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Abstract **APPROVED**
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Ms. Tammy Maher
Freedom of Information Officer
Palatine Police Department
595 North Hicks Road
Palatine, Illinois 60067

RE: FOIA Request for Review – 2012 PAC 18983

Dear [REDACTED] and Ms. Maher:

Pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2011 Supp.)), the Public Access Bureau has received a Request for Review of the response by the Palatine Police Department (Department) to a FOIA request submitted by [REDACTED]

On January 17, 2012, [REDACTED] requested "a copy of the entire investigative file including field notes, witness statements, arrest reports, etc., concerning the investigation into the murder of [Antonio] Hernandez on April 25, 1997 at 11:30 p.m. at the location of 1285 Dundee Road."¹ On February 23, 2012, the Department partially denied the request pursuant to sections 7(1)(b) and 7(1)(d)(vi) of FOIA (5 ILCS 140/7(1)(b), (d)(vi) (West 2011)). In her Request for Review, [REDACTED] claims that she should be provided the requested records in un-redacted form and that she was improperly charged a fee for the copies provided by the Department.

On April 9, 2012, we forwarded a copy of [REDACTED] Request for Review to the Department and requested that the Department provide the Public Access Bureau with

¹FOIA request submitted by [REDACTED] to the Palatine Police Department (January 17, 2012).

[REDACTED]
Ms. Tammy Maher
March 26, 2013
Page 2

additional information concerning the asserted exemptions. On April 23, 2012, the Department responded:

The information redacted consists of the names and private information such as social security numbers and addresses of witnesses to the murder of Antonio Hernandez. This information was redacted pursuant to Sections 7(1)(b) and 7(1)(d)(vi) of the Freedom of Information Act. Furthermore, Section 7(1)(d)(iv) is also applicable because the information reveals the identity of persons who provided information to law enforcement as part of the investigation.²

On April 27, 2012, we forwarded a copy of the Department's response to [REDACTED]. As of the date of this letter, [REDACTED] has not submitted a reply to the Department's response.

DETERMINATION

With respect to [REDACTED] assertion that the Department improperly assessed copying fees for the responsive records, section 3(d) of FOIA (5 ILCS 140/3(d) (West 2010)) provides, in pertinent part:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. *A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies.* (Emphasis added.)

[REDACTED] mailed her request to the Department on January 17, 2012. The Department received the request no later than January 19, 2012, when it extended the time for responding by 5 business days under section 3(e)(v) of FOIA (5 ILCS 140/3(e)(v) (West 2010)).³

²Letter from Patrick T. Brankin, on behalf of the Palatine Police Department, to Dushyanth Reddivari, Assistant Attorney General, Public Access Bureau (April 23, 2012).

³Section 3(e)(v) of FOIA provides that a public body may extend the time for responding to a

[REDACTED]
Ms. Tammy Maher
March 26, 2013
Page 3

The Department then provided a written response to [REDACTED] on February 3, 2012, which was at least eleven business days after the Department received the request and six business days after the Department extended its response time. Because the Department failed to issue a timely response to the FOIA request in violation of section 3(d) of FOIA, we conclude that the Department must provide [REDACTED] with a refund for all copying fees.

Redacted Information

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2010); *see also Southern Illinoisan v. Illinois Dept. 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 2010).

Section 7(1)(b) of FOIA

Private information is exempt from disclosure pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2011 Supp.)). Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2011 Supp.)) defines "private information" to mean:

[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.

Personal telephone numbers, home addresses, social security numbers, driver's license numbers and personal license plate numbers are exempt "private information" pursuant to the definition of that term in section 2(c-5) of FOIA. Moreover, the Public Access Bureau has previously determined that signatures are unique identifiers and, therefore, a form of "private information." Ill. Att'y Gen. PAC Req. Rev. Ltr. 9838, issued December 10, 2010. In addition, FBI numbers, which are assigned by the Federal Bureau of Investigation to an arrest fingerprint record, and State Identification (SID) numbers, which uniquely identify individuals who have a criminal

FOIA request by 5 business days when "the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions[.] "

Ms. Tammy Maher
March 26, 2013
Page 4

history record, also constitute "private information" under section 7(1)(b). Accordingly, we conclude that the Department has sustained its burden of demonstrating that personal telephone numbers, home addresses, social security numbers, driver's license numbers, personal license plate numbers, signatures, FBI numbers, and SID numbers are exempt from disclosure under section 7(1)(b).

