



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 6, 2025

Via electronic mail



Via electronic mail

Ms. Dawn C. Didier
City Attorney
City of Wheaton – Legal Department
303 West Liberty Street
Wheaton, Illinois 60187
ddidier@wheaton.il.us

RE: FOIA Request for Review – 2024 PAC 84373

Dear [REDACTED] and Ms. Didier:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)).

On December 9, 2024, [REDACTED] submitted a FOIA request to the Wheaton Police Department (Department) seeking copies of the reports for WH 0904284779, which related to a case dating back to May 27, 2009. On December 11, 2024, the Department denied the request pursuant to section 7(1)(a) of FOIA,¹ which exempts from inspection and copying "[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 a provision in the Criminal Identification Act (20 ILCS 2630/13(c) (West 2022)) related to sealed or impounded records. On December 13, 2024, this office received [REDACTED] Request for Review contesting the withholding of the arrest records.

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

On December 30, 2024, this office forwarded a copy of the Request for Review to the Department and asked it to provide a copy of the records for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemption. On January 6, 2025, this office received the requested materials, including a copy of a court order to seal a conviction. On January 7, 2025, this office forwarded a copy of the Department's response to [REDACTED]; he replied that same day, maintaining that he sought arrest records.

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 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).

A public body does not violate FOIA when it withholds records that are prohibited from disclosure by a court order, such as a sealing order. *See GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 387 (1980) (U.S. Supreme Court held that a Federal agency did not violate the Federal FOIA (5 U.S.C. § 552 *et seq.* (1974)) by withholding several consumer safety reports that were subject to an injunction prohibiting their disclosure); Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 22-23 (concluding that a public body did not violate FOIA by withholding complaints for search warrants and search warrants that had been impounded by court order); Ill. Att'y Gen. PAC Req. Rev. Ltr. 62415, issued May 14, 2020 (public body not obligated to disclose a subpoena, which was sealed by the court, in response to a FOIA request).

In its response to this office, the Department stated that the incident that was the subject of the requested arrest records involved two individuals, one of whom was [REDACTED]. The Department asserted that the records are exempt from disclosure under section 7(1)(a) of FOIA because they were sealed pursuant to a court order. Specifically, the Department argued that records that have been sealed or expunged are exempt from disclosure in accordance with section 5.2(d)(9)(C) of the Criminal Identification Act, which provides, in relevant part, that "[u]pon entry of an order to seal records under subsection (c), the arresting agency, any other agency as ordered by the court, the Illinois State Police, and the court shall seal the records (as defined in subsection (a)(1)(K))." 20 ILCS 2630/5.2(d)(9)(C) (West 2022)).

As noted above, the Department provided a copy of a court order to seal a conviction. The court order seals a conviction for another individual and references case # 09

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CF 1282. This office's review of the withheld records pertaining to WH 0904284779 determined that most of the records contain information about that individual and [REDACTED] related to an incident in which they were both involved. Because the records pertain to the conviction of the individual, the Department is not obligated to disobey a court order sealing those records to comply with a FOIA request.

However, a portion of the records (pages 60-68) pertain only to the arrest and charging of [REDACTED]. These records reference a different case, #09 CF 1283, and do not discuss the other individual. The Department did not demonstrate how these records are covered by the court order at issue, and its applicability is not apparent to this office. Accordingly, the Department did not demonstrate by clear and convincing evidence that it properly denied the request in whole pursuant to section 7(1)(a) of FOIA. This office requests that the Department provide [REDACTED] with a copy of pages 60-68 of the records.

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 the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Deputy Bureau Chief
Public Access Bureau

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