



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 28, 2020

Via electronic mail
Mr. Bradley W. VanHoose

Via electronic mail
Mr. Garrett P. Hoerner
City Attorney
City of Belleville
5111 West Main Street
Belleville, Illinois 62226-4728
gphoerner@belleville.net

RE: FOIA Request for Review – 2019 PAC 60997

Dear Mr. VanHoose and Mr. Hoerner:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons stated below, the Public Access Bureau concludes that the City of Belleville (City) has not sustained its burden of demonstrating that certain information it redacted from a crash report responsive to Mr. Bradley W. VanHoose FOIA request is exempt from disclosure.

On December 2, 2019, Mr. VanHoose submitted a FOIA to the City of Belleville (City) request seeking copies of (1) the administrator activity log for the City Police Department's Facebook page from January 1, 2015 to present, and (2) all accident reports from August 26, 2018. On December 9, 2019, the City responded that it maintained no documents responsive to part one of the request, and provided records responsive to part two of the request but redacted information under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). On December 12, 2019, Mr. VanHoose submitted this Request for Review, contesting the City's response.

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On December 23, 2019, this office forwarded a copy of Mr. VanHoose's Request for Review to the City and asked it to provide copies of the unredacted records responsive to part two of his FOIA request for our confidential review, together with a detailed explanation of the legal and factual bases for redacting the records. This office also asked the City to explain how the City interpreted part one of his FOIA request and how it concluded that it does not possess a responsive activity log.

On January 3, 2019, the City provided this office with unredacted copies of the crash report and a written response asserting that it properly redacted information from the records responsive to part two pursuant to sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). On January 21, 2020, Mr. VanHoose replied.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2018). The exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Crash Report

A review of the records reveals that the City redacted the names of the drivers involved in the vehicle accident as well as the names of other witnesses. The City asserts that the names are exempt under section 7(1)(c) of FOIA.

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." However, section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019) specifically provides that "the identities of witnesses to traffic accidents * * * shall be provided by agencies of local government." Because section 7(1)(d)(iv) is a specific provision regarding releasing the identities of witnesses to traffic accidents, it prevails over the more general 7(1)(c) exemption regarding personal information. *See People v. Villarreal*, 152 Ill. 2d 368, 379 (1992) ("It is a fundamental rule of statutory

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construction that where there exists a general statutory provision and a specific statutory provision, either in the same or another act, which both relate to the same subject, the specific provision controls and should be applied."'). If the General Assembly had intended to permit public bodies to redact information identifying witnesses to traffic accidents, it would not have excluded such witnesses from the section 7(1)(d)(iv) exemption that applies to witnesses who provide information to law enforcement in other contexts.¹ Neither the City's response to the FOIA request nor its response to this office provides clear and convincing evidence that disclosure of the names of the drivers and other witnesses in the accident report in question would constitute an unwarranted invasion of personal privacy due to the particular circumstances of that accident. Accordingly, the City improperly redacted the names of the drivers and other witnesses listed in the crash report.

A review of the records also reveals that the City redacted the drivers' addresses, telephone numbers, driver's license numbers, license plates, make of car, vehicle identification numbers (VIN), vehicle owner's names and addresses, the insurance company names and policy numbers, and birth dates. In addition, the City redacted the addresses and phone numbers of the other witnesses.

Section 7(1)(b) of FOIA exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2016)) defines "private information" as "unique identifiers, including a person's * * * driver's license number * * * home or personal telephone numbers * * * home address and personal license plates[.]" Additionally, the Public Access Bureau has consistently determined that a public body may withhold, pursuant to section 7(1)(c) of FOIA, a person's date of birth and the insurance policy numbers of individuals on the basis that it is "highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information." *See, e.g.*, Ill. Att'y Gen. Pub. Acc. Op. No 16-009, issued November 7, 2016, at 12 (date of birth highly personal); Ill. Att'y Gen. PAC

¹Section 7(1)(d)(iv) applies to information in the possession of any public body which was created in the course of administrative enforcement proceedings, or in the possession of any law enforcement or correctional agency for law enforcement purposes, to the extent that disclosure would:

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[.]

