FOIA for Law Enforcement Agencies – Reports

Public Access Bureau Illinois Attorney General's Office June 6, 2024

Public Access Counselor

Added to the Attorney General Act in 2010, the Office of the Public Access Counselor within the Attorney General's office is authorized to:

• Provide advice and education with respect to FOIA and OMA

 Resolve complaints concerning compliance with FOIA and OMA without litigation (Requests for Review)
 15 ILCS 205(7)

Public Access Counselor

- In 2023, the Public Access Counselor (PAC) received more than 3,800 complaints concerning FOIA and OMA
- Many are resolved informally or with just one letter to a public body
- 195 Binding Opinions issued since 2010
- Thousands of determination letters
- Required online training plus presentations
- Hotline (877-299-3642)

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Presumption of Openness

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by *clear and convincing evidence* that it is exempt."

5 ILCS 140/1.2

What is Clear and Convincing?

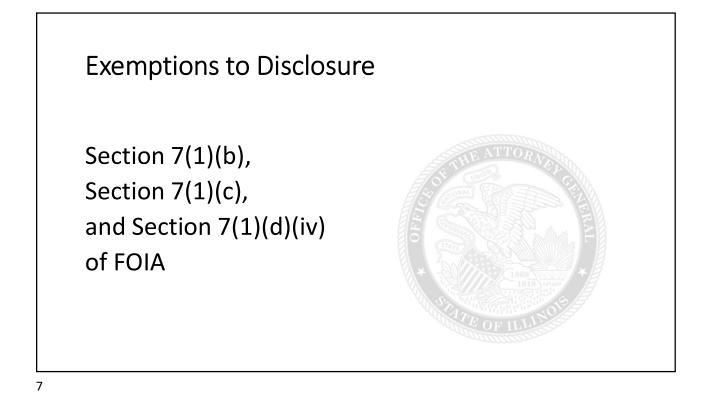
Generally, under FOIA, "clear and convincing" evidence requires the public body to "provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.)

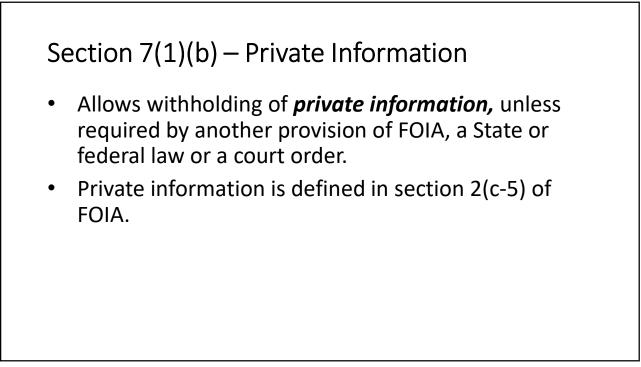
Illinois Educ. Ass'n v. Illinois State Bd. of Educ., 204 III. 2d 456, 464 (2003).

Exemptions to Disclosure

Exemptions allow public bodies to maintain certain types of sensitive public records or information confidentially. FOIA provides a number of exceptions to the requirement that public records are available for public inspection.

FOIA Exemptions are listed in section 7 and section 7.5 (5 ILCS 140/7 and 5 ILCS 140/7.5)



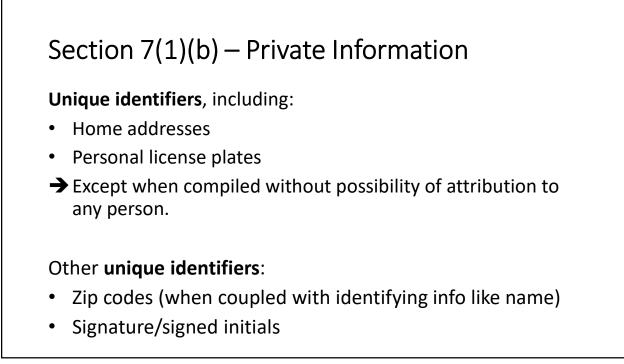


Section 7(1)(b) – Private Information

Unique identifiers, including:

- Social Security Numbers
- Driver's License Numbers
- Employee Identification Numbers
- Biometric Identifiers (DNA, retina/iris scan, fingerprint, voiceprint, scan of hand)
- Personal Financial Information
- Passwords or Other Access Codes
- Medical Records, including electronic medical records
- Home or Personal Telephone Numbers
- Personal Email Addresses

5 ILCS 140/2(c-5)



Section 7(1)(b) Not Properly Asserted Business telephone numbers, e-mail addresses, street addresses Commercial license plates Badge numbers Firearm serial numbers VINs

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Section 7(1)(c) – Personal Privacy

Exempts "[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) – Personal Privacy "Unwarranted invasion of personal privacy means the disclosure of information that isHighly 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." → Balancing test, usually requiring case-by-case consideration.

