



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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October 16, 2018

Via electronic mail

Mr. Kirk Allen
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Via electronic mail

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RE: FOIA Requests for Review – 2016 PAC 44871; 2016 PAC 44872

Dear Mr. Allen and Mr. McPhedran:

This determination 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 discussed below, **this office concludes that the LaSalle Police Department (Department) violated FOIA by improperly withholding certain records concerning an internal investigation of a police officer in its response to Mr. Kirk Allen's September 25, 2016, FOIA request.**

BACKGROUND

On that date, Mr. Allen submitted a FOIA request to the Department seeking:

1. Copy of any police report regarding a Sgt. James Strand of the LaSalle and Utica Police Departments regarding Sgt. Strand's alleged solicitation of a prostitute that was or is being handled by the Peru Police[.]
2. Copy of completed investigation file pertaining to any investigation performed by the LaSalle Police [D]epartment

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- regarding Sgt. James Strand's alleged solicitation of a prostitute.
3. Copy of any statement provided by a [named individual] regarding this investigation.
 4. Copy of cell phone records for the phone used in the alleged solicitation of a prostitute. It is my understanding that this phone was the property of the Utica Police Department.
 5. Copy of any communications with the Illinois State Police regarding this incident to include any request for them to assist or handle the investigation.^[1]

On September 30, 2016, the Department responded by stating that it did not possess records responsive to Mr. Allen's requests for a copy of a police report by the Peru Police Department, statements of a woman who was interviewed, cell phone records, or communications with the Illinois State Police (ISP). The Department indicated that the allegation concerning solicitation of a prostitute is believed to be unfounded, but provided Mr. Allen with the final outcome of discipline imposed on Sergeant Strand for policy violations. The Department denied any additional records concerning the investigation file "pursuant to pertinent provisions of the Freedom of Information Act, including, but not necessarily limited to"² sections 7(1)(c) and 7(1)(n) of FOIA (5 ILCS 140/7(1)(c), (1)(n) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016). The Department explained that "[t]here was discipline imposed and thus, an adjudication regarding certain policy violations involving Sgt. Strand."³

On October 13, 2016, Mr. Allen submitted a second FOIA request to the Department seeking:

1. Copy of the hearing notice for the adjudication hearing held for Officer St[r]and referenced in the previous FOIA response.
2. Copy of the actual complaint that led to a claimed adjudication hearing for Officer Strand.

¹E-mail from Kirk Allen to [Police] Chief Robert Uranich, [LaSalle Police Department] (September 25, 2016).

²Letter from Robert Uranich, Chief of Police, LaSalle Police Department, to Kirk Allen (September 30, 2016), at 2.

³Letter from Robert Uranich, Chief of Police, LaSalle Police Department, to Kirk Allen (September 30, 2016), at 2.

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3. Copy of all text messages pertaining to the violations of policy that were used as part of the claimed adjudication hearing for Officer Strand and his discipline.
4. Copy of the transcript from the claimed adjudication hearing for Officer Strand.⁴

On October 20, 2016, the Department responded by stating that it did not possess a formal hearing notice, formal complaint, or transcripts for an adjudication hearing. The Department asserted that any formal complaint concerning internal discipline would be exempt under section 7(1)(n) of FOIA, but provided Mr. Allen with a copy of an anonymous complaint containing various allegations. The Department also denied Mr. Allen's request for text messages pursuant to sections 7(1)(c) and 7(1)(n) of FOIA. On November 3, 2016, Mr. Allen submitted Requests for Review to the Public Access Bureau contesting the Department's denial of his FOIA requests under sections 7(1)(c) and 7(1)(n) of FOIA. Specifically, Mr. Allen disputed the claim that "internal discipline constituted an adjudication of the [o]fficer in question[.]"⁵

