



Crash Reports

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 16, 2018

Via electronic mail

Ms. Caroleann S. Gallagher
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Via electronic mail

Ms. Erin Davis
Freedom of Information Officer
Illinois State Police
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RE: Request for Review – 2017 PAC 50968; ISP request no. 17-1982

Dear Ms. Gallagher and Ms. Davis:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that the Illinois State Police (ISP) did not improperly redact the records responsive to Ms. Caroleann S. Gallagher's FOIA request, with the exception of a business address.

On December 7, 2017, Ms. Gallagher submitted a FOIA request to ISP seeking a copy of the Traffic Crash Reconstruction report for an accident involving one of her clients. On December 15, 2017, ISP responded by providing her with copies of the records with redactions pursuant to sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (1)(c) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). On December 22, 2017, this office received Ms. Gallagher's Request for Review contesting ISP's partial denial. In particular, she alleged that ISP improperly redacted the address of the driver who was at fault and the names and addresses of witnesses to the accident.

Ms. Caroleann S. Gallagher
Ms. Erin Davis
April 16, 2018
Page 2

On January 5, 2018, this office forwarded a copy of the Request for Review to ISP and asked it to provide this office with unredacted copies of the requested records for our confidential review, redacted copies of the records in a manner suitable for comparison, and a detailed explanation of the factual and legal bases for the applicability of sections 7(1)(b) and 7(1)(c). On January 5, 2018, ISP provided this office with unredacted copies of the records and its written response maintaining that its partial denial was proper. On April 12, 2018, ISP provided this office with redacted copies of the records. Ms. Gallagher did not reply.

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 2016); *see also Southern Illinoisan v. Illinois Dept. 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 2016).

Section 7(1)(b) of FOIA

Section 7(1)(b) 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." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2016)) defines "private information" as:

[U]nique 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.

The Public Access Bureau has previously determined that personal vehicle registration numbers fit within this definition. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 23463*, issued May 7, 2014, at 3.

In its responses to Ms. Gallagher's FOIA request and to this office, ISP asserted that it redacted all relevant private information. This office's review of the records revealed that ISP redacted a home address, home or personal telephone numbers, a vehicle registration number, and driver's license numbers. Because this information fits within the definition of "private information" in FOIA, this office concludes that ISP did not improperly redact this

Ms. Caroleann S. Gallagher
Ms. Erin Davis
April 16, 2018
Page 3

information under section 7(1)(b) of FOIA. Although Ms. Gallagher argued that a provision of the Driver's Privacy Protection Act (DPPA) (18 U.S.C. § 2721(b)(4) (2018)) "provides that Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety for use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body[,]"¹ that provision instead pertains to "permissible uses" and provides that "personal information" "may be" disclosed under those circumstances. "Personal information" is defined as "information that identifies an individual, including an individual's * * * address (but not the 5-digit zip code), * * * but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. § 2725 (2018). Even if home addresses connected to vehicular addresses are within the scope of "personal information" under the definition of that term in DPPA, "[l]egislative use of the word 'may' is generally regarded as indicating a permissive or directory reading, whereas use of the word 'shall' is generally considered to express a mandatory reading." *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Thus, DPPA is not a Federal law that *requires* disclosure of home addresses in connection with vehicular accidents. Therefore, while ISP was permitted to provide Ms. Gallagher with a copy of a driver's home address, it was not required to do so.

This office notes that the unredacted copies of the records do not appear to contain any witness information; on April 12, 2018, ISP confirmed to this office by telephone that it did not redact witness information.

However, ISP did redact a business's contact information, which is impermissible under section 7(1)(b). *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 48461, issued December 18, 2017. Accordingly, this office concludes that ISP improperly withheld this information under section 7(1)(b) of FOIA, and asks that it disclose this information to Ms. Gallagher.

Section 7(1)(c) of FOIA

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:

[T]he disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's

¹Letter from Caroleann S. Gallagher, Dwyer & Coogan, P.C., to Public Access Counselor, Office of the Attorney General (December 22, 2017).

Ms. Caroleann S. Gallagher
Ms. Erin Davis
April 16, 2018
Page 4

right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

The Attorney General has determined that dates of birth are exempt from disclosure under section 7(1)(c). *See* Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 12.

ISP redacted dates of birth. Because dates of birth are exempt from disclosure, ISP did not violate FOIA by redacting them.

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 (312) 814-8413 or the Chicago address on the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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