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Section 7(1)(c) – Personal Privacy, con't

"The disclosure of information that *bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."*

Section 7(1)(c) – Personal Privacy

Exempt personal information:

- Names of surviving victims
- Names of uninvolved third parties mentioned in report
- Names of suspects/subjects not arrested
- Dates of birth
- Race
- Specific medical information (i.e. descriptions of specific injuries, illnesses, and treatments)
- Death-scene images of decedent

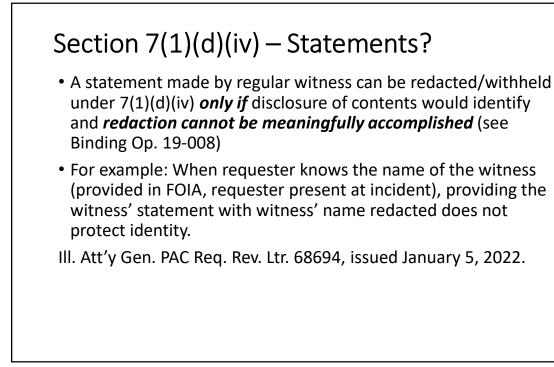


Section 7(1)(c) <u>Not</u> Exempt

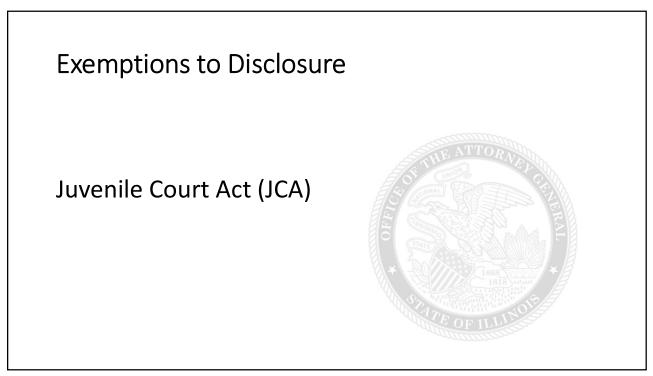
- Identifying information of an arrestee (adult)
- Names of people issued a ticket, citation, or notice to appear
- Personal information concerning requester
- Age, height, and weight
- Death certificate
- Information relating to a decedent, e.g., police report describing death (non-graphic)
- Name of hospital/medical facility/"EMS transport"
- Names of police officers in lineups

Section 7(1)(d)(iv) – Witnesses and CIs

- Allows a public body to withhold records that would unavoidably reveal the identity of a complainant or witness
 Names, identifiers, other descriptors (employer/job title)
- Also identities of confidential informants and "confidential information furnished only by the confidential source"



Special Rule! "[E]xcept that the identities of witnesses to traffic accidents, traffic accident reports, or rescue reports shall be provided[.]" "Identities of witnesses" means names – department can redact witness home and personal telephone numbers and home addresses (under 7(1)(b)). III. Att'y Gen. PAC Req. Rev. Ltr. 54174, issued October 9, 2018.



Section 7.5(bb) – Records Confidential under Juvenile Court Act (JCA)

Juvenile Law Enforcement Records that relate to a minor (under 18 y.o.) who has been:

✓ Arrested

✓ Investigated, or

✓ Taken into custody

Can be withheld in their entirety, depending on who is requesting the records.

705 ILCS 405/1-7(A)

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Definition of Juvenile Law Enforcement Record

Includes:

...

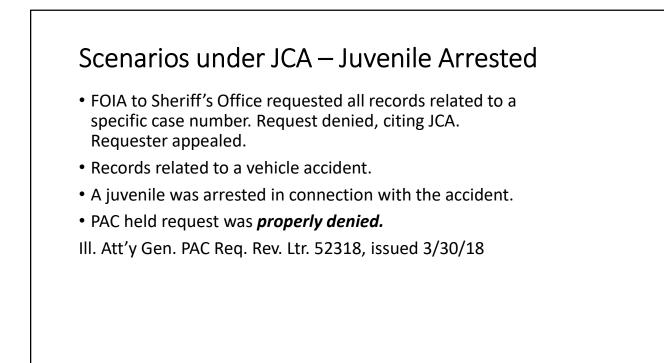
- "records of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, *or any other records or documents* maintained by any law enforcement agency...
- relating to a *minor suspected of committing an offense*, and records maintained by a law enforcement agency *that identifies a juvenile as a suspect* in committing an offense,

