

Illinois FOIA:
Common Issues Facing
Law Enforcement Agencies

June 21, 2018

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Public Access Counselor

Position within the Attorney General's Office.

Created by amendments to FOIA effective
January 1, 2010.

To provide advice and education with respect
to FOIA and OMA;

To resolve complaints concerning compliance
with FOIA and OMA without litigation.

15 ILCS 205(7)

FOIA Training Requirement

- Yearly, for FOIA Officers
- Available on AG/PAC website
- Must file a copy of the certificate of
completion with the public body!

The Purpose of FOIA

"The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a **fundamental obligation of government** to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." (Emphasis added.)

5 ILCS 140/1

Presumption of Openness

Under FOIA, there is a presumption that all public records are ***open to inspection or copying***:

"Presumption. 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 (added by 2010 amendments)

Definition of "Public Records"

The definition of "public records" includes:

"[A]ll *** documentary materials ***pertaining to the transaction of public business***, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, ***in the possession of, possessed or under the control*** of any public body."

5 ILCS 140/2(c)

What is a Public Record? Emails and Texts

- City/Village/Department Devices/Accounts: Subject to FOIA if ***pertain to transaction of public business.***
- Personal Devices/Accounts: Subject to FOIA if ***pertain to transaction of public business.***
 - *City of Champaign v. Madigan*, 2013 IL App (4th) 120662 (2013): elected official communications sent or received on a personal electronic device during a public meeting
 - Ill. Att’y Gen. Pub. Acc. Op. No. 16-006 (August 9, 2016) (aff’d by Circuit Court of Cook County): public employee e-mails sent or received via personal accounts

What is a Public Record? Emails and Texts

“A ruling that writings pertaining to the transaction of public business are not public records would open the door to allow unscrupulous government officials to shield public records by the simple expediency of conducting public business with the use of personal devices and in personal emails.”

What is a Public Record? Emails and Texts

The public body may be able to fulfill its obligations under FOIA by asking personnel to search their e-mail accounts in good faith.

Ill. Att’y Gen. Pub. Acc. Op. No. 16-006, issued August 9, 2016, aff’d by Circuit Court of Cook County.

What is a Public Record?

A public record must *pertain to the transaction of public business*. Therefore, any communications relating to ***strictly personal matters*** are not "public records" subject to disclosure under FOIA, regardless of how or where they are maintained.

Content controls, not the medium.

Designated Public Records

Docs re: public funds spent/rec'd: section 2.5

Arrest reports: section 2.15: Arrestee name, age, address, and photograph if available; information detailing any charges relating to the arrest

Certified payrolls: section 2.10

Settlement and Severance Agreements: section 2.20

→ Some redactions allowed

Record Held by Agent

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted *to perform a governmental function* on behalf of the public body, and that *directly relates to the governmental function* and is *not otherwise exempt* under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2)

See *Chicago Tribune v. College of DuPage and College of DuPage Foundation*, 2017 IL App (2d) 160274 (2017).

What is a Public Record?

FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying. *Workmann v. Illinois State Bd. of Educ.*, 229 Ill. App. 3d 459, 464 (2d Dist. 1992).

Questions and Explanations

- FOIA is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records. 5 ILCS 140/3.3
- A public body is not required to answer questions or generate new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).

Compiling Information Is Not Creating New Records

FOIA does not require public bodies to create entirely new records consisting of information that is not in its possession or custody, but a public body may be required to compile and re-organize information that it already maintains in the ordinary course of business.

Hites v. Waubensee Community College, 2016 IL App (2d) 150836 (2016).

Hypothetical

An applicant who was not hired for an open position sends a FOIA request to your department requesting the hire and promotion dates of all department employees. The department denied this FOIA request saying that it would have to compile this information from its HR database and FOIA does not require it to create a new document.

Does the department's response comply with FOIA?

NO.

In *Hamer v. Lentz*, 132 Ill. 2d 49, 56 (1989), the Illinois Supreme Court considered whether a public body was required to create a computer program to generate a paper copy of information which it possessed only on computer tape, and concluded that it was required to do so: "In sum, the *** information is maintained by defendants in the ordinary course of business, is nonexempt, and thus must be disclosed. Disclosure of the information in no way involves the creation of a new record." *Lentz*, 132 Ill. 2d at 57.