The Public Access Bureau has determined, however, that unlike license plate numbers, which identify the registered owner of a vehicle, a vehicle identification number (VIN) identifies a vehicle. Therefore, a VIN is not "private information" under the definition of that term in section 2(c-5) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 15159, issued October 6, 2011. The Public Access Bureau also has determined that names are not a form of "private information." Ill. Att'y Gen. PAC Req. Rev. Ltr. 13610, issued December 9, 2011. Although names are unquestionably "personal information" in the sense that they are specific to particular persons (*see Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 411 (1997)), they are neither confidential nor unique. To the contrary, names are "basic identification," and as the Supreme Court concluded in *Lieber*, "[w]here the legislature intended to exempt a person's identity from disclosure, it [has done] so explicitly." *Lieber*, 176 Ill. 2d at 412. Therefore, by excluding names from the definition of "private information," the General Assembly clearly did not intend for names to be exempt from disclosure under section 7(1)(b) of FOIA. Accordingly, we conclude that the Department has not sustained its burden of demonstrating by clear and convincing evidence that names and VINs are exempt from disclosure under section 7(1)(b).

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

Section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(iv) (West 2011 Supp.)) exempts information 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 law enforcement officials. The requested reports contain the names and identifying information of witnesses and other individuals who provided information to the police. Accordingly, we conclude that the Department has sustained its burden of demonstrating that the names and identifying information of these individuals are exempt from disclosure under section 7(1)(d)(iv). Because our determination on the Department's assertion of section 7(1)(d)(iv) to withhold the names and identifying information of witnesses and other individuals who provided information to the police is dispositive, we make no finding as to whether this information is also exempt pursuant to section 7(1)(d)(vi) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2011 Supp.)) exempts from inspection and copying "[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." The exemption defines "unwarranted invasion of personal 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 the information." The Public Access Bureau has previously determined that disclosure of an individual's date of birth (Ill. Att'y Gen. PAC Pre-Auth. al 15760, issued August 2, 2011), medical history (Ill. Att'y Gen. PAC Pre-Auth. al 9974, issued October 21, 2010), and emergency contact information (Ill. Att'y Gen. PAC Pre-Auth. al 15823, issued August 5, 2011) would constitute clearly unwarranted invasions of personal privacy under section 7(1)(c). The Public Access Bureau has also determined that the disclosure of the names and photographs of "filler" persons from photographic line-ups, that is, persons other than arrestees, would constitute a clearly unwarranted invasion of personal privacy under section 7(1)(c). Ill. Att'y Gen. PAC Pre-Auth. al 10235, issued October 25, 2011. Finally, the Public Access Bureau has determined that the disclosure of the names of individuals who have no involvement in the underlying incident would be highly objectionable to a reasonable person and would, likewise, constitute a clearly unwarranted invasion of personal privacy under section 7(1)(c). Ill. Att'y Gen. PAC Pre-Auth. al 14713, issued June 22, 2011. Accordingly, we conclude that the Department may properly redact dates of birth, medical history information, emergency contact information, the names and photographs of "filler" persons from photographic line-ups, and the names of third-party individuals under section 7(1)(c) of FOIA.

Section 9(b)

Section 9(b) of FOIA (5 ILCS 140/9(b) (West 2010)) states the following:

When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority. Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. (Emphasis added.)

[REDACTED]
Ms. Tammy Maher
March 26, 2013
Page 6

The Department failed to offer any basis for additional information redacted from investigative action reports, arrest reports, forensics reports, prisoner lock-up records, advise of rights forms, subpoenas, arrest warrants, complaints for preliminary examination and incident histories. By neither identifying relevant exemptions nor providing a detailed and factual basis for the applicability of those exemptions to these redactions, the Department violated section 9(b) of FOIA.

In accordance with the conclusions expressed in this letter, we request that the Department release the responsive records to [REDACTED] with redacts of only that information identified as exempt from disclosure in this letter, namely: personal telephone numbers, home addresses, social security numbers, driver's license numbers, personal license plate numbers, signatures, names and identifying information of individuals who provided information to the police, dates of birth, medical history information, emergency contact information, the names and photographs of "filler" persons from photographic line-ups, and the names of third-party individuals. The Department may not charge [REDACTED] for copies pertaining to her FOIA request dated January 17, 2012, pursuant to section 3(d) of FOIA, and should provide her with a refund of any fees paid in connection with that request.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This correspondence shall serve to close this file. Should you have any questions, please contact me at (312) 814-5206 or at the Chicago address listed below.

Very truly yours, [REDACTED]

[REDACTED]
DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

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