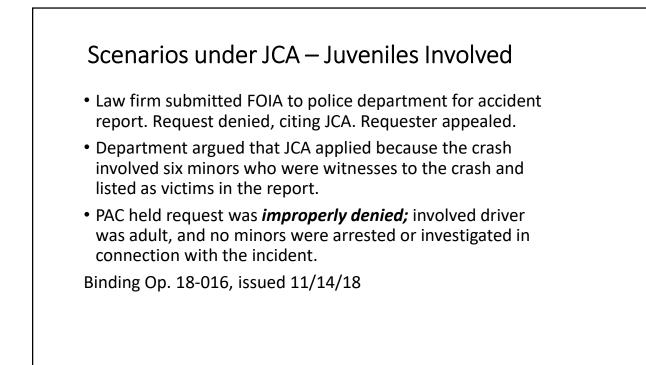
705 ILCS 405/1-3(8.2)

Section 7.5(bb) – Juvenile Court Act

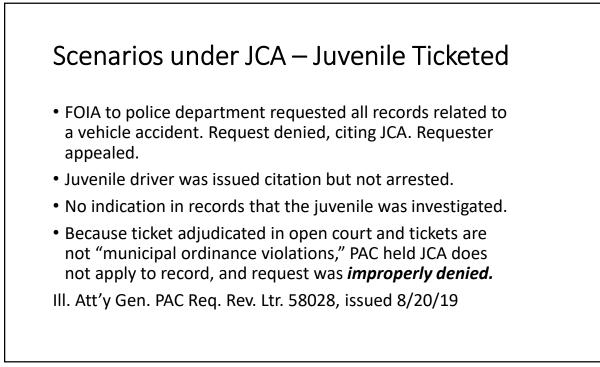
"...but does **not** include records identifying a juvenile as a **victim**, **witness**, or **missing juvenile** and any records created, maintained, or used for purposes of referral to programs relating to diversion as defined in subsection (6) of Section 5-105."

705 ILCS 405/1-3(8.2)





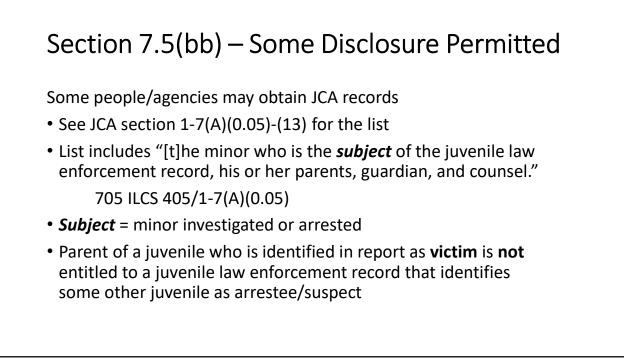




Juvenile & Adult Arrestees

- FOIA requested all records related to an incident in which <u>both a</u> <u>juvenile and an adult were arrested</u>. The juvenile was not charged as an adult.
- Department released arrest information sheet and mugshot of adult, but withheld arrest records for juvenile and incident report, citing JCA. Requester appealed to PAC.
- Incident report is a "juvenile law enforcement record" because it documents arrest of juvenile, and JCA requires withholding regardless of whether it also describes conduct of an adult arrestee. AG held report was *properly withheld*.

Ill. Att'y Gen. Pub. Acc. Op. 23-010, issued 7/12/23



Section 7.5(bb) – Parent Request

- FOIA to police department for specified report. Request denied in entirety, citing JCA. Requester appealed, asserting he was parent of one of the involved juveniles.
- Department argued that although requester's child was involved, so were two other juveniles.
- Because JCA specifically permits parents of minors who are the subjects of records to access those records, parent entitled to the portion of report concerning own child.
- May redact identifying information about other minors.