On November 10, 2016, the Public Access Bureau sent copies of the Requests for Review to the Department and asked it to provide unredacted copies of the investigation file and text messages at issue for this office's confidential review together with a detailed explanation of the factual and legal bases for its assertion of the section 7(1)(c) and 7(1)(n) exemptions. On November 22, 2016, the Department's attorney furnished those materials to the Public Access Bureau along with a written response. The Department's response asserted that portions of the withheld records were also exempt under sections 7(1)(a), 7(1)(f) and 7(1)(m) of FOIA (5 ILCS 140/7(1)(a), (1)(f), (1)(m) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016) and section 7.5(q) of FOIA (5 ILCS 140/7.5(q) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016). The Department also provided additional information to this office confidentially. On November 23, 2016, this office forwarded a copy of the non-confidential portions of the Department's response to Mr. Allen; he responded on December 12, 2016. On December 15, 2016, an Assistant Attorney General in this office contacted the Department concerning e-mails from Chief Robert Uranich to a recipient whose name had been redacted. On December 20, 2016, the Department furnished this office with unredacted copies of the e-mails, which had been sent to the Department's outside counsel, along with a confidential cover letter.

⁴E-mail from Kirk Allen to [Police] Chief Robert Uranich, [LaSalle Police Department] (October 13, 2016).

⁵E-mail from Kirk Allen to Public Access [Bureau, Office of the Attorney General] (November 3, 2016).

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On January 31, 2017, this office sent the Department a letter seeking further clarification about the records in its possession and requesting additional records for our confidential review. Specifically, this office requested that the Department clarify whether it possessed text messages from Sergeant Strand's Utica Police Department phone. In addition, this office asked the Department to provide copies of the attachments to e-mails with its outside counsel and unredacted copies of the LEADS information that had previously provided to our office in redacted form. On February 13, 2017, the Department provided a written response, copies of the requested e-mail attachments and LEADS information for our confidential review, and a confidential response letter. The Department's response stated that it does not possess copies of text messages from Sergeant Strand's Utica Police Department phone. The Department also asserted that records concerning its investigation of Sergeant Strand are exempt under section 7.5(q) of FOIA as a performance evaluation.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 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) of FOIA (5 ILCS 140/7(1) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016) further provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure * * * 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."

Section 7(1)(a) of FOIA

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." The Department stated that it had withheld "certain 'LEADS' inquiries [that] were made in regard to two individuals, neither of which was Sergeant Strand or any member of the LaSalle Police Force"⁶ pursuant to section 7(1)(a) of FOIA. The Civil Administrative Code of

⁶Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2016), at 4.

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Illinois (Civil Code) authorized ISP to establish the Law Enforcement Agencies Data System (LEADS), for the purpose of "mak[ing] available to other law enforcement agencies for immediate dissemination data that can assist appropriate agencies * * * for criminal justice and related purposes." 20 ILCS 2605/2605-375(a) (West 2014). ISP has established an administrative rule implementing the Civil Code that prohibits the disclosure of LEADS information "to any individual or organization that is not legally authorized to have access to the information." 20 Ill. Adm. Code §1240.80 (2016), old Part repealed and new Part adopted at 23 Ill. Reg. 7521, effective June 18, 1999. LEADS data, which is prohibited from being disclosed to the public, includes information transmitted through LEADS. *Better Government Association v. Zaruba*, 2014 IL App (2d) 140071, ¶27, 21 N.E. 3d 516, 525 (2014).

The Department provided this office with unredacted copies of records containing ISP criminal history information obtained from LEADS. Because an administrative rule implementing a State law prohibits the Department from disclosing LEADS data to Mr. Allen, this office concludes that, the Department properly withheld information transmitted through LEADS and information obtained from LEADS under section 7(1)(a) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA allows a public body to withhold "[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 privacy" as "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 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.**" (Emphasis added.)

The Department cited section 7(1)(c) as a basis for its denial stating that "we still need to also respect the right of privacy and the provisions provided for in regard to exemptions in connection with potential discipline and matters related thereto if they have application."⁷ The Department stated that Sergeant Strand's privacy rights must be respected as well as "the right of

⁷Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2016), at 2.