FOIA Requests

- In writing, directed to the public body.
- Oral requests *may* be honored.
- Standard form *may not* be required.
- Public body *may not require* requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
- Forward immediately to FOIA officer.
See 5 ILCS 140/3(c)

Time for Responding

A public body must generally respond to a FOIA request within 5 business days after receipt of a written request. The time for response may be extended **by the public body** for an additional 5 business days for one of seven reasons specified in the Act.

See 5 ILCS 140/3(d),(e)

→ 2010 amendments shorted response time from 7 business days

FOIA Response

A FOIA request may be granted, denied, or granted in part and denied in part. **If denying** a request for public records the public body shall **notify the requester in writing of:**

1. The decision to deny the request,
2. The **reasons** for the denial, including a detailed factual basis for the application of any exemption claimed, and
3. The names and titles or positions of each person responsible for the denial.

FOIA Response, cont.

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number of the Public Access Counselor,
3. Inform the requester of his right to judicial review under section 11 of FOIA.

5 ILCS 140/9(a)

Failure to Respond

Failure to respond to a request within the time permitted is considered a **denial** of the request.

- A public body that fails to respond to a request within the time permitted, but then provides copies of the requested public records **may not impose a fee** for those copies.
- A public body that fails to respond to a request received **may not treat the request as unduly burdensome** under section 3(g).

5 ILCS 140/3(d)

Copying Fees (amended in 2010)

First 50 pages (b/w, letter or legal) = FREE!

Pages 51+ = may not exceed **15 cents per page**.

If a public body provides copies in color or in a size other than letter or legal, the public body may charge its actual cost for reproducing the records. 5 ILCS 140/6(a).

Fees for Electronic Copies

A public body may only charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.

Statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format, unless the General Assembly otherwise provides.

5 ILCS 140/6(a)

Requests for Electronic Copies

- A public body must produce **records that are maintained in an electronic format** in the electronic format specified by the requester, if feasible.
- If not feasible, must disclose in the electronic format in which the records are maintained or in paper, at the option of the requester.

Records Maintained Online

A public body is not required to copy a public record that is published on the public body's website.

- Public body must **notify** the requester that the public record is available online and **direct** the requester to the website.
- Persons unable to reasonably access the record online may re-submit the request, public body must then respond as provided in section 3.

5 ILCS 140/8.5

Unduly Burdensome Requests

- Before invoking this section, public bodies must extend to requester an opportunity to reduce the request to manageable proportions.
- The burden of compliance on public body must outweigh public interest in the information.
- Repeated requests by same person for same records identical to records *previously provided or properly denied* are unduly burdensome.

5 ILCS 140/3(g)

Unduly Burdensome - Examples

- ... manually locating and compiling large numbers of records from 93 separate facilities or systems over a 23-year time span.
- ... compiling all records, including financial records, school policies, and correspondence for a 12-year period.
- ... only two employees to gather, review, and redact thousands of records from several sources over a six-year span.
- ... creation of new reports to assemble vendor information and payments for rent-related expenses for public housing.

Exemptions

To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection.

Exemption **authorize** withholding, but do not prohibit disclosure

When a record contains both exempt and non-exempt information, the public body **may elect** to redact exempt information; remaining information shall be made available for inspection and copying. 5 ILCS 140/7(1).

Exemptions

The exemptions to disclosure under FOIA are to be narrowly construed.

Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 408 (1997).

Section 7.5(bb) – Juvenile Court Act

Section 1-7 of JCA (amended 2018):

"All juvenile records which have not been expunged ***are sealed and may never be disclosed to the general public or otherwise made widely available.*** Sealed records may be obtained only under this Section and Section 1-8 and 5-915 of this Act, when their use is needed for good cause and with an order from the juvenile court, as required by those not authorized to retain them...."

Section 7.5(bb) – Juvenile Court Act

"Inspection and copying of law enforcement records maintained by law enforcement agencies ***or records of municipal ordinance violations*** maintained by any State, local, or municipal agency that ***relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday***" is limited to certain enumerated parties."

