

Request for review for improper FOIA denial.

Kirk Allen
PO Box 593
Kansas, IL 61933
217-508-0564

I request communications be handled electronically on this matter if at all possible.

Public Body:

Illinois Law Enforcement Training & Standards Board
FOIA Officer Anthony Raffety – Anthony.raffety@illinois.gov
4500 S. Sixth Street Road, Room 173
Springfield, IL 62703
217-782-4540

The attached FOIA request was denied in entirety by utilizing multiple exemptions which do not appear to be proper. Below each exemption cited is my explanation as to why I believe such an exemption is not applicable.

1. *7a Prohibited by State law: The ILETSB must make this database available to chief administrators and their designees. As access of these sensitive materials was restricted to a specific class, the public has no right to review.*

The statute outlines that the public body shall maintain a database readily available to any chief administrative officer etc.

50 ILCS 705/6.2(c) The Board shall maintain a database readily available to any chief administrative officer, or his or her designee, of a law enforcement agency that shall show each reported instance, including the name of the officer, the nature of the violation, reason for the final decision of discharge or dismissal, and any statement provided by the officer.

Access to the data base in question contains no language that restricts its access. It just states it is to be **readily available** to specific entities. Had the legislature wanted that data base to be exempt from FOIA they would have stated that these records are not subject to FOIA or are protected from public review. No such restriction is found in 50 ILCS 705/6.2c as they have implied.

The FOIA exemption cited, 7a, states it pertains to Information **specifically prohibited** from disclosure by federal or State law or rules and regulations implementing federal or State law.

I find no specific prohibition in section 6.2c of the statute they reference which is required based on the plain language of section 7(1)a.

2. *7b - Private information: The database contains the home address and other contact information of certified law enforcement officers. This information is private in nature.*

Such private information may be redacted as outlined by FOIA and can not be used to withhold records subject to FOIA.

*7(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. **The public body shall make the remaining information available for inspection and copying.***

I believe the exemption they cited is not proper based on the plain language found in 7(1) cited above.

3. *(b-5) Law Enforcement Databases: The material in the database was provided from an employing law enforcement agency to the Law Enforcement Training and Standards Board, an agency with law enforcement authority. These materials contain accounts that reflect the mental state of individuals who committed improper acts.*

The ILETSB **is not** an agency with law enforcement authority. They are a public body that is responsible for training standards. They are given the power to appoint investigators that have law enforcement power, much like a municipality, however that does not mean the agency has law enforcement authority. Therefore, they can not use an exemption that applies to a law enforcement agency. In addition, the information in the data base we are seeking should not contain physical or mental status of individual subjects. The statute requiring this data base outlines that it is to be a data base that pertains to actions by law enforcement officers that lead to their discharge or dismissal as a result of their actions or resignations during an investigation into their actions. (See 50 ILCS 705/6.2)

If the ILETSB is keeping additional information pertaining to a person's medical condition then they have created a data base not authorized under the statute and can not use that as an exemption. Any such information may be redacted but not used as the reason to not turn over the records.

For the reasons outlined, exemption 7(1)b-5 does not apply.

4. *7(1)c -Personal Information: The database contains statements and allegations of unsubstantiated claims. As these records of alleged improper, but not criminal, conduct have not been subject to a formal process of judicial review, disclosure by a governmental body would result in the release of private, personal, and sensitive nature that lacks the reliability of a State record. The sensitive nature of these adjudicated claims combined with the fact that such individuals are no*

longer public employees outweigh any public value and the right to privacy must be preserved to the extent possible.

If the data base contains statements and allegations of unsubstantiated claims then we contend the data base is holding information that is not permitted. The data base contents may contain exempt information that can be redacted. They can't use such a broad stroke and deny the entire data base because of some qualified exemptions. They imply the information in the data base is based on adjudicated claims but we have no way to know if that is true or not. I disagree that the release of this information does not outweigh their right to privacy. Private material can be redacted and the public has a right to know what officers have been terminated.

5. *(d) Administrative Law Enforcement Records: The materials were created by law enforcement agencies in the course of administrative disciplinary hearings. Disclosure could interfere with ongoing investigations and would reveal the identity of witnesses, potentially endangering the safety of law enforcement officers*

The materials exempt under 7(1)d would be administrative *enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would*;

- (i) *interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;*

Section 5d(i) is not applicable because there are no pending or actually law enforcement proceedings taking place. The data base contains nothing pertaining to a pending law enforcement proceeding. The information lists those discharged, dismissed, or who have resigned during an investigation.

- (ii) *interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;*

Release does not interfere with active administrative enforcement proceedings as the action of discharge, dismissal, and resignation has already occurred, thus no further administrative enforcement proceedings can take place. It should be noted that this public body admitted those in this data base are no longer public employees so there cannot be any active administrative enforcement proceedings.

- (iii) *create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;*

There is no evidence that the release of this data base would create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing. In the event the public body is able to produce records that support this claim, we only seek the names of those discharged and not the other applicable records in those cases, if there are any.

- (iv) *unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;*

The data base in question should not contain information outlined in 7(1)d(iv)

- (v) *disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;*

The data base in question should not contain information outlined in 7(1)d(v)

- (vi) *endanger the life or physical safety of law enforcement personnel or any other person; or*

The data base in question should not contain information outlined in 7(1)d(vi)

- (vii) *obstruct an ongoing criminal investigation by the agency that is the recipient of the request.*

The ILETSB is does not have criminal investigation authority pertaining to records submitted for entry into the data base so there can be no obstruction.

I do not believe the ILETSB has met the requirements of the exemption criteria found in 7(1)d.

6. *(d-5) Shared Law Enforcement Records: The recipient of the records, ILETSB, did not create the records and had no role in the events of the subject record, and has access only through a shared system.*

I believe the ILETSB misunderstands the exemption they cited or purposely left out a key element of the statute. The actual exemption reads as follows:

*7(1)d-5 A law enforcement record created for **law enforcement purposes** and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access to the record through the shared electronic record management system.*

The data base and the information contained in it is not a “*law enforcement*” record, nor a record that was created for “*law enforcement purposes*”. The record is an administrative record pertaining to officers that have been discharged, dismissed, or resigned during an investigation. Such an administrative record IS NOT a record that pertains to law *enforcement*.

7. *(m) Materials Prepared for a Criminal or Administrative Proceeding: The materials in the database arise out of conduct was improper or otherwise criminal in nature. These contain notes and opinions that would not otherwise be subject to discovery in litigation.*

Once again the ILETSB has misstated the exemption. The exemption cited actually reads as follows:

7(1)m Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

The data base is not communications between a public body and an attorney or auditor representing the public body. They are records provided to the ILETSB, a public body of this state, by another public body for the purpose of establishing a data base pertaining to officers that have been discharged, dismissed, and or resigned during an investigation. Nor is the data base related to internal audits of this public body.

8. *(n) Disciplinary Adjudication: The materials in the database contain allegations and claims of conduct that did not necessarily result in an outcome of discipline.*

Once again the ILETSB has provided misleading information and had they cited the whole exemption they would see that such an exemption is not applicable.

The exemption cited actually reads as follows:

*7(1)n 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.***

The data base in question pertains to final outcome of cases of which may or may not have been adjudicated, even though such an adjudication is not relevant in this case. The final outcome is discharge, dismissal, or their resigning during an investigation. Had they cited the rest of the statute in their attempt to withhold public records they would have realized this exemption is not applicable.

For all the reasons outlined above I ask that the PAC issue a binding opinion and direct the public body to provide the requested data base with any applicable and appropriate redactions.

Thank you,

Kirk Allen
PO Box 593
Kansas, IL 61933
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