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privacy of all other officers of the City of LaSalle and other municipalities in police department when there is a reasonable basis to claim the exemption and the privilege."⁸

Section 7(1)(c) of FOIA expressly provides that "disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." The records requested by Mr. Allen concern alleged misconduct that occurred while Sergeant Strand was on duty and relate to whether he would face discipline by the Department. Because such records directly bear on his public duties, disclosure of those records would not constitute an unwarranted invasion of personal privacy. See *Gekas v. Williamson*, 393 Ill. App. 3d 573, 586 (2009) (analyzing the applicability of a prior version of section 7(1)(c) (5 ILCS 140/7(1)(b) (West 2006)) to records related to complaints against a police officer and concluding that because "these materials, true or false, founded or unfounded, bear on his duties as a police officer, the disclosure of these materials would not invade his personal privacy[.]"). Accordingly, this office concludes that the Department has not sustained its burden of demonstrating that the investigation records are exempt from disclosure in their entirety pursuant to section 7(1)(c) of FOIA.

We note, however, that information identifying the women who assisted the Department in its investigation of Sergeant Strand and who corresponded with Sergeant Strand in text messages is highly personal information. Because neither woman was charged with a crime in connection with their contact with Sergeant Strand, there is no legitimate public interest in the disclosure of their identities or the content of the majority of their text messages that outweighs their right to privacy. However, four text messages sent from one of the women on January 4, 2016, bear on the public duties of a police officer and, therefore, are not exempt from disclosure under the plain language of section 7(1)(c). Further, a discrete portion of Detective Smudzinski's summary of an interview contains highly personal information about the interviewee's health which would constitute an unwarranted invasion of personal privacy if disclosed. There is no public interest in disclosure of this information that outweighs the interviewee's right to privacy. In addition, discrete portions of the report contain the name two public employees, one of whom was misidentified as a person who was engaged in a sexual relationship with a woman alleged to be a prostitute. Because the nature of this allegation is highly personal, does not bear on public duties, and was demonstrated to be false, the personal privacy interest of the employees outweighs the public's interest in the disclosure of their names. Therefore, the Department may properly redact this information pursuant to section 7(1)(c) of FOIA. Lastly, portions of the report contain identifying information of a person who is

⁸Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2016), at 2.

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suspected of impersonating a police officer. This individual was incorrectly identified as being the police officer with whom one of the women met. The Department may withhold the name and identifying information of that person under section 7(1)(c) of FOIA because the Department determined that this individual was not involved in this incident. *Coleman v. F.B.I.*, 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal privacy by revealing "the identities of innocent third parties, witnesses or victims.").

Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption is equivalent to the deliberative process exemption in the federal FOIA (5 U.S.C. §552(b)(5) (2012)), which applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption "protects only documents that are *both* predecisional and deliberative." *Public Citizen Inc. v. Office of Management and Budget*, 598 F. 3d 865, 876 (D.C. Cir. 2009). (Emphasis in original.) Section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248. That exemption, however, "typically does not justify the withholding of purely factual material." *Enviro Tech Intern., Inc. v. United States Environmental Protection Agency*, 371 F.3d 370, 374 (7th Cir. 2004). Rather, "[o]nly those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 748 (2014) (quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010)). In addition, a public body that asserts the deliberative process exemption "has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process." *Coastal States Gas Corp. v. United States Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir 1980).

The Department's response to this office contended that the notes of Chief Uranich are exempt under section 7(1)(f) of FOIA as "being preliminary drafts, notes, recommendations, memoranda and/or other records in which opinions are expressed or policies or actions are formulated."⁹ This office has reviewed Chief Uranich's notes, which consist of factual summaries of his conversations with Department officers, other police departments'

⁹Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau (November 22, 2016), at 7.