Section 7.5(bb) – Juvenile Court Act

- Section 1-7 of the JCA ***does not*** apply to criminal conduct by adults in which a ***minor*** is discussed as a ***victim***
→7(1)(c) to protect identity of victims

Section 7.5(bb) – Juvenile Court Act

- Request from alleged victim, record relates to arrest of a minor: **properly denied**. Ill. Att’y Gen. PAC Req. Rev. Ltr. 52318, issued 3/30/18.
- Request from parent, record relates to arrest of minor child: **properly denied**. Ill. Att’y Gen. PAC Req. Rev. Ltr. 52957, issued 5/23/18.
- Request from parent, record relates to investigation of minor child: **properly denied**. Ill. Att’y Gen. PAC Req. Rev. Ltr. 52968, issued 5/18/18; see also Ill. Att’y Gen. PAC Req. Rev. Ltr. 52759, issued 4/26/18 (req from guardian).

Section 7(1)(a)

Exempts from disclosure:

“Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.”

5 ILCS 140/7(1)(a)

Section 7(1)(a) – Information Exempt Under Other Laws

Section 7(1)(a) applies only when a law or rule implementing a law *specifically* prohibits the public body from releasing the information in question. *Better Government Ass’n v. Blagojevich*, 386 Ill. App. 3d 808, 814 (4th Dist. 2008).

Examples of 7(1)(a)

LEADS Regulations

- IL Admin Code provides that "LEADS data shall not be disseminated to any individual or org that is not legally authorized to have access." 20 Ill. Adm. Code 1240.80(d)
→ But if general information (e.g., vehicle registration) obtained from LEADS **is incorporated into another report**, not exempt

Information Exempt Under Other Laws

Illinois Criminal Codes

- Records under court seal that were obtained through court ordered overhears and records that reflect the contents are prohibited under 725 ILCS 5/108A-7.
- Grand jury records. See 725 ILCS 5/112-6.
- School bus audio-visual recordings. See 720 ILCS 5/14-3(m).
- Recordings of custodial interrogations. See 725 ILCS 5/103-2.1(g).

7(1)(a) Not Properly Asserted

Health Insurance Portability and Accountability Act (HIPAA)

- HIPAA applies to **covered entities** such as health plans and providers, not law enforcement agencies
- IL Supreme Court Rule 415
- Regulates discovery in criminal cases; prohibits disclosure of materials furnished to an attorney from the opposing party in discovery process
 - Does not govern police departments and records they created

7(1)(b) – Private Information

Allows withholding of **private information**, unless required by another provision of FOIA, a State or federal law or a court order.

Private information is defined in section 2(c-5) of FOIA.

Private Information

5 ILCS 140/2(c-5) **Unique Identifiers**, including:

- Social Security Numbers
- Driver's License Numbers
- Employee Identification Numbers
- Biometric Identifiers (DNA, retina/iris scan, fingerprint, voiceprint, scan of hand)
- Personal Financial Information
- Passwords or Other Access Codes
- Medical Records
- Home or Personal Telephone Numbers
- Personal Email Addresses

Private Information

5 ILCS 140/2(c-5) **Unique identifiers**, including:

- Home addresses
- Personal license plates
- Except when compiled without possibility of attribution to any person

Other Unique identifiers

- Zip codes (when coupled with identifying information like name)
- Signatures

7(1)(b) Not Properly Asserted

- *Business* telephone numbers, e-mail addresses, street addresses
- Commercial license plates
- Badge numbers
- Firearm serial numbers
- VINs
- FEINs

7(1)(c) – Personal Information

Exempts “[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[.]”
5 ILCS 140/7(1)(c)

Personal Information, cont.

“*Clearly unwarranted invasion of personal privacy*” means 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.

7(1)(c) involves a fact-specific, case-by-case inquiry, balancing right to privacy with public interest.

Personal 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."

