource personnel or program volunteers, within the counties of DuPage, Cook and Will, for the years 2020 to 2024. Information should include: band number, species, age, location, sex, date of banding, name of permitted bander. Any format containing this information is acceptable.^[2]

On August 22, 2024, the Department responded by providing a copy of a responsive report with the band numbers and the locations of where the banding occurred redacted pursuant to section 7(1)(i) of FOIA.³ On November 12, 2024, this office received [REDACTED] Request for Review contesting the Department's redactions of the band numbers and banding locations. [REDACTED] explained that:

The reason I am asking for this information is concern over handling of the program. I am a bird rescue volunteer. I have identified instances where the IDNR has banded birds with visible injuries and then released them. The injuries should have been identified and proper steps taken to treat through a licensed rehabilitation center. Instead, they were banded and released. Within 6 weeks both of these birds were debilitated and captured by our rescue group in our community public parks. These birds were ultimately euthanized due to the willful ignorance during the banding process. Specifically, I need the band numbers and location of the IDNR banding to compare with my findings.^[4]

On November 19, 2024, this office forwarded a copy of the Request for Review to the Department and asked it to provide an unredacted copy of the report for this office's confidential review as well as a detailed explanation of the factual and legal bases for the applicability of section 7(1)(i) to the band numbers and the banding locations. On November 27, 2024, the Department provided this office with those materials. On December 2, 2024, this office forwarded a copy of the Department's written response to [REDACTED] and notified him of his opportunity to reply to that response. [REDACTED] did not submit a reply.

²FOIA portal message from [REDACTED] to Illinois Department of Natural Resources (August 7, 2024).

³5 ILCS 140/7(1)(i) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

⁴Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (dated October 18, 2024; received November 12, 2024).

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 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that redacts records "has the burden of proving by clear and convincing evidence" that the information 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)(i) of FOIA

Section 7(1)(i) of FOIA exempts from disclosure:

Valuable formulae, computer geographic systems, designs, drawings, and **research data** obtained or produced by any public body when disclosure could **reasonably be expected to produce private gain or public loss**. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public. (Emphasis added.)

In its response to this office's inquiry letter, the Department asserted that it properly redacted the band numbers and banding locations from the report as "research data" by explaining that:

The Department is involved in a study that tracks the survival rates of banded waterfowl. This study is a collaborative effort between the federal government and all the states in the flyway. The United States Geological Survey (USGS) Bird Banding Laboratory (BBL) manages all banding data in the U.S. The Department retains its banding data, but it is required to submit all data to the BBL. The BBL provides the bands to the Department. When individuals report bird bands, they must do so online with the USGS Bird Banding Laboratory. The Department then receives reports from the BBL indicating recent band recoveries.

During the banding process, waterfowl is captured by a permit holder who then places a band on the bird with a number that is unique to that bird. The captured waterfowl is then released. When a banded bird is killed or found, the individual in possession can then report the band number. That individual will then receive a certificate with the following information: species, age at banding, sex, date of banding, agency/individual who banded the bird, and location the bird was banded.

The Department then uses the data it receives from these reports of banded birds to determine the survival rates of different species of waterfowl in general based on the smaller population of banded birds. These survival rates help the Department to determine season lengths and bag limits (number of birds that a hunter can kill) for the different species.^{5]}

"Research data" is not defined in FOIA. Therefore, this office looks to the principles of statutory construction. When construing a statute, the primary purpose is to ascertain and give effect to the intent of the General Assembly. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415, (2006). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain, ordinary and popularly understood meaning." *Nelson v. Kendall County*, 2014 IL 116303, ¶ 23. When a term is undefined in a statute, it is entirely appropriate to use a dictionary to help determine its meaning. *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 363 (2009).

"Research" is defined as: "Serious study of a subject with the purpose of acquiring more knowledge, discovering new facts, or testing new ideas[]" or "[t]he activity of finding information that one needs to answer a question or solve a problem." Black's Law Dictionary 1563 (11th ed. 2021). The dictionary definition of "data" is "factual information (such as measurements or statistics) used as a basis for reasoning, discussion, or calculation."⁶

Here, the Department explained that it is involved in a collaborative study with the United States Geological Survey (USGS) Bird Band Laboratory (BBL) that seeks to track survival rates of banded waterfowl. The Department stated that it utilizes the data it collects, including the band numbers and banding locations, to determine survival rates of different species of waterfowl and thereby set the length of the hunting season and bag limits. Such an

⁵Letter from Nicole Thomas, Legal Counsel, Illinois Department of Natural Resources to Matt Goodman, Assistant Attorney General, Public Access Bureau (November 27, 2024), at [1-2].

