



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 9, 2016

Via electronic mail

Mr. Kirk Allen
PO Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: FOIA Request for Review – 2016 PAC 45128

Dear Mr. Allen:

The Public Access Bureau has received the enclosed response to your Request for Review from the Attorney for the City of LaSalle (City). Additional confidential documents provided to the Public Access Counselor have been withheld.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2014). Please send a copy of your reply to the City as well.

If you have questions about this matter, please contact me at (217) 782-9054.

Very truly yours,

Matthew Hartman

MATTHEW HARTMAN
Assistant Attorney General
Public Access Bureau

Enclosure

cc: *Via electronic mail*
Mr. James A McPhedran
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December 8, 2016

Mr. Matt Hartman
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, Illinois 62706

Re: FOIA Request for Review – 2016 PAC 45128 (Request Dated 11/29/2016)

Dear Mr. Hartman:

As you are aware, our office as City Attorney for the City of LaSalle has been asked to assist Chief Uranich in a timely response to your inquiry on behalf of the Office of the Attorney General dated November 29, 2016. This response and the enclosures herewith are also submitted in furtherance of Freedom of Information Act Sections 140 ILCS 140/9.5(c), (d) and (e).

In regard to certain aspects of your request, it is respectfully suggested that they were also responded to in regard to our prior recent response to your FOIA request for review -2016 PAC 44871 and 2016 PAC 44872, which response was forwarded November 22, 2016 with enclosures, both containing an extensive public response portion that was not claimed privileged or confidential and a concurrent private confidential claimed response by the same date. You are respectfully advised that in regard to certain aspects of your present FOIA Request for Review- 2016 PAC 45128 that they were specifically covered with the reasons therefore in said prior responses and the terms and provisions of those prior responses are hereby incorporated by reference herein and made a part hereof. Per our discussion, subsequent to receipt of your FOIA Request for Review – 2016 PAC 45128, we have not included an additional copy for your file inasmuch as both you and Mr. Allen already have the prior public aspect of the response and the confidential aspect is within your office. Parts that are specifically covered regarding the same include the investigative reports including interviews of Derek Sexton; requests regarding investigation/interview reports of Laura Phillips; and investigation/interview reports of Dana Slaughter. In regard to response on said items, you are also respectfully referred to the FOIA responses themselves and in regard to the most recent one that is the subject of this inquiry to the response dated November 10, 2016, which is already attached to your present Request for Review. The materials

Mr. Matt Hartman
Assistant Attorney General
December 8, 2016
Page Two

provided in the prior responses of November 22, 2016 together with the Department response to the November 3, 2016 FOIA addressed any potential known documents related to Derek Sexton, Laura Phillips and/or Dana Slaughter, and the authority and enclosures referenced and contained therein are additionally provided as a portion of the response for the remainder of your inquiry regarding FOIA Request for Review – 2016 PAC 45128, (hereinafter referred to as the “FOIA Request – 2016 PAC 45128”).

The remaining items concerning which further response will be made include the following:

- A. “Copies of the amount of funds spent from any informant fund in the past twelve months”; and
- B. “Disciplinary records for the officers that were referred to as unproductive in the Illinois State Police Report”.