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officials, municipal officials, ISP, attorneys representing the Department, and private citizens. The Department asserted that the communications are pre-decisional because they took place before the Department had taken disciplinary action. The Department, however, has not explained how Chief Uranich's notes are deliberative in nature. Most of the notes do not contain opinions or recommendations, or formulate policies or actions. Such records do not appear to reflect the give and take of the Department's decision-making process and, therefore, are not deliberative in nature. Accordingly, we conclude that the Department has not sustained its burden of demonstrating that Chief Uranich's e-mails are exempt from disclosure in their entirety pursuant to section 7(1)(f) of FOIA. However, Chief Uranich's notes occasionally contain his impressions about the information he received from witnesses, as well as his impression of the truthfulness and character of the witnesses. Chief Uranich's impressions about information obtained from interviews of witnesses and about the witnesses themselves are opinions that guided the course of the investigation and, therefore, fall within the scope of section 7(1)(f). In addition, portions of the March 28, 2016,¹⁰ and March 31, 2016, notes involve discussions with the Department's attorneys in which opinions and recommendations are expressed in the process of formulating action. Further, there is no indication that these portions of the notes were publicly cited or identified by Chief Uranich. Therefore, this office concludes that they are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Section 7(1)(m) of FOIA

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney
* * * 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[.]

Communications protected by the attorney-client privilege are within the scope of section 7(1)(m). *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1st Dist. 1997). A party asserting that a communication to an attorney is protected by the attorney-client privilege must show that: "(1) a statement originated in confidence that it would not be disclosed; (2) it was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services; and (3) it remained confidential." *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 228 (2d

¹⁰Although the March 28, 2016, note is dated March 28, 2015, this office believes that date is a scrivener's error based on the dates of all of Chief Uranich's other notes.

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Dist. 2006). "The privilege applies not only to the communications of a client to his attorney, but also to the advice of an attorney to his client." *In re Marriage of Granger*, 197 Ill. App. 3d 363, 374 (5th Dist. 1990). A public body that withholds records under section 7(1)(m) "can meet its burden only by providing some *objective* indicia that the exemption is applicable under the circumstances." *Illinois Education Ass'n v. Illinois State Board Of Education*, 204 Ill. 2d 456, 470 (2003). (Emphasis in original.)

The Department withheld e-mail communications with an its outside counsel under section 7(1)(m) of FOIA. The Department stated that the attorney was contacted by Chief Uranich as special counsel concerning the internal investigation involving Sergeant Strand.¹¹ According to the Department, the communications were made to an attorney as a legal advisor and "confidentiality * * * has been maintained in regard to those communications."¹² This office has reviewed the e-mails, which consist of a total of 5 e-mails – 4 e-mails with attachments from Chief Uranich to the attorney and 1 e-mail with an attachment from Chief Uranich to Jeff Grove, the mayor of the City of LaSalle. **The e-mail to Mayor Grove is not exempt under section 7(1)(m) of FOIA because it is not a communication between the public body and an attorney representing the public body. In addition, the text of Chief Uranich's three e-mails to the Department's outside counsel on March 25, 2016, are e-mails forwarding attachments that do not contain substantive information concerning the matter about which the Department sought legal advice.** The majority of the attachments to those e-mails consist of copies of the text messages between Sergeant Strand and the women he contacted, which are not confidential attorney-client communications. However, portions of the attachment to third e-mail sent by Chief Uranich to the attorney contain handwritten notes in the margins of the Department's policy manual. Those handwritten notes are communications made by Chief Uranich to an attorney for the purpose of obtaining legal advice and are exempt under section 7(1)(m). **With the exception of those handwritten notes, the Department has not demonstrated that the three March 25, 2016, e-mails and the attachments to those e-mails are confidential attorney-client communications.** In contrast, Chief Uranich's March 30, 2016, e-mail specifically seeks legal advice from the attorney. Because that e-mail is a confidential communication made for the purpose of securing legal advice concerning the investigation of Sergeant Strand, we conclude that the Department has sustained its burden of demonstrating by clear and convincing evidence that Chief Uranich's March 30, 2016, e-mail to the Department's outside counsel is exempt from disclosure under section 7(1)(m) of FOIA.

¹¹Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2016), at 4.

¹²Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2016), at 5.

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Similarly, portions of Chief Uranich's March 28, 2016, and March 31, 2016, notes summarize his conversations with the Department's outside counsel and Mr. James McPhedran. Those notes contain confidential communications to or from an attorney representing the Department about the investigation and responses to FOIA requests for records concerning the investigation. Because those notes reflect attorney-client communications related to legal advice which originated in confidence and there is no indication that they did not remain confidential, the Department did not improperly withhold the portions of those notes under section 7(1)(m) of FOIA.