5 ILCS 140/7(1)(c)

Exempt Personal Information

- ***Victim names/identifying information***
- ***Names of suspects not arrested, third parties mentioned incidentally in reports***
- Dates of birth
- Race
- Graphic photos and descriptions of offenses
- Graphic autopsy photos of decedent
- Specific medical information (i.e. descriptions of specific injuries and treatment)
- Information related to unsuccessful candidates for employment

7(1)(c) Not Properly Asserted

- ***Identifying information of an arrestee***
- ***Names of people issued a ticket, citation or notice to appear***
- ***Personal information concerning requester***
- Age, gender, height, weight
- Death certificate
- Information relating to a decedent, e.g., police report describing death (non-graphic)
- Names of police officers in lineups
- Name of hospital/medical facility

7(1)(c) Not Properly Asserted

- Resumes, CVs, certificates and other employment information
- Places of employment, outside employment
- Dollar amount deducted from all employee paychecks for union dues
- Time sheets, vacation time, accrual sheets, and amount of sick time used

7(1)(d)(i) – Pending Law Enforcement Proceedings

- Exemption 7(1)(d)(i) of FOIA allows a public body to withhold records if disclosure **would interfere** with pending or actually and reasonably contemplated law enforcement proceedings conducted **by the law enforcement or correctional agency that received the FOIA request.**

If “Disclosure Would Interfere”

Day v. City of Chicago, 388 Ill. App. 3d 70 (1st Dist. 2009): “Simply saying there is an ‘ongoing criminal investigation because the case has not been cleared,’ [does not] show the ongoing investigation exemption applies.”

- Found that the statements from the police department failed to explain how disclosure **would specifically obstruct** the investigation.
- Factors considered: nature of the offense, stage of the investigation or prosecution, and the sensitivity of the investigatory records.

7(1)(d)(ii) – Active Admin Enforcement Proceedings

- Exemption 7(1)(d)(ii) of FOIA allows a public body to withhold records when disclosure **would interfere** with active administrative enforcement proceedings conducted **by the public body that received the FOIA request**.
- *E.g.*, may apply to active, internal investigation of alleged police misconduct.

7(1)(d)(iii) – Deprivation of Fair Trial or Impartial Hearing

- Allows a public body to withhold records if disclosure **would create a substantial likelihood** that a person will be deprived of a fair trial or impartial hearing.
- If case is technically open but no charges pending, likelihood of trial too tenuous
- Must also show furnishing records **to requester** would jeopardize fair trial

7(1)(d)(iv) – Witnesses and CIs

- Allows a public body to withhold records that would unavoidably reveal the identity of a complainant or witness
- Statement can be withheld entirely **if** disclosure of contents would identify and **redaction cannot be meaningfully accomplished**
- Does not apply to witnesses of traffic accidents, traffic accident reports, or rescue reports
- Also identities of CIs and "confidential information furnished only by the confidential source"

7(1)(d)(v) – Specialized Investigative Techniques

- Allows a public body to withhold information to the extent that releasing it would disclose "unique or specialized investigative techniques ***other than those generally used and known***" * * and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request."
- Administration of polygraph test not considered a unique or special technique.

7(1)(d)(vi) – Danger to Life or Physical Safety

- Allows a public body to withhold information if disclosure would "endanger the life or physical safety of law enforcement personnel or any other person[.]"
- Distinction between undercover and non-undercover officers

7(1)(d)(vii) – Obstruction of Ongoing Criminal Investigation

- Allows a public body to withhold if disclosure would "obstruct an ongoing criminal investigation by the agency that is the recipient of the request."
- Similar to 7(1)(d)(i):
 - Fact that investigation has commenced is not, by itself, sufficient
 - Applies only to investigations conducted by recipient of FOIA request

7(1)(e) – Security of Detention Facilities

- Allows a public body to withhold records that “relate to or affect the security of correctional institutions and detention facilities.”
- Applies if disclosure would post a security risk to a detention facility or correctional institution
- E.g., video recordings of internal sections of a detention facility – *if* video would expose surveillance system blind spots

7(1)(f) – Deliberative Process

- Allows withholding of “records in which opinions are expressed, or policies or actions are formulated”
- Except when record is publicly cited by head of public body
- The purpose of the deliberative process exemption is to protect the predecisional communications process and encourage frank and open discussion **among agency employees**.

7(1)(m) –Privileged Information

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, or are prepared in anticipation of litigation, are exempt from disclosure under section 7(1)(m) of FOIA.

7(1)(n) – Disciplinary Cases

- Allows a public body to withhold “records relating to a public body’s adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.”
- Investigative records (police reports, citations, etc.) that do not relate to an actual adjudication are not exempt.

Peoria Journal Star v. City of Peoria, 2016 IL App (3d) 140838, 52 N.E.3d 711 (2016) (police department improperly withheld report of investigation of grievance that was created before any adjudication).

