OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2016

PUBLIC ACCESS OPINION 16-009
(Requests for Review 2016 PAC 43168, 43184, 43186, 43193 and 43370)

FREEDOM OF INFORMATION ACT:
Disclosure of Certain Information in a
Criminal Complaint Filed by a Public Figure

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Mr. Nathan Lurz
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Ms. Natasha Korecki
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Ms. Enza Petrarca
Village Attorney
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Dear Ms. Vinicky, Mr. O'Connor, Mr. Fusco, Mr. Lurz, Ms. Korecki, and Ms. Petrarca:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that, although the Village of Downers Grove (Village) provided copies of some records and substantial additional information in a supplemental response and properly applied exemptions to portions of various records that it continues to

withhold, it violated the requirements of FOIA by improperly redacting and withholding other information related to a criminal complaint filed by a then-public official.

BACKGROUND

This binding opinion addresses five FOIA requests seeking the same or similar records, each of which the Village denied in part asserting the same bases. Because the Requests for Review present common issues, this office has consolidated these files for determination in this binding opinion.

2016 PAC 43168

On July 25, 2016, Ms. Sarah Mueller submitted a FOIA request to the Village seeking "[a] copy of all police reports filed by Ron Sandack of Downers Grove between July 1, 2016 and July 24, 2016."[1] On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(vii) (West 2015 Supp.)) The response also stated that "[i]nvestigative supplements have not been completed as of the date of this response and that "[e]videntiary documents are denied" pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.[2] On July 26, 2016, Ms. Mueller submitted a Request for Review, on behalf of National Public Radio (NPR) Illinois, disputing the redaction of the information in the narrative of the complaint, the type of incident, and the offense classification.[3]

On August 3, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village's Police Department and asked it to provide unredacted copies of the police report at issue for this office's confidential review together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information redacted from the complaint as well as to the redactions of the

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[1]Village of Downers Grove FOIA 1-Request form submitted by Sarah Mueller (July 25, 2016).

[2]Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Sarah Mueller (July 26, 2016).

[3]E-mail from Sarah Mueller, Reporter, NPR Illinois, to Public Access (July 26, 2016). Ms. Mueller also questioned why she was required to submit photo identification in order to file a FOIA request with the Village. The Public Access Counselor's authority under FOIA is limited to reviewing denials of FOIA requests. *See* 5 ILCS 140/9.5(a) (West 2014). Because Ms. Mueller did not refuse to provide photo identification and because the Village did not deny her request for failing to do so, this office is unable to review that issue. However, this office notes that no provision of FOIA authorizes a public body to require a requester to provide photo identification as a prerequisite to filing a FOIA request.

type of incident and the offense classification.[4] On August 5, 2016, the Village Attorney furnished those materials to the Public Access Bureau in a consolidated response to the Requests for Review in 2016 PAC 43184, 43186, and 43193 (Consolidated Response).[5] On the same day, this office forwarded a copy of the non-confidential portions of the Village's Consolidated Response to Ms. Mueller;[6] she did not reply.

On September 8, 2016, this office received from the Village a supplemental response in which it asserted that the information redacted from the incident report should remain confidential based on Mr. Sandack's rights as a crime victim under article I, sections 8.1(a)(1) and 8.1(a)(2) of the Illinois Constitution of 1970 (Supplemental Response to PAC).[7] On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC) to Ms. Mueller;[8] she did not reply.

2016 PAC 43184

On July 25, 2016, Mr. John O'Connor, on behalf of the Associated Press, submitted a FOIA request to the Village's Police Department seeking "a copy of any report filed by Ron Sandack or involving alleged cyber-security threats or fraudulent impersonation using social media since July 1, 2016."[9] On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also indicated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.[10] On July 26,

[4]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tracy Adams, Police Records/Information Manager, Downers Grove Police Department (August 3, 2016).

[5]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (August 5, 2016).

[6]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sarah Mueller (August 5, 2016).

[7]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 8, 2016).

[8]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Sarah Mueller (August 5, 2016).

[9]Letter from John O'Connor, Associated Press, to Downers Grove Police Department (July 25, 2016).

[10]Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to John O'Connor - AP (July 26, 2016).

