



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 29, 2025

Via electronic mail



Via electronic mail

Ms. Michelle Montgomery
McHenry County Sheriff's Office
2200 North Seminary Avenue
Woodstock, Illinois 60098
msschroeder@mchenrycountyil.gov

RE: FOIA Request for Review – 2025 PAC 85480

Dear [REDACTED] and Ms. Montgomery:

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 2024)). For the reasons that follow, the Public Access Bureau concludes that the McHenry County Sheriff's Office (Sheriff's Office) did not improperly deny [REDACTED] February 14, 2025, FOIA request.

On February 14, 2025, [REDACTED] submitted a FOIA request to the Sheriff's Office seeking, in relevant part, copies of the body camera footage from each deputy that responded to a November 30, 2024, incident involving her son, and police reports associated with a separate investigation involving her son. On February 20, 2025, the Sheriff's Office provided responsive police reports with certain information redacted pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.¹ In addition, the Sheriff's Office withheld all video footage from the November 30, 2024, incident pursuant to section 7.5(cc) of FOIA.²

¹5 ILCS 140/7(1)(b), (1)(c) (West 2024).

²5 ILCS 140/7.5(cc) (West 2024).

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██████████
Ms. Michelle Montgomery
July 29, 2025
Page 2

On February 26, 2025, ██████████ submitted the above-referenced Request for Review disputing the Sheriff's Office's redactions of portions of the police report and its withholding of the video footage. On March 4, 2025, the Public Access Bureau forwarded a copy of the Request for Review to the Sheriff's Office and asked it to provide this office with unredacted copies of the relevant police reports and the withheld video footage along with an explanation of the factual and legal bases for the asserted exemptions. On March 10, 2025, the Sheriff's Office provided this office with a written response and the withheld footage. In its response, the Sheriff's Office stated that it withheld the footage pursuant to section 10-20(b)(3) of the Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/10-20(b)(3) (West 2024)) "because [██████████] does not appear in the recording and the footage is not flagged."³ On March 12, 2025, this office forwarded the Sheriff's Office's response to ██████████ she did not provide a written reply.

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 2024); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2024). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Police Report

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 2024)) 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. (Emphasis added.)

³Letter from Michelle Montgomery, FOIA Officer, McHenry County Sheriff's Office, to Caleb L. Briscoe, Assistant Attorney General, Office of the Illinois Attorney General (March 10, 2025), at [2].

Additionally, 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 in section 7(1)(c) 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."

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 (2001). "[T]he core purpose of the FOIA is to expose what the government is doing, not what its private citizens are up to." *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 211 (2004) (quoting *Lakin Law Firm, P.C. v. F.T.C.*, 352 F.3d 1122, 1124 (7th Cir. 2003)). The right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'" *Citizens for Responsibility & Ethics in Washington v. United States Department of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (quoting *American Civil Liberties Union v. United States Department of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011)). Accordingly, the Public Access Bureau has previously determined that while the public interest generally requires information about the circumstances of arrests to be disclosed, there is a lesser public interest in the disclosure of information about an incident that did not result in an arrest. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 37700, issued January 13, 2016, at 3 (records of criminal sexual assault investigation exempt where no arrests were made and no criminal charges filed).

This office has reviewed the responsive records at issue. The reports provide a summary of an investigation of a criminal sexual assault allegation initiated after statements were made by [REDACTED] minor child during a forensic interview. The report indicates that the investigating officer discussed the progress of the investigation with [REDACTED] following the officer's interview of the alleged perpetrator. The investigation did not result in any arrests or the filing of any criminal charges.

The redacted portions of the report include unique identifiers such as home addresses, dates of birth, and driver's license numbers. The remaining redacted portions consist of a summary of the suspect's responses to the allegations made by the minor. As a parent of the minor child, [REDACTED] has a strong personal interest in the contents of the interview. However, on balance, given that no arrests were made and the identity of the accused suspect is known to [REDACTED], this office finds disclosure of the records would constitute an unwarranted invasion of the suspect's personal privacy. Accordingly, the Sheriff's Office did not improperly withhold the portions of the responsive records under sections 7(1)(b) and 7(1)(c) of FOIA.

Body Camera Footage

Section 7.5(cc) of FOIA exempts from disclosure "[r]ecordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act." Section 10-20(b) of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act)⁴ provides, in relevant part:

Recordings made with the use of an officer-worn body camera **are not subject to disclosure under the Freedom of Information Act**, except that:

(1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, shall be disclosed in accordance with the Freedom of Information Act if:

(A) the subject of the encounter captured on the recording is a victim or witness; and

(B) the law enforcement agency obtains written permission of the subject or the subject's legal representative;

(2) except as provided in paragraph (1) of this subsection (b), any recording which is flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and

(3) **upon request, the law enforcement agency shall disclose**, in accordance with the Freedom of Information Act, **the recording to the subject of the encounter captured on the recording or to the subject's attorney**, or the officer or his or her legal representative. (Emphasis added.)

⁴50 ILCS 706/10-20(b) (West 2024).