7(1)(n) and Officer Complaints

- CPD “Complaint Register” – recorded complaints against officers and records reflecting investigations of complaints.
- Held: CR files not “related to” disciplinary adjudications in a way that might exempt them from disclosure.

Kalven v. City of Chicago, 2014 IL App. (1st) 121846 (2014)

9-1-1 Calls

9-1-1 emergency call recordings and transcripts are public records that should be released, subject to any redactions permitted under section 7 of FOIA, including sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv).

Dashcam Videos

Dashcam video recordings are public records that should be released, subject to any redactions permitted under section 7 of FOIA. Body camera video footage is subject to separate procedures.

Body Camera Video

- The Law Enforcement Officer-Worn Body Camera Act. 50 ILCS 706/10-20(b).
- If video footage is "flagged" due to filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, then it is subject to disclosure under FOIA.
- If the subject of an encounter is a victim or a witness and has a reasonable expectation of privacy (arrestees have no such expectation), written consent is required for disclosure.

Body Camera Video

- Video footage is required to be disclosed to a subject of an encounter or the subject's legal representative upon request.
- Only recordings or portions of recordings responsive to a request may be made available for inspection or reproduction.
- The identity of any person who is not the officer, the subject of the encounter, or otherwise directly involved in the encounter *shall* be redacted.

Body Camera Video

- The exemptions in section 7 of FOIA still may be asserted for body camera footage.
- A law enforcement agency's assertion that it lacks the technological capability to make redactions is not a valid basis for denying a request for body camera footage.

Review of FOIA Denials – Request for Review

A Request for Review must be filed with the Public Access Counselor "not later than 60 days after the date of the final denial."

The request must be in writing, signed by the requester and include:

- 1) a copy of the request for records, and
- 2) any responses from the public body

5 ILCS 140/9.5(a)

PAC Review Process

- Determine whether further action is warranted.
- If unfounded, advise public body and requester, no further action.
- Otherwise, send to public body and request records and response; requester has opportunity to reply.
- Follow up with additional questions as necessary.

Resolution of Requests for Review

The Public Access Counselor may:

- Issue a binding opinion, which is subject to administrative review under section 11.5 of FOIA, or
- Resolve a request for review by mediation or by a means other than the issuance of a binding opinion. 5 ILCS 140/9.5(f)
- Other means – determination letter.

Judicial Review

Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

5 ILCS 140/11(a)

If the requester files suit under section 11 **
* the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

5 ILCS 140/9.5(g)

Commercial Purpose Requests

“Commercial purpose” means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.”

5 ILCS 140/2(c-10)

Must respond within 21 working days after receipt.

Recurrent Requester

A person who, in the 12 months immediately preceding the request, has submitted to the same public body:

- (i) a minimum of 50 requests for records,
- (ii) a minimum of 15 requests for records within a 30-day period,
- (iii) a minimum of 7 requests for records within a 7-day period. 5 ILCS 140/2(g)

News media and non-profit, scientific, or academic organizations are generally excluded.

Request

A request means a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied. 5 ILCS 140/2(g)

Voluminous Request - Definition

Section 2(h) of FOIA:

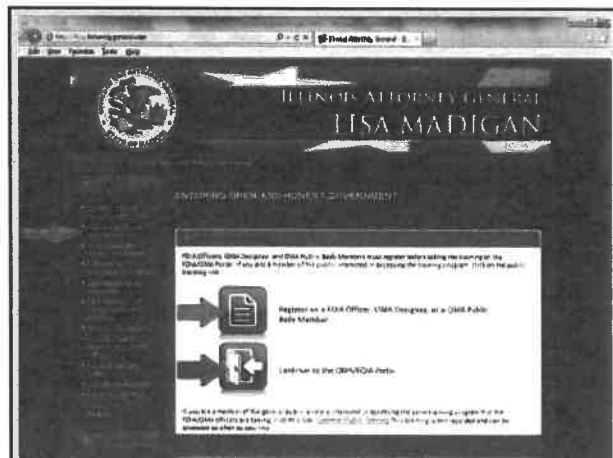
"Voluminous request" means a request that:

- (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or
- (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. "Single requested record" may include, but is not limited to, one report, form, e-mail, letter, memorandum, book, map, microfilm, tape, or recording.