2016, Mr. O'Connor submitted a Request for Review asserting that the report was excessively redacted and requested that this office direct the "Downers Grove Police Department to disclose all relevant and public information under FOIA."[11]

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Village's Consolidated Response to Mr. O'Connor.[12] On August 9, 2016, Mr. O'Connor submitted a reply in which he disputed the redaction of information in several specific sections of the incident report.[13] On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. O'Connor.[14] He did not reply to the Supplemental Response to PAC.

2016 PAC 43186

On July 26, 2016, Mr. Chris Fusco, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Village "seeking to review and/or obtain copies of any police reports, audio and/or video recordings, and/or any other records involving incidents since Jan. 1, 2016 – including but not limited to cyberhacking – involving state Rep. Ronald Sandack, whose home and office are in Downers Grove."[15] On the same day, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA; the response also stated that investigative supplements had not been completed, and denied evidentiary documents under sections 7(1)(c) and 7(1)(d)(vii) of FOIA.[16] On July 27, 2016, Mr. Fusco submitted a Request for Review in which he questioned whether the information that was redacted and withheld is exempt from disclosure under FOIA.[17]

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[11]Letter from John O'Connor, Associated Press, to Sarah Pratt, Public Access Bureau, Office of the Attorney General (July 26, 2016).

[12]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to John O'Connor, Associated Press (August 5, 2016).

[13]Letter from John O'Connor, Associated Press, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (August 9, 2016).

[14]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John O'Connor, Associated Press (September 8, 2016).

[15]E-mail from Chris Fusco, Staff Reporter, Investigations/Projects, *Chicago Sun-Times*, to FOIA Officer, Village of Downers Grove (July 26, 2016).

[16]Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Chris Fusco, [*Chicago*] *Sun-Times* (July 26, 2016).

[17]E-mail from Chris Fusco, *Chicago Sun-Times*, to Public Access Counselor, Illinois Attorney General (July 27, 2016).

On August 3, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village's Police Department and asked it to provide unredacted copies of the records that were redacted and withheld for this office's confidential review together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions. This office also asked the Village's Police Department to clarify in its response the reasons for withholding investigative supplements that had not been completed at the time of the response to the FOIA request.[18]

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Village's response to Mr. Fusco.[19] On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. Fusco.[20] He did not reply to either response.

2016 PAC 43193

On July 26, 2016, Mr. Nathan Lurz, on behalf of Shaw Media, submitted a FOIA request to the Village seeking copies of "[a]ny police reports involving former IL State Rep. Ron Sandack filed in the past six months, including any legally releasable ongoing cases[.]"[21] On July 27, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.[22] On July 27, 2016, Mr. Lurz submitted a Request for Review questioning whether the information redacted from the incident report is exempt from disclosure under FOIA.[23]

On August 3, 2016, the Public Access Bureau sent a copy of the Request for

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[18]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tracy Adams, Police Records/Information Manager, Downers Grove Police Department (August 3, 2016).

[19]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, *Chicago Sun-Times* (August 5, 2016).

[20]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, *Chicago Sun-Times* (September 8, 2016).

[21]Village of Downers Grove FOIA 1-Request form submitted by Nathan Lurz (July 26, 2016).

[22]Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Nathan Lurz, Suburban Life (July 27, 2016).

[23]E-mail from Nathan Lurz to Public Access (July 27, 2016).

Review to the Village's Police Department and asked it to provide an unredacted copy of the police report together with a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted.[24]

On August 5, 2016, this office forwarded a copy of the non-confidential portions of the Consolidated Response to Mr. Lurz.[25] On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Mr. Lurz.[26] He did not reply to either response.

2016 PAC 43370

On July 25, 2016, Ms. Natasha Korecki, on behalf of Politico Illinois, submitted a FOIA request to the Village seeking a "copy or copies of any police report filed by Ronald Sandack (state Representative) from March[ ] 1, 2016 to the present."[27] On July 26, 2016, the Village's Police Department responded by providing a copy of the report but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.[28] On August 7, 2016, Ms. Korecki submitted a Request for Review questioning whether the information that was redacted from the report is exempt from disclosure under FOIA.[29]

On August 11, 2016, this office sent a copy of the Request for Review to the Village's Police Department and asked it to provide a detailed explanation of the factual and legal bases for the applicability of the sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the

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[24]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tracy Adams, Police Records/Information Manager, Downers Grove Police Department (August 3, 2016).

