



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 18, 2020

Via electronic mail
Mr. Rob Dorman

Via electronic mail
Ms. Heidi L. Eckert
FordHarrison LLP
7777 Bonhomme Avenue, Suite 1710
St. Louis, Missouri 63105
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RE: FOIA Request for Review – 2020 PAC 62916

Dear Mr. Dorman and Ms. Eckert:

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 that follow, the Public Access Bureau concludes that the Madison County Sheriff's Office (Sheriff's Office) improperly denied Mr. Rob Dorman's May 4, 2020, FOIA request.

On that date, Mr. Dorman submitted a request to the Sheriff's Office seeking a copy of a video recording of a named candidate filing precinct committeeman papers at the Madison County Clerk's Office on December 4, 2017. On May 8, 2020, the Sheriff's Office denied his request, citing sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (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 that same date, Mr. Dorman submitted the above-captioned Request for Review contesting the denial. Mr. Dorman noted that this office had previously issued a determination involving nearly identical circumstances (2018 PAC 51411), in which this office concluded that the Sheriff's Office improperly withheld a video recording of a candidate filing for public office in the Madison County Clerk's Office on December 1, 2017. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51411, issued March 6, 2018, at 8.

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On May 13, 2020, this office sent a copy of the Request for Review to the Sheriff's Office and asked it to provide this office with an unredacted copy of the responsive record for this office's confidential review, together with a detailed explanation of the legal and factual bases for the asserted exemptions. On May 18, 2020, the Sheriff's Office responded, arguing that the footage was also exempt from disclosure under sections 7(1)(d)(vi), 7(1)(e), and 7(1)(v) of FOIA (5 ILCS 140/7(1)(d)(vi), (1)(e), (1)(v) (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). The Sheriff's Office stated that its response was confidential under section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2018)).¹ The Sheriff's Office further stated that it was still working on providing this office with a copy of the responsive video recording. Later on that same date, Mr. Dorman replied, continuing to contest the Sheriff's Office's denial. On May 19, 2020, this office informed the Sheriff's Office that providing this office with a copy of the responsive recording would not be necessary given that the Sheriff's Office's argument was not specific to the recording at issue and this office's review of the recording in nearly identical circumstances in 2018 PAC 51411.

DISCUSSION

Under FOIA, "[a]ll 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). A public body "has the burden of proving by clear and convincing evidence" that information it withholds is exempt from disclosure. 5 ILCS 140/1.2 (West 2018).

Section 7(1)(b) of FOIA

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 2018)) defines "private information" as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

¹"The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."

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The Sheriff's Office did not set forth any information indicating that the responsive video recording of a public area of a public building consists of "private information." Therefore, the Sheriff's Office improperly withheld the video recording under section 7(1)(b).

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." An "unwarranted invasion of personal privacy" is defined 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 the information." Moreover, "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

In its confidential response to this office, the Sheriff's Office made a generic argument about personal privacy. In 2018 PAC 51411, this office determined that because the video footage did not depict any highly personal conduct, it was not exempt from disclosure under section 7(1)(c). Ill. Att'y Gen. PAC Req. Rev. Ltr. 51411, at 4-5. The Sheriff's Office provided no information in this matter that would warrant a different result. Accordingly, the Sheriff's Office improperly withheld the responsive video recording pursuant to section 7(1)(c).

Section 7(1)(d)(vi) of FOIA

Section 7(1)(d)(vi) of FOIA exempt from disclosure:

- (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

* * *

- (vi) endanger the life or physical safety of law enforcement personnel or any other person[.]

In its confidential response, the Sheriff's Office did not set forth facts indicating that disclosure of the responsive footage, depicting a public area of a public building more than three years ago, would endanger anyone's life or physical safety. Therefore, the Sheriff's Office improperly withheld the footage under the section 7(1)(d)(vi) exemption.

Section 7(1)(e) of FOIA

Section 7(1)(e) of FOIA exempts from disclosure "[r]ecords that relate to or affect the security of correctional institutions and detention facilities."

In 2018 PAC 51411, this office noted that "[t]he Sheriff's Office did not explain how disclosing video footage of the counter in the public area of the Clerk's Office would somehow jeopardize the security of the Madison County Jail." Ill. Att'y Gen. PAC Req. Rev. Ltr. 51411, at 7. Because the Sheriff's Office did not set forth any new information in this matter, the Sheriff's Office improperly withheld the responsive recording under section 7(1)(e).

Section 7(1)(v) of FOIA

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

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

As in 2018 PAC 51411, the Sheriff's Office provided the same explanation for the applicability of section 7(1)(v) as section 7(1)(e). In that matter, this office concluded that "[e]ven if the video footage could be considered a 'security measure' that is within the scope of section 7(1)(v), the Sheriff's Office did not demonstrate that its disclosure would be expected to

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jeopardize the effectiveness of the surveillance camera as a security measure or the safety of the personnel who implement it or the public." Ill. Att'y Gen. PAC Req. Rev. Ltr. 51411, at 8. Because the Sheriff's Office did not set forth any new information in this matter, this office concludes that the Sheriff's Office improperly denied the request under section 7(1)(v).

In accordance with the conclusions expressed in this letter, this office requests that the Sheriff's Office provide Mr. Dorman with a copy of the responsive video footage.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. Should you have questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
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