



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 20, 2023

Via electronic mail

Mr. Felix Sarver
The Herald-News
Joliet, Illinois
fsarver@gmail.com

Via electronic mail

Mr. Kevin Meyers
Assistant State's Attorney
Will County State's Attorney's Office
57 North Ottawa Street, 6th Floor
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RE: FOIA Request for Review – 2023 PAC 77825

Dear Mr. Sarver and Mr. Meyers:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons set forth below, the Public Access Bureau concludes that the Will County State's Attorney's Office (State's Attorney's Office) improperly denied Mr. Felix Sarver's August 15, 2023, FOIA request.

On that date, Mr. Sarver submitted a FOIA request to the State's Attorney's Office on behalf of *The Herald-News* seeking copies of any communications to Will County Judge John Anderson regarding Samantha Harer since July 1, 2023. The request related to a wrongful death lawsuit brought by Ms. Harer's parents; according to a July 20, 2023, news article, "Judge John Anderson issued a \$15 million total default judgment against former Crest Hill Police Officer Phil Flores in the deadly shooting of Flores' estranged girlfriend, Samantha Harer, 23[.]" but Mr. Flores had never been charged in connection with Ms. Harer's death.¹ On August 18, 2023, the

¹John Ferak, *Phil Flores Must Pay \$15 Million For Samantha Harer's Death: Judge*, Patch (July 20, 2023, 12:24 p.m.), <https://patch.com/illinois/joliet/phil-flores-must-pay-15-million-samantha-harers-death-judge>.

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State's Attorney's Office responded by denying the request pursuant to section 7(1)(a) FOIA,² asserting that the judge "has impounded that communication, and recently ruled that he would not unseal the records."³ On August 22, 2023, Mr. Sarver submitted a Request for Review contesting the denial of his request. Mr. Sarver enclosed copies of court orders issued in the case on July 20, 2023,⁴ July 27, 2023,⁵ and August 15, 2023,⁶ as well as the original complaint.⁷ He argued:

As the judge indicates in his August 15, 2023 court order, his ruling does not prohibit disclosure of the record through FOIA. He's addressing the plaintiffs in the lawsuit case but by saying they could obtain the record through FOIA, that means anyone can obtain the document through that means as well.^[8]

On August 28, 2023, this office forwarded a copy of Mr. Sarver's Request for Review to the State's Attorney's Office and asked it to provide unredacted copies of the responsive records for this office's confidential review, and a detailed written explanation of its legal and factual bases for denying the request. Having received no response, on September 12, 2023, this office again sent a copy of the Request for Review to the State's Attorney's Office and reiterated the prior request for the same materials. On September 29, 2023, the State's Attorney's Office furnished a written response but no records to review. On October 2, 2023, Mr. Sarver notified this office that he had no reply to that response.

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.*

²5 ILCS 140/7(1)(a) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023.

³Letter from Kevin Meyers, Assistant State's Attorney, to Felix Sarver, The Herald-News (August 18, 2023).

⁴*Harer v. Flores*, No. 22 LA 666 (Circuit Court, Will County, July 20, 2023).

⁵*Harer v. Flores*, No. 22 LA 666 (Circuit Court, Will County, July 27, 2023).

⁶*Harer v. Flores*, No. 22 LA 666 (Circuit Court, Will County, August 15, 2023).

⁷Complaint, *Harer v. Flores*, No. 22 LA 666 (Circuit Court, Will County, October 7, 2022).

⁸E-mail from Felix Sarver, The Herald-News, Joliet, Illinois, to Public Access [Bureau] (August 22, 2023).

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Illinois Department 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 2022). When a court issues a protective order that prohibits a public body from disclosing certain records, the public body does not violate FOIA by withholding those records. *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 66.

The first of the three court orders Mr. Sarver provided is Judge Anderson's July 20, 2023, decision that Mr. Flores likely caused Ms. Harer's death and was liable for \$15 million in compensatory damages. The second order, dated July 27, 2023, begins as follows: "The Court is in receipt of communications from the State's Attorney's office, dated July 24, 2023, consisting of a cover letter and what appears (at a glance) to include investigative information regarding the death of Samantha Harer."⁹ Emphasizing that the case before the court was a civil matter rather than a criminal one, Judge Anderson then explained:

The communication from the State's Attorney's office reflects that the letter is submitted in accordance with the rules of professional conduct. However, the State's Attorney's office is not a party to this case, and has never asked to intervene in the case. Accordingly, the Court is not in an appropriate position to accept or consider evidence submitted to the Court in this fashion.

* * *

The Clerk of the Court is directed to place the July 24, 2023 communication (with enclosures) in the Court file and impound it because it does not constitute evidence that is properly before the Court.^[10]

Plainly, no language in this order directed the State's Attorney's Office to keep the records confidential; this order concerned the court's receipt of the records, and served to prevent the records from being immediately disclosed to the public in full as part of the court file.

