



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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December 30, 2024

Via electronic mail

Ms. Emily Hoerner
Chicago Tribune
560 West Grand Avenue
Chicago, Illinois 60654
ehoerner@chicagotribune.com

Via electronic mail

Ms. Julie Tappendorf
Ancel Glink
140 South Dearborn Street, Suite 600
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jtappendorf@ancelglink.com

RE: FOIA Request for Review – 2023 PAC 77465

Dear Ms. Hoerner and Ms. Tappendorf:

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 Village of Glenview (Village) improperly withheld records all records responsive to Ms. Emily Hoerner's July 12, 2023, FOIA request.

On that date, Ms. Hoerner, on behalf of the *Chicago Tribune*, submitted a FOIA request to the Village seeking a copy of a specified police report. On July 14, 2023, the Village denied Ms. Hoerner's FOIA request in its entirety pursuant to sections 7(1)(c) and 7(1)(d)(iv) of FOIA.² On July 25, 2023, Ms. Hoerner submitted the above-referenced Request for Review challenging the Village's denial.

¹5 ILCS 140/9.5(f) (West 2023 Supp.).

²5 ILCS 140/7(1)(c), (1)(d)(iv) (West 2023 Supp.).

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On August 11, 2023, this office sent a copy of the Request for Review to the Village and asked it to provide an unredacted copy of the withheld records for our confidential review, and a detailed explanation of the factual and legal bases for the applicability of sections 7(1)(c) and 7(1)(d)(iv) of FOIA. On August 14, 2023, the Village provided this office with the requested materials. On August 24, 2023, this office forwarded a copy of the Village's response to Ms. Hoerner; she replied on August 29, 2023.

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 Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are 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) of FOIA generally requires public bodies to disclose the non-exempt portions of responsive records, though a request may be denied in its entirety if the records "cannot be redacted in a manner that would protect the identity of the individual whose privacy interest is at stake."³ *Schonberger v. National Transportation Safety Board*, 508 F. Supp. 941, 945 (D.D.C. 1981).

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[.]" except 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 an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Dep't of Public Health*, 327 Ill. App. 3d 192, 196 (2001).

This office has consistently determined that the disclosure of information identifying a victim of a criminal offense would constitute a clearly unwarranted invasion of

³Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2023 Supp.)), provides, in relevant part:

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.

personal privacy and therefore that such information may be redacted from a record pursuant to section 7(1)(c). *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 26904, issued April 16, 2014, at 2. Additionally, this office has previously determined that a police department may redact from an incident report the names and other identifying information of suspects who were never arrested or charged in connection with the incident. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 31526, issued November 26, 2014, at 6; *see also Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (the right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'" (quoting *American Civil Liberties Union v. United States Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011))). Further, the disclosure of the identities of third parties and witnesses would be an unwarranted invasion of those individuals' personal privacy interests. *See Coleman v. F.B.I.*, 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal privacy because "it is evident that release of any portion would reveal the identities of innocent third parties, witnesses or victims.").

Additionally, disclosure of details of alleged sex crimes constitutes an unwarranted invasion of the victim's right to privacy. *McGee v. Kelley*, 2017 IL App (3d) 160324, ¶¶ 18-20 (2017) ("The public has an interest in monitoring law enforcement to ensure it is acting in the public's interest. However, it is doubtful that the public has any interest in the actual details of the victim's sexual assault and battery."). *See also State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶ 56 (2013) ("details of * * * sexual misconduct are highly personal, which weighs heavily in favor of exemption."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 67495, issued June 29, 2021, at 4 (redactions in the narrative section of report consisting of a graphic description of alleged sexual offense properly redacted).

In its non-confidential response to this office, the Village explained that its

denial letter noted that no arrest had been made and no charges brought so the privacy interests of the subject of the report in having this report withheld from release outweighed any public interest in the release of the report. The [denial] letter also noted that the privacy interests of the witnesses and complainants in the report outweighed any public interest in disclosure. In addition to the invasion of personal privacy that would result from disclosure of this report, the Village's denial letter noted that disclosing the report would reveal the identities of victims, witnesses and complaints and confidential information that is exempt under section 7(1)(d)(iv). The Village's denial letter explained that the

report could not be meaningfully redacted to protect these important privacy interests.^[4]

The Village also noted in its response that Ms. Hoerner "does not * * * dispute any of the reasons the Village raised for denying the request."⁵

In her reply, Ms. Hoerner maintained that the reports should not be withheld in their entirety, arguing that the Village must disclose any information that is not considered confidential.

This office's review of the unredacted records confirms that the incident did not involve an arrest. The report contains information that would identify the suspect, the complainant, and other third parties and witnesses. Because disclosure of information identifying those individuals would constitute a clearly unwarranted invasion of personal privacy, this office concludes that such information is exempt from disclosure pursuant to section 7(1)(c).

The narrative section of the report discusses the alleged assault in detail as well as highly personal information about the victim's treatment at a hospital. That information is exempt from disclosure pursuant to section 7(1)(c) of FOIA. *McGee*, 2017 IL App (3d) 160324, ¶ 18. However, the report also includes descriptions of the investigating officers' activities. That information bears on the public duties of public employees and, subject to the redaction of specific details of the alleged offense and information identifying the complainant, suspect, witnesses, and other third parties, may not be withheld pursuant to section 7(1)(c) of FOIA. While 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), there is no legitimate public interest in the highly personal portions of the narrative that would outweigh the subjects' privacy rights under the circumstances of this matter.

Accordingly, this office requests that the Village disclose to Ms. Hoerner a version of the responsive report that reveals the officers' activities. The Village may withhold information identifying the complainant, suspect, and any witnesses or third parties mentioned in the report as well as the highly personal details of the alleged assault and other medical treatment

⁴Letter from Julie A. Tappendorf, Ancel Glink, to Victoria Frazier, Assistant Attorney General, Office of the Attorney General (August 14, 2023), at [1].


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information.⁶ The Village may also redact private information pursuant to section 7(1)(b) of FOIA.⁷

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 victoria.frazier@ilag.gov. Thank you.

Very truly yours,


VICTORIA FRAZIER
Assistant Attorney General
Public Access Bureau

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⁶The Village may also withhold dates of birth pursuant to section 7(1)(c). *See* Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12.

⁷5 ILCS 140/7(1)(b) (West 2023 Supp.). Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2023 Supp.)) 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.