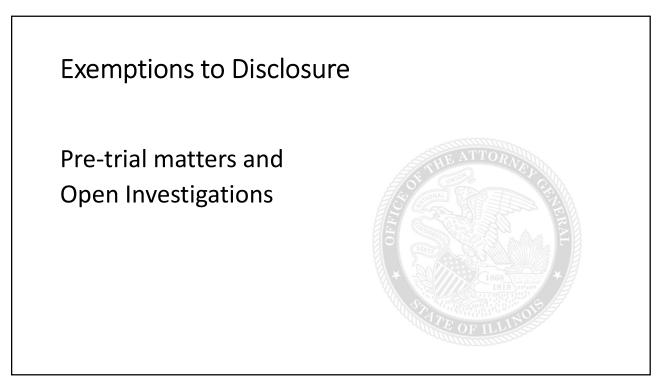
Ill. Att'y Gen. PAC Req. Rev. Ltr. 66759, issued 8/24/21



Minor Victims – Other FOIA Exemptions FOIA to police department requested records documenting allegations of sexual abuse of a minor. Request denied, citing JCA. Requester appealed. Records involved an adult suspect. PAC held request *improperly denied under JCA*. However, because of nature of allegations and age of alleged victim, identity of minor victim could be withheld under section 7(1)(c) or Privacy of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/3). Binding Op. 21-002, issued February 17, 2021.

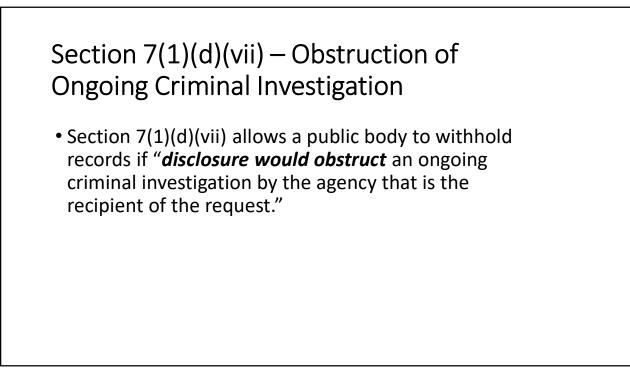
Minor as victim and suspect

- Existence of separate records investigating the minor does not extend JCA protection to records in which same minor is victim.
- FOIA's exemption for records covered by the JCA does not apply "to a request for records related to the investigation of police officers who fatally shot a minor." *NBC Subsidiary* (*WMAQ-TV*) v. Chicago Police Dep't, 2019 IL App (1st) 181426.



Section 7(1)(d)(i) – Interfere with Law Enforcement Proceedings

 Section 7(1)(d)(i) of FOIA allows a public body to withhold records if "*disclosure would interfere* with pending or actually and reasonably contemplated law enforcement proceedings" conducted by the law enforcement or correctional agency that received the FOIA request.



Sections 7(1)(d)(1) and 7(1)(d)(vii)

- Fact that arrest has been made, or that an investigation has commenced or remains open on department's end, *is not by itself sufficient to meet burden* of demonstrating that the request can be denied in whole.
- Agency may not "use the term 'ongoing criminal investigation'... as some sort of magic talisman."
 Day v. City of Chicago, 388 III. App. 3d 70 (2009); III. Att'y Gen. Pub. Acc. Op. 24-006 (issued Apr. 1, 2024).

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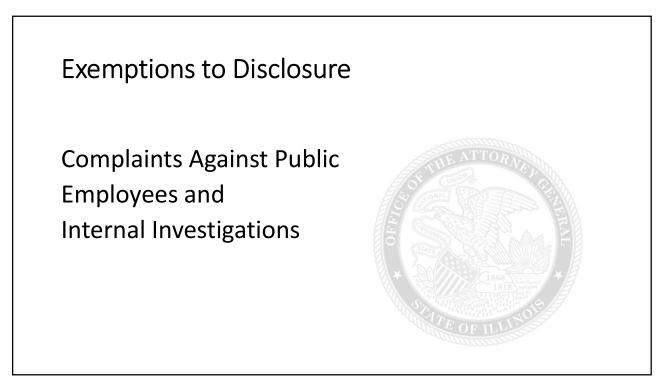
Sections 7(1)(d)(i) and 7(1)(d)(vii): How Can Agency Satisfy the Burden? Ballew v. Chgo. Police Dep't., 2022 IL App. (1st) 210715: CPD disclosed reducted original case report and withheld remains

disclosed redacted original case report and withheld remainder; court found CPD met burden with affidavit

- Affidavit stated that investigation was ongoing and offender remained at large, and that
- Releasing remaining records could impact investigators' determination of the veracity of potential witnesses

Section 7(1)(d)(iii) – Deprivation of Fair Trial or Impartial Hearing

- Allows a public body to withhold records if disclosure *would create a substantial likelihood* that a person will be deprived of a fair trial or impartial hearing.
- Only applies if trial/hearing *pending or truly imminent*. (See Binding Opinions 19-008, 20-005)
- Must show *how* and *why* disclosure of the information would jeopardize fair trial



Complaints Against Employees and Investigations of those Complaints

Complaints against public employees (from community members or internal) and the investigations of those complaints generally need to be disclosed when requested.

