



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 5, 2023

Via electronic mail

Mr. Tim Novak
Chicago Sun-Times
848 East Grand Avenue
Chicago, Illinois 60611
tnovak@suntimes.com

Via electronic mail

Mr. Patrick Mozdzierz
Police Records Technician FOIA Officer
Park Ridge Police Department
200 South Vine Avenue
Park Ridge, Illinois 60068
pmozdzierz@parkridgepolice.org

RE: FOIA Request for Review – 2019 PAC 57377

Dear Mr. Novak and Mr. Mozdzierz:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the response by the Park Ridge Police Department (Department) to Mr. Tim Novak's March 19, 2019, FOIA request violated FOIA.

On that date, Mr. Novak, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Department seeking copies of all records regarding the death investigation of a named individual since the Department's last disclosure of responsive records to him on February 12, 2018. Among other things, Mr. Novak specifically requested records of communications between the Department and any federal agencies regarding the named individual's death. On March 21, 2019, the Department informed Mr. Novak that it did not possess any additional records regarding the death investigation. Further, the Department denied the portion of Mr. Novak's request seeking records of communications with federal agencies, citing section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2018)). In its denial letter, the Department cited exemptions

Mr. Tim Novak
Mr. Patrick Mozdierz
June 5, 2023
Page 2

7(A) and 8 of the Federal FOIA (5 U.S.C. § 552(b)(7)(A), (b)(8) (West 2018)) as its basis for asserting the section 7(1)(a) exemption. On March 22, 2019, this office received Mr. Novak's Request for Review contesting the Department's denial.

On March 28, 2019, this office sent a copy of the Request for Review to the Department and asked it to provide un-redacted copies of the responsive records and a detailed explanation of the legal and factual bases for the applicability of section 7(1)(a) to the withheld records, including an explanation of how Federal FOIA exemptions 7(A) and 8 apply to the responsive records. On April 8, 2019, the Department provided the requested materials; on April 9, 2019, this office forwarded a copy of the Department's answer to Mr. Novak. 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 Section 7 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). Bare conclusions without a detailed rationale do not satisfy a public body's burden of explaining how exemptions are applicable. *See Rockford Police Benevolent and Protective Ass'n, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)).

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." In connection with section 7(1)(a), the Department cited section 7(A) of the Federal FOIA, which exempts from disclosure, "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings[.]"

The Department offered no explanation for its assertion of Federal FOIA exemptions 7(A) and 8 other than "there is a pending federal investigation relating to the subject of our records, and our federal contact has requested that our agency not release any

Mr. Tim Novak
Mr. Patrick Mozdierz
June 5, 2023
Page 3

communications between our agency and any federal agency because release of these records could interfere with enforcement proceedings relating to their investigation."¹

The Federal FOIA, however, is not applicable to Mr. Novak's request because the Department is not a Federal "agency" subject to the requirements of Federal FOIA. *See* 5 U.S.C. §551(1) (2018) (defining "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency," subject to certain exceptions) and 5 U.S.C. §552(f)(1) (2018) (applying that definition to Federal FOIA). The Department is a "public body" subject to the requirements of the Illinois FOIA. *See* 5 ILCS 140/2(a) (West 2020) (defining "public body" to include "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State[]") and 5 ILCS 140/1.2 (West 2020) ("All records in the custody or possession of a public body are presumed to be open to inspection or copying.").

To the extent the Department intended to cite the corresponding law enforcement exemption in section 7(1)(d)(i) of FOIA,² that provision exempts from disclosure:

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:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request[.]³

"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." *Baudin v.*

¹Letter from Julie Nistler, Police Records Supervisor/FOIA Officer, City of Park Ridge Police Department, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office[] of the Attorney General (April 8, 2019).

²5 ILCS 140/7(1)(d)(i) (West 2018).

³Because a literal reading of the phrase "that is the recipient of the request" would lead to inconvenient, unjust, or absurd results, a public body may assert a section 7(1)(d) exemption for records of other public bodies involved in the same law enforcement proceeding or criminal investigation. *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780, ¶33, 156 N.E.3d 480, 491-92 (2019).