Thus, the Body Camera Act prohibits the disclosure of body camera footage pursuant to a FOIA request, unless one of the three exceptions enumerated above applies. If footage is not flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, a subject of the encounter captured on the recording may still obtain a copy of the footage under the third and final exception. The Public Access Bureau has determined, however, that "the subject of the encounter" means a person who appeared in the recording and "interacted with a law enforcement officer in the course of a law enforcement activity." Ill. Att'y Gen. PAC Req. Rev. Ltr. 48793, issued August 31, 2017, at 4.

Though the subject of the encounter may receive copies of the body camera footage, certain limitations remain. The Public Access Counselor has concluded that section 10-20(b)(3) of the Body Camera Act authorizes the "subject of the encounter" to receive only the specific segments of an unflagged recording in which that subject is "captured on the recording" and is interacting with an officer. Ill. Att'y Gen. PAC Req. Rev. Ltr. 63412 63421, issued September 2, 2020, at 8 (concluding that requester was entitled to only 30 second clip in which he interacted with officer, not remaining footage showing interactions between officer and other subjects). A public body may properly redact portions of an unflagged recording where the subject who submitted the request is no longer present in the footage. Ill. Att'y Gen. PAC Req. Rev. Ltr. 74512, issued February 6, 2023, at 5 (concluding city did not violate FOIA by blurring and muting segments of footage that did not show requester).

The Sheriff's Office's response to this office stated that the withheld recordings capture a "conflict between the dad and juvenile child [which] took place at the dad's house and mom was not present."⁵ The Sheriff's Office asserts that "██████████ was denied the [body camera] footage because she does not appear in the recording and the footage is not flagged."⁶ ██████████ concedes that she was not present, but asserts that she is the custodial parent of the minor child who was one of the subjects of the encounter, and as a parent should be able to obtain a copy of the recordings on behalf of her child.

There is no indication that the footage at issue was flagged for any of the reasons outlined in sections 10-20(b)(1) and (b)(2) of the Body Camera Act. Furthermore, based on this office's review, a vast majority of each video involves the police obtaining information from individuals other than the minor who were present within the residence. Section 10-20(b)(3) of the Body Camera Act plainly prohibits the Sheriff's Office disclosing the footage of those

⁵Letter from Michelle Montgomery to Caleb Briscoe, Assistant Attorney General, Office of Attorney General (March 10, 2025).

⁶Letter from Michelle Montgomery to Caleb Briscoe, Assistant Attorney General, Office of Attorney General (March 10, 2025).

individual's interactions with the responding officers to [REDACTED] The remaining issue is whether [REDACTED] is entitled to obtain footage of the minor.

One of the most fundamental principles of statutory construction is that a reviewing body "may not depart from the plain language [of a statute] by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶ 16; *see also Brunton v. Kruger*, 2015 IL 117663, ¶ 67 ("We will not read in an additional exception to a statute that contains only one express exception, indicating a legislative intent to limit exceptions to that single instance. The creation of such an exception is a matter for the legislature.").

By its plain language, section 10-20(b)(3) of the Body Camera Act permits body footage to be disclosed to (1) "the subject of the encounter captured on the recording," (2) "the subject's attorney," (3) the officer involved in the encounter, and (4) the officer's legal representative." [REDACTED] does not fall under any of those categories. Notably, certain other statutes with broad confidentiality provisions contain exceptions that permit both minors and their parents to obtain records concerning minors. *See, e.g.*, 705 ILCS 405/1-7(0.05) (West 2024) (permitting "[t]he minor who is the subject of the juvenile law enforcement record, the minor's parents, guardian, and counsel[]" to obtain records that are generally prohibited from being disclosed by the Juvenile Court Act). The Body Camera Act does not contain a comparable exception.

Even if section 10-20(b)(3) of the Body Camera Act may be construed to permit a parent to stand in the shoes of a minor subject for purposes of obtaining footage depicting the minor, the Act still provides that "[n]othing in this subsection (b) shall require the disclosure of any recording or portion of any recording which would be exempt from disclosure under the Freedom of Information Act." 50 ILCS 706/10-20(b) (West 2024). As discussed above, courts have recognized that the right to privacy is strongest when a suspect of a crime has not been arrested or charged. During the segments of the video recording where the minor alone interacts with an officer, their interactions concern a matter that is highly personal to the subject who was not arrested or charged with a crime. [REDACTED] has a strong personal interest in the body camera footage of the minor subject interacting with the officer; however, because [REDACTED] is aware of the identity of the adult subject, redacting references to that individual's name or personally-identifiable information from the footage would not render them anonymous. Under these circumstances, the footage of the minor subject is exempt from disclosure under section 7(1)(c) of FOIA.

[REDACTED]
Ms. Michelle Montgomery

July 29, 2025

Page 7

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 782-9054 or caleb.briscoe@ilag.gov if you have questions.

Very truly yours,

[REDACTED]

CALEB L. BRISCOE
Assistant Attorney General
Public Access Bureau

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