Section 7(1)(n) of FOIA

Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords 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 Attorney General has concluded that the applicability of section 7(1)(n) requires a public body's processing of a disciplinary matter to include the commencement of some type of formal adjudicatory proceeding, such as a hearing, where witnesses are called and the employee has the right to make arguments.** See, Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013, at 8. Records generated independent of an adjudication, such as a public body's internal investigation into an allegation of misconduct, do not relate to a public body's adjudication of a disciplinary case, therefore such records fall outside the scope of section 7(1)(n). Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, at 8. In that binding opinion, this office emphasized that there is a significant public interest in access to a public body's investigative records of a personnel matter involving an assistant police chief to ensure that the public body made a reasoned decision:

Disclosure of a full and complete account of a public body's investigation of allegations of employee misconduct ensures that the investigation is consistent with the public body's internal rules and procedures and that the discipline imposed, if any, is consistent with the public body's findings. Without a narrow construction of an 'adjudication' under section 7(1)(n), a public body may define an adjudication without regard to the formality of the proceedings which relate to an investigation of its own employee. Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, at 8.

The Illinois Appellate Court construed section 7(1)(n) in the same manner in *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, 7 N.E.3d 741 (2014). In that case, the Chicago Police Department (CPD) asserted section 7(1)(n) to withhold complaint register (CR)

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files, which are CPD's records of investigations into complaints made by citizens against police officers. *Kalven*, 2014 IL App (1st) 121846, ¶3, 7 N.E.3d at 743. CR files consist of the complaint itself and documents created during the investigation of the complaint. *Kalven*, 2014 IL App (1st) 121846, ¶3, 7 N.E.3d at 743. Analyzing the language of section 7(1)(n), the court noted that an "adjudication" involves a "formalized legal process that results in a final and enforceable decision." *Kalven*, 2014 IL App (1st) 121846, ¶13, 7 N.E.3d at 745. In contrast, the court found that CR files are "part of an investigatory process that is separate and distinct from disciplinary adjudications." *Kalven*, 2014 IL App (1st) 121846, ¶14, 7 N.E.3d at 745. Accordingly, the court held that CR files are not exempt from disclosure pursuant to section 7(1)(n). *Kalven*, 2014 IL App (1st) 121846, ¶22, 7 N.E.3d at 747.

The Department's response to this office stated that "Chief Uranich deemed it appropriate to impose the discipline of a two day suspension on Sergeant Strand" following his investigation and consultation with legal counsel concerning Sergeant Strand's policy violations.¹³ Sergeant Strand had the right under the union contract to appeal his suspension but did not do so. The Department asserted the imposition of discipline in this case constituted an adjudication of employee discipline because "the combination of the union contract, the Police Officer's Bill of Rights, and the internal disciplinary policy and appeal process to either the Board of Police and Fire Commissioners and/or through union grievance procedure provides a final and enforceable decision."¹⁴

We have reviewed the information withheld pursuant to section 7(1)(n), which consists of Chief Uranich's investigation notes, Lieutenant Smudzinski's investigation notes, and text messages of the women. **There is no indication that the Department's investigation of Sergeant Strand included the commencement of a formal hearing.** The Department conducted an internal investigation of Sergeant Strand in accordance with the process outlined in the union contract and its internal policy concerning discipline. The Department's process for investigating employee misconduct pursuant to the union contract, internal disciplinary policy, and the Uniform Peace Officers' Disciplinary Act (50 ILCS 725/1 *et seq.* (West 2014)) is distinct from a disciplinary adjudication. *See, Kalven*, 2014 IL App (1st) 121846, ¶14, 7 N.E.3d at 745. Chief Uranich imposed a 2 day suspension on Sergeant Strand without holding a hearing. Although Sergeant Strand's decision that he would not appeal may have given the suspension the effect of a final outcome, **no part of the process constituted or related to a formal adjudicatory proceeding** where witnesses are called and the employee has the opportunity to rebut the charges. Therefore,

¹³Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau (November 22, 2016), at 7.