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Req. Rev. Ltr. 52841, issued July 3, 2018, at 5 (insurance policy number highly personal information).

Under the plain language of section 7(1)(b) of FOIA the City properly redacted (1) the home addresses, telephone numbers, and driver's license numbers for the drivers listed in units 1 and 2 of the report, (2) the home address of the owner of the vehicle and personal license plate number for the driver listed in unit 1, and (3) the home addresses and phone numbers of the other witnesses in the report. Further, the City properly redacted the dates of birth of the drivers, as well as the insurance policy number for the driver listed in unit 1, pursuant to section 7(1)(c) of FOIA.

However, the City also redacted the business name of the owner of the vehicle listed in unit 2, as well as the address and phone number for that business, and the commercial plate number and insurance information for that auto. Because FOIA defines "private information" as unique identifiers of persons, information identifying businesses is not exempt from disclosure under section 7(1)(b). *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 48461*, issued December 18, 2017, at 3-4. Additionally, the City improperly redacted the vehicles' make and VIN, which is not private information under 7(1)(b). *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 17615*, issued January 26, 2012, at 3 (VIN identifies a vehicle and does not constitute "private information"). Further, the City has failed to sustain its burden of demonstrating by clear and convincing evidence that VINs are highly personal information exempt from disclosure under 7(1)(c). Accordingly, the City improperly redacted that information.

In accordance with the conclusions expressed above, this office requests that the City provide Mr. VanHoose a copy of the crash report which shows the names of the drivers and other witnesses in all sections of the report, the names of the owners of the vehicles, the vehicles' make and VIN, and the business information identified above.

Facebook Activity Log

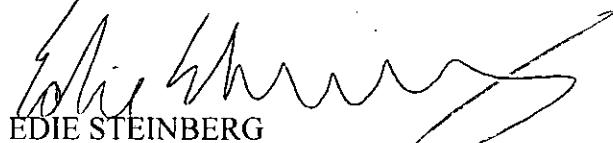
In its response to Mr. Van Hoose's request for the administrator activity log for the City Police Department's Facebook page from January 1, 2015, to the present, the City informed Mr. VanHoose that it did not have records responsive to this portion of his request and suggested that he clarify what he is seeking. On February 21, 2020, the City explained to this office that when it received Mr. Van Hoose's FOIA request for the activity log, the person responding did not believe the City had such a record, but after receiving further information from Mr. VanHoose, the City was able to locate the Facebook activity log for the Police Department. The City also notified this office that on February 20, 2020, the City provided Mr. VanHoose a supplemental response containing a copy of its Facebook activity log, which is 153 pages in length, and contains activities posted from January 3, 2015, through January 31, 2020. (A copy of the supplemental response letter is attached.) Accordingly, the City's supplemental

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response resolves Mr. VanHoose's complaint that the City failed to provide him with a copy of its activity log.

The Public Access Bureau has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at (312) 814-5201 or at the Chicago address on the first page of this letter if you have questions.

Very truly yours,



EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

Attachment

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From: Jenny Meyer

Sent: Thursday, February 20, 2020 12:58 PM

To: bvh231@gmail.com

Cc: Chief Secretary <chiefsecy@bellevillepolice.org>; Lt T Keilbach <keilbacht@bellevillepolice.org>

Subject: FOIA N002009-120219

Mr. VanHoose:

I am in receipt of the additional responsive documents regarding your FOIA Reference #N002009-120219 "Administrator Activity Log, January 2015 - present".

I believe you were having some difficulty accessing your GovQA account for responsive documents previously. Therefore, in addition to uploading to GovQA for your access, I am sending via email.

Respectfully,

Jennifer Gain Meyer, MS, LEHP

City Clerk

City of Belleville

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United States
Census
2020

The 2020 Census Day is April 1 and it's important you get counted! To learn more, click this census graphic above.

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