[25]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nathan Lurz, Reporter, Downers Grove and DuPage County, Shaw Media (August 5, 2016).

[26]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nathan Lurz, Reporter, Downers Grove and DuPage County, Shaw Media (September 8, 2016).

[27]E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter, to FOIA Officer (July 25, 2016).

[28]Letter from Tracy Adams, Police Records/Information Manager, Village of Downers Grove, to Natasha Korecki - Politico (July 26, 2016).

[29]E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter to Appeals officer (August 7, 2016).

information that was redacted from the report.[30] On August 12, 2016, an Assistant Village Attorney asked an Assistant Attorney General in the Public Access Bureau to send Ms. Korecki a copy of the non-confidential portions of the Village's Consolidated Response that had previously been provided to this office with regard to the other Requests for Review. On August 12, 2016, this office sent a copy of that response to Ms. Korecki.[31] On September 8, 2016, this office forwarded a copy of the Supplemental Response to PAC to Ms. Korecki.[32] She did not reply to either response.

Supplemental Response to FOIA Requests

On September 16, 2016, the Village issued a supplemental response (Supplemental Response) to each requester in which it disclosed some portions of the records that had previously been denied and furnished additional records that were generated or obtained subsequent to its initial response. The Supplemental Response, however, indicated that other portions of the records were still being redacted or withheld pursuant to sections 7(1)(b) and 7(1)(c) as well as section 7(1)(d)(v) (5 ILCS 140/7(1)(d)(v) (West 2015 Supp.)). In addition, the response stated that "some records are being denied pursuant to a court order."[33]

This office then received correspondence from Mr. O'Connor,[34] Mr. Fusco and Ms. Tina Sfondeles,[35] Mr. Lurz,[36] and Ms. Korecki[37] indicating that they continued to seek review of the information that had been redacted and withheld in the Supplemental Response.

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[30]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Tracy Adams, Police Records/Information Manager, Downers Grove Police Department (August 11, 2016).

[31]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Natasha Korecki, Politico Illinois, Playbook writer/Political reporter (August 12, 2016).

[32]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Natasha Korecki, Politico Illinois, Playbook writer/Political reporter (September 8, 2016).

[33]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to "Requester" (September 16, 2016).

[34]E-mail from John O'Connor, AP, to [Steve] Silverman (September 16, 2016).

[35]E-mail from Tina Sfondeles and Chris Fusco, *Chicago Sun-Times*, to Public Access Counselor, Illinois Attorney General (September 19, 2016).

[36]E-mail from Nathan Lurz, Reporter – Downers Grove and DuPage County, *Suburban Life Newspaper* (September 20, 2016).

[37]E-mail from Natasha Korecki, POLITICO Illinois Playbook writer/Political reporter, to Mary Jo [Vail] (September 20, 2016).

Ms. Amanda Vinicky, the Springfield Bureau Chief of NPR Illinois, advised the same in a telephone conversation with the Public Access Counselor. Therefore, on September 22, 2016, this office sent a letter to the Village and asked it to provide a detailed explanation of the applicability of sections 7(1)(b), 7(1)(c), 7(1)(d)(v) and the court order to the information that continued to be redacted and withheld, adding that the Village could incorporate by reference any portions of its previous responses to this office which remained relevant.[38] The letter also asked the Village to furnish copies of any responsive records that were not previously provided for this office's confidential review.

On September 28, 2016, the Village provided a second supplemental response (Second Supplemental Response to PAC) together with the additional records that this office had requested.[39] The response indicated that the Village incorporated the arguments set forth in its previous responses to this office dated August 5, 2016, and September 8, 2016. On September 30, 2016, this office sent the non-confidential portions of the Village's response to Ms. Vinicky,[40] Mr. O'Connor,[41] Mr. Fusco,[42] Mr. Lurz,[43] and Ms. Korecki.[44] None of the requesters replied to the Second Supplemental Response to PAC.