¹⁴Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau (November 22, 2016), at 7.

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there was no formalized legal process that resulted in a final and enforceable decision. Because the investigation records do not relate to an "adjudication" of an employee disciplinary case, we conclude that the Department has not sustained its burden of demonstrating that the investigation records are exempt from disclosure pursuant to section 7(1)(n) of FOIA.

Section 7.5(q) of FOIA

Section 7.5(q) of FOIA exempts from inspection and copying "[i]nformation prohibited from being disclosed by the Personnel Record [] Review Act." Section 11 of the Personnel Record Review Act (PRRA) (820 ILCS 40/11 (West 2014)) prohibits employers from disclosing performance evaluations under FOIA. The Department asserted that records concerning its investigation of Sergeant Strand are exempt, stating "[a]n evaluation in the context of whether discipline should be imposed, necessarily reviews the employee's conduct in that regard, and is thus from a practical, factual, legal and common sense standpoint, an employee performance evaluation that should be thus exempt[.]"¹⁵ The resolution of this asserted exemption therefore hinges on whether records related to the Department's investigation of Sergeant Strand are "performance evaluations" that are expressly prohibited from disclosure under FOIA by section 11 of the PRRA.

The term "performance evaluations" is not defined in the PRRA. However, the legislative history of House Bill 5154, which as Public Act 96-1483 added the pertinent language to section 11 of the PRRA, provides some insight into the types of records that the General Assembly intended to exempt from disclosure. In describing the scope of the exemption, the bill's sponsor explained that the "performance evaluation process" allows employees to "receive guidance, corrective action, and further development all with the goal of helping employees achieve excellence." Remarks of Rep. Chapa LaVia, March 11, 2010, House Debate on House Bill No. 5154, at 105-07. An exemption for performance evaluations was necessary "because they're evaluations for corrective actions or the person's doing great." Remarks of Rep. Chapa LaVia, March 11, 2010, House Debate on House Bill No. 5154, at 109.

The Department stated that it followed the disciplinary procedures in its union contract when it conducted its internal investigation into Sergeant Strand's conduct. The Department also stated that it contacted ISP to investigate whether a crime had been committed. The Department's investigation stemmed from an allegation of misconduct against Sergeant Strand. The Public Access Bureau has previously determined that an investigation of employee misconduct is not the same as the routine performance evaluation process for employees designed to provide a constructive review of employee performance. Ill. Att'y Gen. PAC Req.

¹⁵Letter from James A. McPhedran, The Law Offices of Anthony C. Raccuglia & Associates, P.C., to Matt Hartman, Assistant Attorney General, Public Access Bureau (February 13, 2017), at 4.

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Rev. Ltr. 47540, issued September 13, 2017. Because the records in question are not "performance evaluations" within the scope of section 11 of the PRRA, this office concludes that the Department improperly denied Mr. Allen's request pursuant to section 7.5(q) of FOIA.

In accordance with the conclusions in this letter, this office requests that the Department provide Mr. Allen with copies of the requested records with the following exceptions: LEADS information, the texts from the two women, information identifying the women, portions of the report containing the opinions of Chief Uranich about the witnesses, portions of Chief Uranich's March 28, 2016, and March 31, 2018, notes concerning his conversations with attorneys representing the Department, a March 30, 2016, e-mail between Chief Uranich and an attorney representing the Department, and the portion of an attachment containing handwritten notes about the policy manual may be withheld or redacted. For the convenience of the Department, this office has highlighted an unredacted copy of the responsive records that identifies the portions of the records that may be withheld. The highlighted copy will be provided only to Mr. McPhedran because it contains information that was provided to the Public Access Bureau for our confidential review. See 5 ILCS 140/9.5(d) (West 2016).

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. This letter shall serve to close these matters. If you have any questions, you may contact me at (217) 782-9054 or the Springfield address listed on the first page of this letter.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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