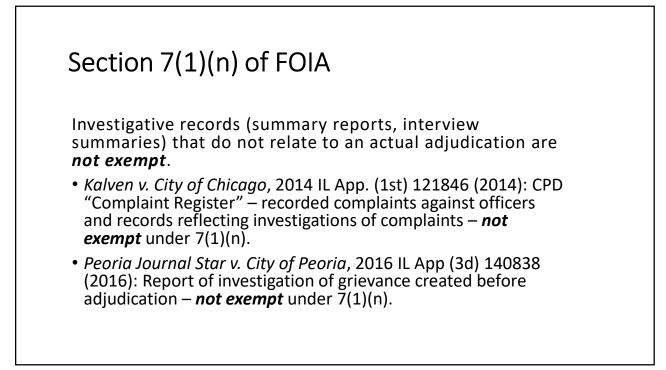
• Courts have determined that the exemptions asserted to withhold these records from disclosure do not apply.

Complaints Against Employees Founded and Unfounded Complaints against public employees generally need to be disclosed when requested. Section 7(1)(c) of FOIA states that "the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy." Complaint, even one determined to be unfounded, bears on public duties of public employee or official. *Gekas v. Williamson*, 393 Ill. App. 3d 573 (2009).

Investigations and Adjudications of Employee Discipline

Allows a public body to withhold "records 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."

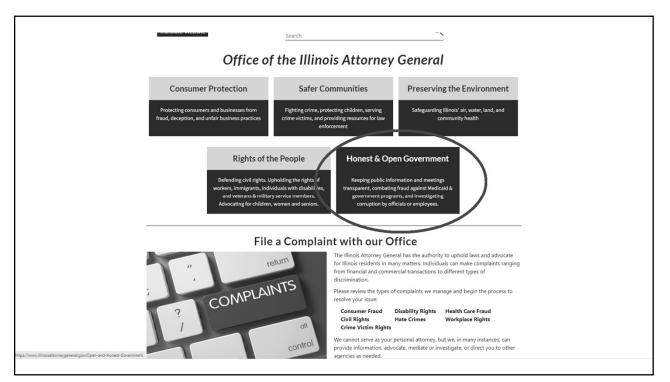
- Section 7(1)(n) of FOIA may apply to certain **specific records** related to adjudication
- "Adjudication" is a "formalized legal process that results in a final and enforceable decision."

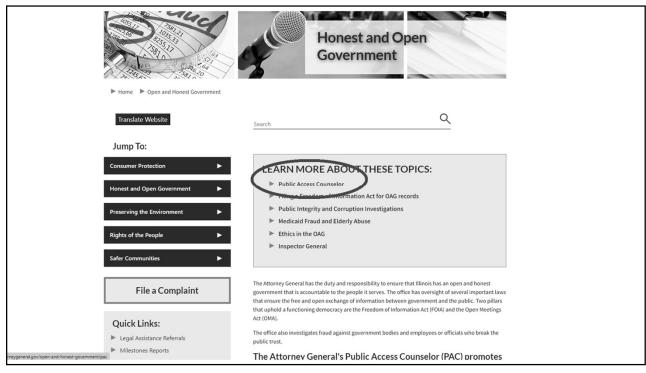


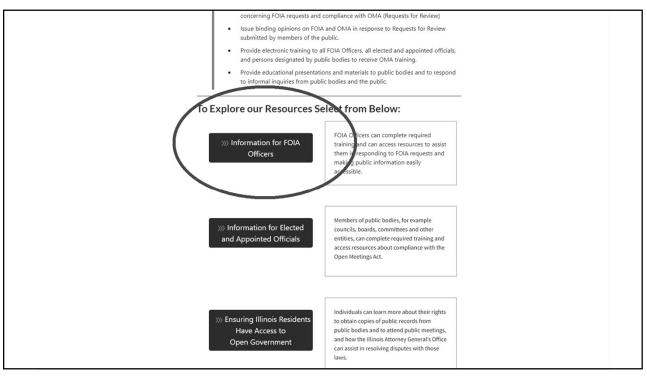
Complaints Against Employees and Records of Investigations

Although complaints and investigation records cannot be withheld in their entireties, redactions can be made:

- unique identifiers (section 7(1)(b))
- witness and third party names (sections 7(1)(c) and 7(1)(d)(iv))
- Internal emails containing opinions and recommendations NOT the final decision (section 7(1)(f))







PAC Contact Information

PAC Hotline: 877-299-3642

(Voicemail, 9 a.m. – 5 p.m. on business days)

public.access@ilag.gov

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