On September 23, 2016, pursuant to section 9.5(f) of FOIA, this office extended the time within which to issue a binding opinion by 30 business days in Requests for Review

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[38]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Enza Petrarca, Village Attorney, Village of Downers Grove (September 22, 2016).

[39]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 28, 2016).

[40]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Amanda Vinicky, WUIS-130 (September 30, 2016).

[41]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John O'Connor, Associated Press (September 30, 2016).

[42]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, *Chicago Sun-Times* (September 30, 2016).

[43]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nathan Lurz, Reporter, Downers Grove and DuPage County, Shaw Media (September 30, 2016).

[44]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Natasha Korecki, Politico Illinois, Playbook writer/Political reporter (September 30, 2016).

2016 PAC 43168,[45] 2016 PAC 43184,[46] 2016 PAC 43186,[47] 2016 PAC 43193,[48] and 2016 PAC 43370.[49]

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 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 2014). Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2015 Supp.)) further provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure * * * but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body ***shall*** make the remaining information available for inspection and copy." (Emphasis added.)

As an initial matter, the additional information disclosed in the Village's September 16, 2016, Supplemental Response to the requesters which had been redacted or withheld in the Village's initial response resolves the allegations that those portions of the records were improperly denied. *See Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 782 (1st Dist. 1999) ("Once an agency produces all the records related to a plaintiff's

[45]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Amanda Vinicky, WUIS-130, and Enza Petrarca, Village Attorney, Village of Downers Grove (September 23, 2016).

[46]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to John O'Connor, Associated Press, and Enza Petrarca, Village Attorney, Village of Downers Grove (September 23, 2016).

[47]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Chris Fusco, Staff Reporter, *Chicago Sun-Times*, and Enza Petrarca, Village Attorney, Village of Downers Grove (September 23, 2016).

[48]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Nathan Lurz, Reporter, Downers Grove and DuPage County, Shaw Media, and Enza Petrarca, Village Attorney, Village of Downers Grove (September 23, 2016).

[49]Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Natasha Korecki, Politico Illinois, Playbook writer/Political reporter, and Enza Petrarca, Village Attorney, Village of Downers Grove (September 23, 2016).

request, the merits of a plaintiff's claim for relief, in the form of production of information, becomes moot.") Thus, our determination in this matter is limited to the information that the Village still claims is exempt from disclosure after issuing its Supplemental Response.

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 2015 Supp.)) 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.)

The Village's Second Supplemental Response to PAC stated that the Village redacted Mr. Sandack's "home address and personal telephone number, Facebook account names, numbers and URLs, Skype usernames, and account transaction numbers[ ]" pursuant to section 7(1)(b) of FOIA."[50] In a September 7, 2016, telephone conversation with an Assistant Attorney General in the Public Access Bureau, an Assistant Village Attorney stated that Mr. Sandack's attorney confirmed for the Village that the redacted telephone number is for a cellphone that Mr. Sandack maintains for personal use.

Home addresses and personal telephone numbers constitute "private information" under the plain language of the definition of that term in section 2(c-5) of FOIA. Mr. Sandack's account identification numbers and the Uniform Resource Locators (URLs) for his Facebook page and that of another individual – which are specific website addresses –are "unique identifiers" and therefore forms of "private information" that are exempt from disclosure under section 7(1)(b). In addition, the tracking numbers for wire transfers that were redacted constitute "personal financial information," which also is defined as a form of "private information" in section 2(c-5) of FOIA. Accordingly, this office concludes that the Village has sustained its burden of demonstrating that this information is exempt from disclosure pursuant to section 7(1)(b) of FOIA.

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[50]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 28, 2016), at 1.

However, Mr. Sandack's Facebook and Skype account names are akin to or derived from his legal name. Conspicuously absent from the statutory definition of "private information" is any reference to a person's name. Although names are specific to individuals (*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. 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, this office concludes that the Village improperly redacted Mr. Sandack's Facebook and Skype account names. The Facebook and Skype account names and other identifying information of the person with whom Mr. Sandack communicated are addressed in the analysis of section 7(1)(c) below.