In the third and final order, issued August 15, 2023, the court denied plaintiffs' motion to unseal the documents that were enclosed with the cover letter from the State's Attorney's Office's "unsolicited communication" to the judge.¹¹ The court denied the motion for

⁹*Harer v. Flores*, No. 22 LA 666, at 1 (Circuit Court, Will County, July 27, 2023).

¹⁰*Harer v. Flores*, No. 22 LA 666, at 1-2 (Circuit Court, Will County, July 27, 2023).

¹¹*Harer v. Flores*, No. 22 LA 666, at 1 (Circuit Court, Will County, August 15, 2023).

various reasons, including that the court lacked sufficient information about the scope and purpose of the records, that the case had already been decided and the records were not relevant to that decision, that plaintiffs' counsel had been advised of the substance of the documents by receiving the cover letter and had also received most if not all of the documents in a related federal case, and that the civil case was not the correct forum to argue over whether Mr. Flores should be charged or whether ethical violations occurred.¹² Nonetheless, the order then stated:

Nothing in this order should be interpreted as prohibiting plaintiffs from seeking the Documents through the court files in the related federal case, *through the Freedom of Information Act, from the State's Attorney's office directly*, through separate litigation, from the ARDC, or through any other means. (Emphasis added.)^[13]

In its answer to this office, the State's Attorney's Office argued that it properly denied Mr. Sarver's FOIA request because although it "has no major objection to the release of the records in general," it "may face the specter of contempt proceedings should [it] voluntarily release the records."¹⁴ The State's Attorney's Office argued that the language in Judge Anderson's most recent order about obtaining the documents through FOIA and from the State's Attorney's Office directly is not dispositive of this matter because "the passage only deals with the Plaintiffs in the *Harer* case[.]" and "it is not definitive in determining whether the documents are available under FOIA, only simply that the Court has not prejudged the ability of the Plaintiffs to avail themselves to the act."¹⁵ The State's Attorney's Office continued: "This is neither a clear declaration that this office may release the impounded documents, nor is it a shield to a contempt proceeding. We are at best left in limbo. For the same reason we have not included the records for the PAC to review."¹⁶

The State's Attorney's Office has not demonstrated that any of Judge Anderson's court orders prohibit the State's Attorney's Office from disclosing the requested records to Mr.

¹²*Harer v. Flores*, No. 22 LA 666, at 1-2 (Circuit Court, Will County, August 15, 2023).

¹³*Harer v. Flores*, No. 22 LA 666, at 3 (Circuit Court, Will County, August 15, 2023).

¹⁴Letter from Kevin Meyers, Assistant State's Attorney, to Assistant Attorney General Joshua Jones, Illinois Attorney General's Office, Public Access Bureau (September 29, 2023), at 1-2.

¹⁵Letter from Kevin Meyers, Assistant State's Attorney, to Assistant Attorney General Joshua Jones, Illinois Attorney General's Office, Public Access Bureau (September 29, 2023), at 2.

¹⁶Letter from Kevin Meyers, Assistant State's Attorney, to Assistant Attorney General Joshua Jones, Illinois Attorney General's Office, Public Access Bureau (September 29, 2023), at 2.

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Sarver. The State's Attorney's Office did not identify any portion of the orders in which the court instructed the State's Attorney's Office to keep the records confidential. Had the court meant that the records sent to the court by the State's Attorney's Office must be kept confidential by the State's Attorney's Office, it could have expressly said so rather than stating that the records may be sought from the State's Attorney's Office pursuant to FOIA. The matter that the court did not prejudge is the extent to which FOIA exemptions pertaining to ongoing criminal investigations apply to the records, not whether the records are beyond the reach of FOIA because of a protective order.

Moreover, in listing FOIA as an available means of seeking the records, the court did not convey that the records are subject to disclosure only to the plaintiffs in the *Harer* case. Rather, "the purpose of the FOIA is to open governmental records to the light of **public scrutiny**." (Emphasis added.) *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378 (1989); *see also* 5 ILCS 140/1 (West 2022) ("[I]t is declared to be the public policy of the State of Illinois that **all persons** are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act." (Emphasis added.)). Again, the extent to which the records are exempt from disclosure pursuant to one or more FOIA exemptions is a separate matter from whether the court order impounding the copies of the records the State's Attorney's Office provided to the court prohibits the State's Attorney's Office from releasing copies of the records it maintains in response to Mr. Sarver's request. Accordingly, the State's Attorney's Office did not prove that it properly denied Mr. Sarver's FOIA request in its entirety.

Because the State's Attorney's Office refused to provide this office with copies of the records for our confidential review as expressly required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2022)), this office is not in a position to analyze the extent to which the records may contain pieces of information that fall within the scope of the exemptions set out in FOIA. This office asks the State's Attorney's Office to provide a revised response to Mr. Sarver, narrowly applying any pertinent FOIA exemptions and disclosing all non-exempt portions of the records. To the extent that it redacts or withholds any information, the State's Attorney's Office must issue a detailed explanation for the denial in accordance with section 9 of FOIA (5 ILCS 140/9 (West 2022)).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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