In regard to your inquiry in connection with A, namely the “Copies of the amount of funds spent from any informant fund in the past twelve months”, it should first of all be noted that in regard to being responsive to the request, Mr. Allen specifically also stated “I am not seeking the names of where the money was spent, only the amounts distributed”. The amount involved “\$50.00” was provided. Thus it is first of all respectfully suggested that any further information would not need to be provided under the request as worded because the request by the party making the request specifically stated that it was limited to “only the amounts distributed”. That amount of \$50.00 was provided. Thus it is suggested by its terms that the request was properly responded to. The additional qualifying provisos were added by the Department in regard to the response to try and eliminate any further requests in case more detail was later requested. However, in providing a more detailed explanation, we can first of all indicate that Sergeant Strand was not at all involved in the \$50.00 item. Additionally, reasons that further details would be claimed exempt in regard to the \$50.00 payment, with the exemption being pursuant pertinent provisions of the Freedom of Information Act, including, but not necessarily limited to, 5 ILCS 140/7(d)(i), (iii), (iv), (vi) and (vii) and 5 ILCS 140/2.15(c) include the point that the party who was identified by the confidential source still is involved in an ongoing investigation. The party could still potentially be charged with a crime. The providing of any additional information even the date of the payment could impair the confidentiality of that source which should not have to be disclosed and also potentially impair the safety of the confidential source, also potentially impair further prosecution and /or impair any potential of having that person or others cooperate as a potential informant in connection with other matters. It is respectfully suggested that this is exactly what part of the reasons for the exemptions in connection with law enforcement matters meant to protect, etc. See 5 ILCS 140/7(d)(i), (iii), (iv), (vi) and (viii) and 2.15(c).

Further specifics will be provided under the concurrent confidential submission pursuant to 5 ILCS 140/9.5(c), (d) and (e).

Mr. Matt Hartman
Assistant Attorney General
December 8, 2016
Page Three

To the remainder of your inquiry in regard to “disciplinary records for the officers that were referred to as unproductive in the Illinois State Police report” you are first of all referenced to the reasons set forth in the City’s November 10, 2016 response to the request when submitted, subparagraph 3 and the authority referred to therein. Supplementing the same and our prior responses, it is respectfully suggested that looking within the State Police report and the paragraph containing that statement, several additional points are respectfully suggested to be pertinent. First, the State Police report does not purport to be a verbatim transcript of all matters that were discussed. Nor is the report put in the context of specific questions and answers but rather appears to be the State Police representatives summary of certain things that were discussed in the context of that State Police Investigator’s impression and recollection. Second, in reading request number 3 of Mr. Allen, it is respectfully suggested that there is no specific request for any specific officers prior discipline information. Were that requested, then again all of the points brought forward in the other responses regarding all of the same being claimed privileged (with the exception of the outcome if within four years) pursuant to those sections and legal authority referenced in the November 22, 2016 prior responses again would be incorporated by reference herein.

Specific Officers discipline was not requested herein. The purpose of a FOIA request is to provide documents in response to a specific inquiry and not to create documents. See e.g., *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836, which specifically referenced the pertinent statutory authority and also distinguished requests where creation of documents is required as being different than those requests made in the case of *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, which has also previously been distinguished in the context of other inquiries brought forward by Mr. Allen. See e.g., *Kalven*, 2014 IL App (1st) 121846 at ¶25, 35-62. The *Hites* Court also relied upon *Chicago Tribune*, 2014 IL App (4th) 130427. See e.g., ¶75-79.

It is respectfully suggested that similarly herein, the requesting party is asking among other things that the Police Chief and the City of LaSalle first interpret the State Police Report which requires a certain amount of speculation and conjecture and then create a list that does not exist. A FOIA request is intended for the purpose of providing existing documents not for the purpose of providing a deposition, interrogatory answer, or creating new documents. The City of LaSalle has no such list of “alleged unproductive officers” referred to in the State of Illinois State Police report in the instant case.

Additionally, even assuming *arguendo* that a list of alleged non-productive officers did exist, which it does not, the same would be exempt for additional reasons including pursuant to the Illinois Personnel Review Act as being in the nature of a performance evaluation and thus exempt for the additional reasons set forth in the Illinois Personnel Review Act.