Section 7(1)(c) of FOIA

Section 7(1)(c) 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 disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2015 Supp.). 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. Dep't 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 possessing the record to prove that standard has been met. *Schessler v. Dep't of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

The Village's Consolidated Response indicated that portions of Mr. Sandack's statement and birth date were redacted pursuant to section 7(1)(c) of FOIA.[51] The Village's Supplemental Response to PAC also indicated that, pursuant to section 7(1)(c), the Village redacted information relating to the identities of suspects and withheld in their entireties records that Mr. Sandack provided to the police when he reported the crime, including receipts for wire

[51]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (August 5, 2016), at 5-6.

transfers and Skype messages.[52]

Birth Date

An individual's birth date 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., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. § 552(b)(6) (1990)),[53] "dates of birth[ ] are a private matter, particularly when coupled with * * * other information" and that disclosure "would constitute a clearly unwarranted invasion of personal privacy."); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 346-348, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "'nontrivial privacy interest'" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure). Accordingly, this office concludes that Mr. Sandack's birth date is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

Mr. Sandack's Statement and the Records that he Provided to Police

At the outset, this office notes that at the time he filed the incident report on July 14, 2016, Mr. Sandack was the State Representative serving the 81st District in the Illinois House of Representatives. He resigned from office on July 24, 2016, "citing 'cyber security issues' that also prompted him to delete his social media accounts."[54]

As a former elected official, Mr. Sandack remains a public figure. An individual's status as public figure diminishes his or her right to privacy. *Iowa Citizens for Community Improvement v. United States Dep't of Agriculture*, 256 F. Supp. 2d 946, 954 (S.D. Iowa 2002) (nominee's "privacy interest is not eliminated by the fact that he has been nominated by President Bush to serve as Undersecretary of Agriculture for Rural Development; however, his public-figure status lessens that interest."). Although a public figure's "official position" may be a relevant factor in analyzing whether disclosure of records would constitute an unwarranted invasion of personal privacy, "it does not determine, of its own accord, that the privacy interest is

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[52]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 28, 2016), at 2.

[53]Because Illinois' FOIA statute is based on the Federal FOIA statute, decisions construing similar provisions of the Federal Act, while not controlling, may provide helpful and relevant precedents in construing the State Act. *See, e.g., Margolis v. Director, Ill. Dep't of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

[54]Monique Garcia, *Suburban lawmaker abruptly resigns, citing hacked social media accounts*, CHICAGO TRIBUNE (July 25, 2016, 7:00 AM), http://www.chicagotribune.com/news/local/politics/ct-ron-sandack-resigns-illinois-house-20160724-story.html.

outweighed." *Bast v United States Dep't of Justice*, 665 F.2d 1251, 1255 (D.C. Cir. 1981). "Instead, in cases involving public figures, 'the degree of intrusion occasioned by disclosure is necessarily dependent upon the character of the information in question.'" *Archibald v. United States Dep't of Justice*, 950 F. Supp. 2d 80, 88 (D.D.C., 2013), citing *Fund for Constitutional Gov't v. Nat'l Archives & Records Service*, 656 F.2d 856, 865 (D.C. Cir. 1981).

Federal courts have identified several factors relevant in analyzing the applicability of the personal privacy provision of the Federal FOIA[55] to records of criminal investigations concerning public figures such as current and former public officials. In *Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 978 F. Supp. 2d 1, 8-10 (D.D.C. 2013), a Federal appellate court stated that a former United States Senator had a heightened privacy interest in such records because he had resigned from office and because he had not been criminally charged following an investigation concerning allegations that he covered up an extra-marital affair. *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10. The court, however, also stated that because the Senator had publicly acknowledged the existence of the investigation, his "privacy interest in a fact already known to the public is substantially diminished; all the more so because he was the person responsible for disclosing it." *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10; *see also Citizens for Responsibility & Ethics in Washington v. United States Dep't of Justice*, 840 F. Supp. 2d 226, 233 (D.D.C. 2012) ("One can have no privacy interest in information that is already in the public domain, especially when the person asserting his privacy is himself responsible for placing that information into the public domain."). Nonetheless, the court emphasized that the Senator "retain[ed] a cognizable privacy interest in the contents of the file. * * * In addition to reopening old wounds, disclosure of DOJ's investigative file could result in new revelations of misconduct, even if that misconduct did not rise to the level of a criminal violation." *Citizens for Responsibility and Ethics in Washington*, 978 F. Supp. 2d at 10; *see also Kimberlin v. Dep't of Justice*, 139 F.3d 944, 949 (D.C. Cir. 1998) (a public official who disclosed to the media that he was accused of misconduct and sanctioned "still has a privacy interest, however, in avoiding disclosure of the details of the investigation[.]").

