



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

December 2, 2021

*Via electronic mail*

*Via electronic mail*

Ms. Michelle L. Weber  
Robbins Schwartz  
55 West Monroe, Suite 800  
Chicago, Illinois 60603  
mweber@robbins-schwartz.com

RE: Request for Review – 2021 PAC 68242

Dear [REDACTED] and Ms. Weber:

This determination letter 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 Oakton Community College (College) did not improperly withhold information responsive to [REDACTED] August 16, 2021 FOIA request, with the exception of certain discrete information.

On that date, [REDACTED] submitted a FOIA request to the College seeking copies of:

1. Any RADAR report(s)<sup>[1]</sup> which mention me, made/filed during 2021. Note: this request is for full & unredacted RADAR reports
2. The name(s) of any and all complainants (or reporters if oakton prefers that title) and/or person(s) attached to or who

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<sup>1</sup>A RADAR report is generated when a complaint is made against a student or employee of the College.

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contributed to such reports, alerts, advisements, and/or complaints of any kind which involve me

3. The phone number, and/or email address(s) which contributed to such reports, alerts, advisements, and/or complaints of any kind which involve me

4. The call recording/footage, original email(s) and/or recorded security camera video and audio footage of such a person who came into the oakton community college police station physically to make any such report(s)/complaint(s).<sup>[2]</sup>

On August 30, 2021, the College denied his request in its entirety pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA.<sup>3</sup> On October 29, 2021, ██████████ submitted a Request for Review contesting the denial. He explained that he was most interested in any RADAR reports responsive to part one of his request, stating: "I understand names and other personal identifying information may be redacted i.e. there may be small redactions etc; I am interested in the content of the report(s)/complaint(s) [sic]."<sup>4</sup> He explained what he believed to be the contents of the reports and his personal interest in obtaining them as follows:

The first allegation was that I, ██████████, might, allegedly, come to Oakton Community College with various firearms/other lethal weapons and shoot, maim, and/or kill members of the Oakton Community College staff, faculty, and/or students. Whereas, the second allegation was that that I, ██████████, might, allegedly, engage in other actions which might harm my neighbors who live in my condominium building. As these are disparate [sic] complaints, neither of which was/is true and neither of which was based upon any real facts, evidence, nor any information beyond one person's own musings/ideations, I have a right to understand exactly what was filed against me as well as any potential threats or perceived threats against my community, school, and/or workplace at large.<sup>[5]</sup>

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<sup>2</sup>E-mail from ██████████ to Edwin, Miny, FOIA Team, and other(s)? (August 16, 2021).

<sup>3</sup>5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv) (West 2020), as amended by Public Act 102-038, effective June 25, 2021.

<sup>4</sup>E-mail from ██████████ to Public Access Counselor, Office of the Attorney General, of the State of Illinois (October 29, 2021).

<sup>5</sup>E-mail from ██████████ to Public Access Counselor, Office of the Attorney General, of the State of Illinois (October 29, 2021).

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On November 3, 2021, this office forwarded a copy of [REDACTED] Request for Review to the College and asked it to furnish unredacted copies of the responsive records for our confidential review, together with a detailed explanation of the factual and legal bases for the asserted exemptions. On November 12, 2021, this office received those materials, including two versions of the College's written response: a complete version for this office's confidential review and a redacted version for this office to forward to [REDACTED].<sup>6</sup> On November 30, 2021, he submitted a 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 2020). 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)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Section 7(1)(c) also contains a relevant exception providing that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's assertion that the release of information would constitute a clearly unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Additionally, section 7(1)(d)(iv) of FOIA exempts from disclosure:

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<sup>6</sup>5 ILCS 140/9.5(d) (West 2020) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

(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[.]

This provision allows police departments to protect the anonymity of both confidential informants and other persons who provide them with information. *See, e.g., Chicago Alliance for Neighborhood Safety v. Town of Chicago*, 348 Ill. App. 3d 188, 200-01 (1st Dist. 2004) (names and addresses of beat meeting participants properly redacted because they provided information to police department). Witness statements may be withheld in their entirety only if disclosure of the contents "would necessarily result in the disclosure of the identity of that source" of information and, therefore, "redaction of the [records] cannot be meaningfully accomplished." *Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 426 (4th Dist. 1994).

In its non-confidential response to this office, the College acknowledged that it withheld a RADAR Behavior Incident report and closely similar police report, "which pertain to allegations against the requestor that he is in possession of firearms and made threatening remarks against members of the College and individuals in his condominium association."<sup>7</sup> The College asserted that it "withheld the records on the grounds that **a majority of the information** contained within the records is exempt from disclosure pursuant to FOIA."<sup>8</sup> (Emphasis added.) The College argued that any information that directly or indirectly identifies a person who provided information to the police in this matter is exempt from disclosure under section 7(1)(d)(iv), and that the narrative statement in the police report and RADAR report "contains

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<sup>7</sup>Letter from Michelle L. Weber, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 12, 2021), at 1.

<sup>8</sup>Letter from Michelle L. Weber, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 12, 2021), at 2.