The Illinois Personnel Review Act as the attorney general’s office is well aware is one of the statutory exemptions. See 5 ILCS 140/7.5(q) and 820 ILCS 40/1 *et seq.* Specific

Mr. Matt Hartman
Assistant Attorney General
December 8, 2016
Page Four

sections of that Illinois Personnel Review Act that may be relevant include, but are not necessarily limited to, Section 820 ILCS 40/11 which provides that disclosure of "performance evaluations under the Freedom of Information Act shall be prohibited". Even aside from specific discipline, it is respectfully suggested that the disclosure of such a list of individuals, assuming one hypothetically existed, which per what the Police Chief has represented to this office does not exist, the same would be prohibited from disclosure under the Freedom of Information Act in any event. Additionally, disclosure of that list would be necessary in order to then provide potential information regarding discipline on this hypothetical speculative list of individuals which have not been specifically identified by the requester and thus cannot be responded to for that reason as well as indicated above.

Further, even assuming hypothetically a specific individual and/or individuals information were requested, which it has not been, the only disclosure that could be made pursuant to 820 ILCS 40/7(8) and 5 ILCS 140/7.5(q) would be discipline that was within the last four years of the request and not older. Thus, even if discipline on specific individuals were requested, which they have not been, any request for the outcome of discipline regarding any of said individuals would be claimed as exempt except for that within the last four years. Additionally, again for the reasons set forth in the response dated November 22, 2016, any other information would be claimed as exempt for the reasons set forth in that prior responses and as further amplified herein.

In regard to this aspect of the FOIA Request for Review – 2016 PAC 45128 related to a hypothetical non-productive officers list, no additional documents are confidentially provided to the Attorney General because pursuant to 5 ILCS 140/9.5(c), the LaSalle Police Department here cannot decipher which specific individuals information is being sought. The request as framed is respectfully suggested to be too general, not specific enough, calls for speculation and interpretation and calls for a list that does not exist in any record contained within the LaSalle Police Department. Also, again the creation of that list is a necessary predicate to providing any other information which could then also be contended to be privileged for reasons under law including the exemption provisions of the Freedom of Information Act 5 ILCS 140 *et seq.*, and the Illinois Personnel Review Act 820 ILCS 40/1 *et seq.*, and for reasons set forth herein and within the prior responses to requests.

It summary on certain of these points, though not all, it is certainly respected that the Freedom of Information Act is to be liberally construed in favor of disclosure. The Act was not intended to, it is respectfully suggested, nor does it require the creation of documents such as compiling a list that does not exist and concerning which the compilation of the same would also require a certain amount of interpretation, speculation and/or conjecture. Further, the provisions in regard to protecting potential employment evaluations from disclosure pursuant to the codified statutory exemption in the Illinois Personnel Record Review Act, and further within the exemption provisions

Mr. Matt Hartman
Assistant Attorney General
December 8, 2016
Page Five

regarding discipline with the exception of outcome in connection with discipline under the Freedom of Information Act are for good reason. Also, in any event, they are supported by statute. The LaSalle Police Department and the City in that regard as was alluded to in the City's response to certain of these questions is also taking this position to respect the privacy of its officers in appropriate circumstances, privacies in certain personnel matters to the extent provided by statute and also not only those officers of the City of LaSalle, but officers of other police departments who could potentially be adversely affected by precedents in such matters.

It is thus respectfully suggested that for the reasons set forth herein, including, but not limited to those reasons incorporated by reference herein in regard to the City of LaSalle's prior responses dated November 22, 2016 regarding 2016 PAC 44871 and 44872, that the City's position is reasonable and should be sustained and that the City should not be required to provide any further records and/or documentation or other information in response to the Freedom of Information Act responses which the City respectfully suggests were appropriately previously responded to. Authority in regard to the exemptions includes, but is not limited to, 5 ILCS 140/7(1)(c), 7(1)(f), 7(1)(n), 7(1)(d)(i), 7(1)(d)(iii), 7(1)(d)(iv), 7(1)(d)(vi), 7(1)(d)(vii), 2.15(a), 7.5(q) and 820 ILCS 40/1 et seq. including, 40/7(8)(11).

Respectfully submitted,

ANTHONY C. RACCUGLIA & ASSOCIATES, P.C.

James A. McPhedran

James A. McPhedran

JAM:csg