In Illinois, the resolution of a personal privacy exemption claim requires balancing the public interest in disclosure of the specific information against the involved individuals' interests in privacy. *See Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 20-21 (1st Dist. 1997). This determination is made by considering and weighing four factors: "(1) the [requester's] interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining

[55]Exemption 7(C) of Federal FOIA (5 U.S.C. § 552(b)(7)(C) (2012)) exempts from disclosure "information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]"

the requested information." *National Association of Criminal Defense Lawyers v. Chicago Police Dep't*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

Here, the requesters represent media outlets that seek to disseminate information from the records in question to the public. Therefore, their interest in the records and the public's interest are aligned. In his Request for Review (2016 PAC 43184), Mr. O'Connor emphasized that Mr. Sandack's "status as a public figure who voluntarily engaged in the use of social media must be taken into consideration[,]" and asserted that "there surely is information that has been improperly redacted in the name of preserving the investigation which the complainant himself has disclosed to one or more members of the news media."[56] Mr. Sandack reportedly told Capitol Fax that "he had 'deactivated' three of his four online social media accounts after 'someone' had 'tried hacking[ ]" and that "**somebody** started creating fake accounts in his name around July 4th. In all, the person or persons wound up creating a total of ten fake Facebook accounts and two fake Twitter accounts."[57] (Emphasis in original.) Following the disclosure of additional records in the Village's Supplemental Response, Mr. Sandack issued a written statement indicating that he "was the target of an international crime ring focusing on high-profile individuals luring them to engage in inappropriate online conversations with the intent of extortion," and that he "took their bait and fell for it hook, line and sinker."[58] There is a significant public interest in disclosure of information that relates to allegations of a crime committed against a public figure, especially one that a public official publicly acknowledged and cited as a contributing factor in his decision to resign from public office.

As to the degree of invasion of personal privacy, the Village's Consolidated Response to this office, which it incorporated by reference in its Supplemental Response to PAC, stated: "Mr. Sandack is the victim in this case. * * * Nobody, public figure or not, would want any of the information being disclosed to the public."[59] This office has considered, but is precluded from discussing in this binding opinion, additional information about the applicability

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[56]Letter from John O'Connor, Associated Press, to Sarah Pratt, Public Access Bureau, Office of the Attorney General (July 26, 2016), at 2.

[57]*Rep. Sandack Announces Resignation*, CAPITOL FAX, July 25, 2016.

[58]Monique Garcia and Joe Mahr, *Ex-State Rep. Ron Sandack resigned after 'inappropriate' online talks, extortion scheme*, CHICAGO TRIBUNE (September 16, 2016, 7:18 PM), http://www.chicagotribune.com/news/local/politics/ct-state-rep-ron-sandack-internet-scam-met-0917-20160916-story.html.

[59]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (August 5, 2016), at 5.

of section 7(1)(c) that the Village provided confidentially.[60] In his reply to the Village's Consolidated Response in 2016 PAC 43184, Mr. O'Connor stated that "[e]ven if statements by the victim include information that would constitute an invasion of personal privacy, I find it hard to fathom that the statement the victim gave police is one, long, highly personal narrative."[61]

Lastly, there do not appear to be any alternative means for the requesters to obtain the records in question.

This office's review of the records confirms that Mr. Sandack is the victim rather than the target of the investigation documented therein. The portions of his statement that were disclosed in the Village's Supplemental Response reveal the general nature of the crime under investigation and details about how Mr. Sandack was targeted. The portions of his statement that remain redacted and the information he provided to police contain highly personal information. On one hand, Mr. Sandack's interest in privacy is heightened by the fact that he has resigned his public office and is no longer a public official. On the other hand, Mr. Sandack's privacy rights are diminished by his status as a public figure and his voluntary disclosure of discrete information about the alleged crime to the media.