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specific information and details which, if disclosed, would likely reveal [redacted]."<sup>9</sup> The College argued that the narrative is therefore exempt from disclosure in its entirety. In addition, the College argued that information that would identify individuals involved in the matter is exempt under section 7(1)(c) because "individuals who report information to the College and its law enforcement officials regarding threats of safety have a reasonable expectation that their identities will not be disclosed, particularly to the source of the threat."<sup>10</sup> Further, the College argued that ██████████ interest in disclosure does not outweigh the individuals' privacy interests because he "was properly notified of the allegations against him and afforded an opportunity to respond to those allegations[.]" and the College has taken no adverse action against him.<sup>11</sup>

In his reply, ██████████ argued that he "would not be able to link any person(s) to these reports based upon the claims made within the narrative statement(s) and/or the details of these reports, some of which, again, could also be redacted if that were truly necessary."<sup>12</sup> He stated that the College's response to this office's letter "was the first time it was ever stated that there had been allegations that I had allegedly made threatening remarks against both members of the college and individuals in my condominium association[.]" and he argued that "[t]his claim was not based upon any real/accurate information and was made solely to induce police action as well as actions of the college against me."<sup>13</sup> He argued that "[a]s these false allegations may be used against me in litigation between myself and my condominium association, I have a legitimate interest in the content of these reports (even if redacted), even if not in the identity of the reporter(s), which outweighs the claim of privacy of one or some who filed false police report(s)."<sup>14</sup>

This office's review of the responsive records confirmed that the narrative largely consists of information that falls within the scope of sections 7(1)(c) and 7(1)(d)(iv) of FOIA. The name and employment position of a person who provided information directly to law

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<sup>9</sup>Letter from Michelle L. Weber, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 12, 2021), at 3.

<sup>10</sup>Letter from Michelle L. Weber, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 12, 2021), at 4.

<sup>11</sup>Letter from Michelle L. Weber, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 12, 2021), at 4.

<sup>12</sup>E-mail from ██████████ (Requester) to Joshua Jones (November 30, 2021).

<sup>13</sup>E-mail from ██████████ (Requester) to Joshua Jones (November 30, 2021).

<sup>14</sup>E-mail from ██████████ (Requester) to Joshua Jones (November 30, 2021).

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enforcement is exempt from disclosure under the plain language of section 7(1)(d)(iv). Additionally, the name of the other party and the description of the information provided by that party are exempt from disclosure under section 7(1)(c) because it would be objectionable to a reasonable person to disclose the information to the subject of the report, and the person's right to privacy outweighs any legitimate public interest in obtaining the information. Although ██████████ expressed a clear *personal* interest in learning the contents of the allegedly false statements made about him, the *public* interest favors protecting the confidentiality of the person under the circumstance of an alleged threat to public safety. *Gabrielli v. U.S. Dep't of Justice*, 594 F. Supp. 309, 312-13 (N.D.N.Y. 1984) (identity of individual who filed unfounded complaint exempt from disclosure under the version of section 7(1)(c) in Federal FOIA<sup>15</sup> because "[p]ersons who suspect criminal activity, but who have no hard and fast proof, could well be deterred from providing to law enforcement authorities what may prove to be vital information for fear that their names would be released to the parties against whom they provided information if their suspicions ultimately prove groundless."). It is apparent that disclosing the substance of the statements would be reasonably likely to identify the person who made them. Although ██████████ professed that he would not be able to discern the person's identity, he is not well-positioned to make that judgment without the ability to review the contents of the remarks.

The RADAR report and police report also, however, contain certain discrete information that falls outside the scope of the section 7(1)(c) and section 7(1)(d)(iv) exemptions. The records contain limited information that bears upon the duties of public employees. There is a compelling public interest in disclosure of records that shed light on the manner in which law enforcement officials perform their public duties. Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7. While the College expressly argued that "a majority of the information" in the reports is exempt from disclosure pursuant to FOIA, section 7(1) of FOIA (5 ILCS 140/7(1) (West 2020), as amended by Public Act 102-038, effective June 25, 2021) provides:

When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body **shall make** the remaining information available for inspection and copying. (Emphasis added.)

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<sup>15</sup>Exemption 7(c) of Federal FOIA (5 U.S.C. § 552(b)(7)(C) permits the withholding of "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information \* \* \* could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]"

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It is true that FOIA does not mandate "the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content." *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 n. 55 (D.C. Cir. 1977). That is not the case here, however, because the records contain information about law enforcement activities and context, albeit limited in nature. Therefore, the College did not sustain its burden of proving by clear and convincing evidence that the records are exempt from disclosure in their entireties.

In accordance with the conclusions set out above, this office requests that the College provide [REDACTED] with copies of records, subject to the redaction of the information described above and any other information that falls within the plain language of the definition of "private information" in section 2(c-5) of FOIA<sup>16</sup> pursuant to section 7(1)(b).<sup>17</sup> Under separate cover, this office will provide the College with copies of the records with the information this office has identified as exempt highlighted.

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 [joshua.jones@ilag.gov](mailto:joshua.jones@ilag.gov).

Very truly yours,

[REDACTED]

JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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<sup>16</sup>Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2020)) defines "private information" 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.

<sup>17</sup>Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2020), as amended by Public Act 102-038, effective June 25, 2021) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order."