Mr. Tim Novak
Mr. Patrick Mozdierz
June 5, 2023
Page 4

City of Crystal Lake, 192 Ill. App. 3d 530, 536 (2d Dist. 1989). Conclusory statements that the disclosure of records would obstruct a law enforcement proceeding are insufficient to support the assertion of the pending law enforcement proceeding exemption. *See Day v. City of Chicago*, 388 Ill. App. 3d 70, 74-77 (1st Dist. 2009). A public body must demonstrate *how* disclosure of records would interfere with or obstruct an investigation in order to properly withhold records pursuant to section 7(1)(d)(i) of FOIA. The Attorney General has issued a binding opinion concluding that the mere existence of a pending investigation does not demonstrate by clear and convincing evidence that any records are exempt from disclosure. Ill. Att'y Gen. Pub. Acc. Op. No. 17-001, issued March 14, 2017. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 33927, issued May 6, 2015; Ill. Att'y Gen. PAC Req. Rev. Ltr. 30811, issued November 21, 2014; Ill. Att'y Gen. PAC Req. Rev. Ltr. 26563, issued November 21, 2013.

The Department's assertions that the responsive records are exempt in their entirety are generalized and conclusory; it did not provide clear and convincing evidence demonstrating how disclosure of any or all of the specific records would interfere with any pending investigation. Further, it is not apparent to this office how the withheld records would interfere with any pending investigation.⁴

The Department also cited exemption 8 of the Federal FOIA, which exempts from disclosure matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions[.]" As noted above, the Federal FOIA does not apply to the Department's records. Exemption 8 of the Federal FOIA is substantially similar to section 7(1)(t) of the Illinois FOIA, which exempts from disclosure "[i]nformation contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions, insurance companies, or pharmacy benefit managers, unless disclosure is otherwise required by State law."⁵

In interpreting exemption 8 of the Federal FOIA,⁶ the federal courts have determined that the exemption is intended to "ensure the security of financial institutions. Specifically, there was concern that disclosure of examination, operation, and condition reports

⁴Because the Department provided the records to this office confidentially, section 9.5(c) of FOIA precludes this office from further identifying the nature of the records. 5 ILCS 140/9.5(c) (West 2020).

⁵5 ILCS 140/7(1)(t) (West 2018).

⁶Although interpretations of the Federal FOIA are not controlling, such precedents are considered by the courts in construing the Illinois FOIA because both statutes promote full disclosure of public records subject to limited exceptions. *See Margolis v. Director, Illinois Dep't of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

Mr. Tim Novak
Mr. Patrick Mozdierz
June 5, 2023
Page 5

containing frank evaluations of the investigated banks might undermine public confidence and cause unwarranted runs on banks." *Consumers Union of U.S., Inc. v. Heimann*, 589 F.2d 531, 534 (D.C. Cir 1978). The exemption is also intended "to safeguard the relationship between the banks and their supervising agencies. If details of the bank examinations were made freely available to the public and to banking competitors, there was concern that banks would cooperate less than fully with federal authorities." *Heimann*, 589 F.2d at 534. In interpreting section 7(1)(t) of the Illinois FOIA, this office has concluded that the exemption encompasses information submitted by financial institutions to regulators for examination purposes. Ill. Att'y Gen. PAC Req. Rev. Ltr. 16976, issued March 26, 2012, at 4-5 (determining that internal manuals, guides, and other training materials withheld by the Illinois Department of Financial and Professional Regulation were not exempt pursuant to section 7(1)(t), but that a database of information submitted by financial institutions that was used by Department examiners in connection with the licensing process could be withheld).

The Department did not explain how the withheld records relate to any "examination, operating, or condition reports" used by a financial regulator. Even if they do, it does not appear that disclosure of the records would reveal the details of any bank examination. Therefore, the Department did not meet its burden of establishing that the records are exempt in their entireties pursuant to section 7(1)(t) of FOIA.

Accordingly, this office requests that the Department provide Mr. Novak with copies of the withheld records; the Department may redact private information pursuant to section 7(1)(b) of FOIA⁷ and the identities of third parties pursuant to section 7(1)(c) of FOIA.⁸

⁷5 ILCS 140/7(1)(b) (West 2021 Supp.), as amended by Public Acts 102-752, effective January 1, 2023; 102-753, effective January 1, 2023; 102-776, effective January 1, 2023; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

⁸5 ILCS 140/7(1)(c) (West 2021 Supp.), as amended by Public Acts 102-752, effective January 1, 2023; 102-753, effective January 1, 2023; 102-776, effective January 1, 2023; 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

Mr. Tim Novak
Mr. Patrick Mozdierz
June 5, 2023
Page 6

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 (217) 843-0564 or laura.harter@ilag.gov.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

57377 f 71a improper 71di improper 71t improper pd