News Media Excluded

"Voluminous request" does not include a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education.





Contact Information

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 22, 2018

Via electronic mail



RE: FOIA Request for Review – 2018 PAC 52957

Dear [REDACTED]:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that this Request for Review is unfounded.

On April 26, 2018, you submitted a FOIA request to the Madison County Sheriff's Office (Sheriff's Office) seeking records related to your minor son since March 26, 2018. The following day, the Sheriff's Office denied your request pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017). The Sheriff's Office indicated that the records you requested are juvenile arrest records, alluding to the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 *et seq.* (West 2016)). In your Request for Review, submitted on May 1, 2018, you alleged that the JCA contains an exception permitting a minor's parents to review the minor's juvenile records.

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law."¹ Section 1-7(A) of the JCA (705 ILCS 405/1-7(A) (West 2016), as amended by Public Act 100-285, effective January 1, 2018) provides:

¹Additionally, section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2016), as amended by Public Acts 100-020, effective July 1, 2017; 100-022, effective January 1, 2018; 100-201, effective August 18, 2017; 100-373, effective January 1, 2018; 100-464, effective August 28, 2017; 100-465, effective August 31, 2017) exempts from disclosure: "Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987."

All juvenile records which have not been expunged are sealed and may never be disclosed to the general public or otherwise made widely available. Sealed records may be obtained only under this Section and Section 1-8 and 5-915 of this Act, when their use is needed for good cause and with an order from the juvenile court, as required by those not authorized to retain them. Inspection and copying of law enforcement records maintained by law enforcement agencies or records of municipal ordinance violations maintained by any State, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following[.]

The classes of persons who are permitted access to those records are then enumerated; parents of minors who have been investigated, arrested, or taken into custody are not among the authorized parties. However, as indicated in section 1-7(A) of the JCA, section 1-8(A)(1) of the JCA (705 ILCS 405/1-8(A)(1) (West 2016), as amended by Public Act 100-285, effective January 1, 2018) provides that a minor's parents may obtain the minor's sealed juvenile records through an order from the juvenile court.

The language in section 1-7(A) of the JCA stating that juvenile records are sealed and obtainable only under sections 1-7, 1-8, and 5-915 of the Act was added by Public Act 100-285, effective January 1, 2018. That Public Act also added criminal penalties for the unauthorized disclosure of juvenile records. *See* 705 ILCS 405/1-7(I), (J) (West 2016), as amended by Public Act 100-285, effective January 1, 2018. That Public Act did not, however, amend section 5-905(1) of the JCA (705 ILCS 405/5-905(1) (West 2016)), which, similar to section 1-7(A) of the JCA, provides that the "[i]nspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following and when necessary for the discharge of their official duties[.]" As in section 1-7(A) of the JCA, the authorized parties are then enumerated, except that in this provision those parties include "[t]he minor, the minor's parents or legal guardian and their attorneys, but only when the juvenile has been charged with an offense[.]"

On May 17, 2018, the Sheriff's Office confirmed to this office by telephone that your minor child was charged with an offense. Nonetheless, section 5-905(1) of the JCA does not afford you, as the minor's parent, access to the juvenile records you requested pursuant to FOIA because the more recently-enacted amendment to section 1-7(A) of the JCA specifically prohibits disclosure of those records absent an order from the juvenile court. *See, e.g., Moore v. Green*, 219 Ill. 2d 470, 480 (2006) (where two statutory provisions conflict, courts "will presume that the legislature intended the more recent statutory provision to control.").

May 22, 2018

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Pursuant to section 1-8(A)(1) of the JCA, you may wish to seek the Sheriff's Office's records concerning your child from the juvenile court presiding over his case. Because sections 7(1)(a) and 7.5(bb) of FOIA exempt from disclosure information prohibited from disclosure by the JCA, and because the JCA now prohibits disclosure of juvenile records even to the minor's parents absent a court order, the Public Access Bureau has determined that this Request for Review is unfounded.

This letter closes this file. If you have any questions, please contact me at 312-814-8413, jjones@atg.state.il.us, or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: Captain T. Mike Dixon
Madison County Sheriff's Office
405 Randle Street
Edwardsville, Illinois 60225