⁶Merriam-Webster, <https://www.merriam-webster.com/dictionary/data> (last visited January 28, 2025).

endeavor clearly involves acquiring more knowledge and discovering new facts about survival rates. Similarly, the band numbers and the band locations are "data" obtained by the Department because they are factual information the Department relies upon to determine the length of the hunting season and the number of birds a hunter can kill in a given hunting season. Accordingly, based on this office's review of the record itself and the explanation provided by the Department, the band numbers and banding locations redacted from the report constitute "research data," as that term is used in section 7(1)(i) of FOIA.

Although the Department established that the banding numbers and banding locations are "research data," they are only exempt from disclosure under section 7(1)(i) if the Department demonstrates by clear and convincing evidence that "disclosure could reasonably be expected to produce private gain or public loss."

Regarding "private gain," the Department stated:

The taking of a banded bird and the accompanying certificate has become a point of pride for some waterfowl hunters. This is so much so that there is a market for bands of unreported numbers on websites such as ebay.com. It has also led to these banded birds being targeted by hunters over non-banded birds.

If the unique identifying numbers are released, individuals could then make replica bands and sell them. Buyers could then report these numbers as a taken and receive a certificate. This is one reason the Department believes the band numbers that are unique to each bird should not be released.

Since banded birds are targeted by hunters, releasing the location where the birds are banded would allow these birds to be targeted even more so.^[7]

The Department provided sufficient facts to demonstrate that the disclosure of the band numbers could reasonably be expected to produce private gain. This office confirmed the Department's assertions that bands are sold online on websites such as eBay and that there is a company selling replica bird bands online.⁸ In addition to private gain from replica bands, a

⁷Letter from Nicole Thomas, Legal Counsel, Illinois Department of Natural Resources to Matt Goodman, Assistant Attorney General, Public Access Bureau (November 27, 2024), at [2].

⁸National Band & Tag Company International Identification Inc., Replica Bands and Custom Bird Bands, <https://www.nationalband.com/replica-bands-and-custom-bird-bands/> (last visited January 28, 2025).

hunter who obtains the banding locations once they have been released to anyone pursuant to FOIA could reasonably be expected to obtain private gains from targeting hotspots of banded birds.

Although the Department has established the resulting "private gain" from disclosure of the redacted band numbers and locations, the Department also established the "public loss" element by explaining:

If the band numbers are released to the public, an individual could falsely report the take of banded birds. This would skew the results of the data collection. It could result in the incorrect determination that the survival rates for specific species is smaller than what it truly is. Therefore, hunting seasons could be unnecessarily shortened and bag limits could be reduced. This would create less opportunities for waterfowl hunters in general.

Releasing the location of the banding would also allow individuals to continue to target the banded birds, again resulting in incorrect survival rates.^[9]

The Department has illustrated that the disclosure of the redacted information could reasonably be expected to interfere with data collection for public research, the length and scope of the hunting season, and bird survival rates. As such, the Department demonstrated that release of the redacted data could reasonably be expected to produce "public loss."

██████████ has explained that he is seeking the records in connection with rescue activities, and there is no indication that he is seeking to profit or otherwise reap a private gain or that he would seek to use the information in a manner that would generate a public loss. Nevertheless, if the information is disclosed the Department would be unable to prevent it from being disseminated and potentially accessed for the profit and hunting related activities described in the Department's response even if ██████████ did not intend for the information to be used in that manner. Accordingly, under these circumstances, the Department has sustained its burden of demonstrating by clear and convincing evidence that the band numbers and banding locations are exempt from disclosure pursuant to section 7(1)(i) of FOIA.

⁹Letter from Nicole Thomas, Legal Counsel, Illinois Department of Natural Resources to Matt Goodman, Assistant Attorney General, Public Access Bureau (November 27, 2024), at [2].

[REDACTED]
Ms. Nicole Thomas
February 10, 2025
Page 7

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 matthew.goodman@ilag.gov.

Very truly yours,

[REDACTED]

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

83854 71i proper sa