Taking all of these factors into account, this office concludes that disclosure of most of the remaining redacted portions of the statement and the documentation Mr. Sandack provided to police would constitute a clearly unwarranted invasion of personal privacy. These materials contain highly personal and specific information concerning how Mr. Sandack was allegedly lured into an extortion scheme, how the extortion was carried out, and how he responded. He has not publicly disclosed this information, which is unrelated to his former public duties. There is no legitimate public interest in disclosure of these portions of the records that would outweigh Mr. Sandack's right to privacy. Accordingly, this office concludes that the Village has sustained its burden of demonstrating that this information is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

However, the Village has not sustained its burden of demonstrating by clear and convincing evidence that the amounts of money that were requested and transmitted and the receipts of those transactions would constitute an unwarranted invasion of personal privacy. Although the fact that an individual paid money in response to extortion is highly personal, that

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[60]5 ILCS 140/9.5(d) (West 2014) ("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.").

[61]Letter from John O'Connor, Associated Press, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (August 9, 2016), at 3.

fact has already been revealed in the records disclosed to the requesters. Further, Mr. Sandack is a public figure who publicly acknowledged that he was extorted and he cited the extortion as a reason for his resignation from public office. Under these circumstances, Mr. Sandack's right to privacy does not outweigh the legitimate public interest in disclosure of this information. Accordingly, this office concludes that the Village improperly withheld that information pursuant to section 7(1)(c) of FOIA. As discussed above, Mr. Sandack's home address and telephone number may be properly redacted from the receipts pursuant to section 7(1)(c), and, as discussed below, information identifying the recipient of the money may be properly redacted pursuant to section 7(1)(c).

Information Relating to the Identities of Suspects

When balancing the right to privacy against the public interest in disclosure, courts have "repeatedly expressed particular concern for protecting those who have been investigated, but not charged, in connection with a crime from the public embarrassment and damage to their reputations which a disclosure of the investigative interest would cause." *Dunaway v. Webster*, 519 F. Supp. 1059, 1078 (N.D. Cal. 1981); *see also Citizens for Responsibility and Ethics in Washington v. United States Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C., 2012), quoting *American Civil Liberties Union v. United States Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011) (the right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'"); *Fiumara v. Higgins*, 572 F. Supp. 1093, 1108 (D. N.H. 1983) (the version of section 7(1)(c) in Federal FOIA "applies to withhold the identities of those third parties investigated for possible criminal activities, even though not subsequently charged or indicted."). Special circumstances – such as suspects who are candidates for public office rather than private citizens and allegations of illegal campaign contributions that are required to be publicly reported – are required to justify disclosure of information identifying unindicted targets of criminal investigations. *See Common Cause v. National Archives and Records Service*, 628 F.2d 179, 184 (D.C. Cir. 1980).

Although the records in question involve a public figure, Mr. Sandack was the victim rather than the target of the investigation. The records contain names (possibly aliases), Facebook and Skype account names, and other types of identifying information of suspects who appear to be private citizens. Because these individuals are suspects who have not been arrested or charged with a crime, their right to privacy outweighs any legitimate public interest in disclosure of this identifying information. Accordingly, this office concludes that the Village did not improperly redact that information pursuant to section 7(1)(c) of FOIA.

Western Union and MoneyGram E-mails and Document Response

The Village contends that the following information in e-mails and documents obtained from Western Union and MoneyGram in the course of the investigation is exempt from

disclosure pursuant to section 7(1)(c): the name of an individual to whom money was sent; account numbers; the amount sent; and the names, addresses, and e-mail addresses of other victims. The Village also redacted information obtained from Western Union from the records that were provided to the requesters in the Supplemental Response.

As discussed above, the disclosure of names and other information identifying a suspect of a crime who has not been arrested or charged would constitute an unwarranted invasion of personal privacy. Likewise, information identifying any victims other than Mr. Sandack may be properly redacted pursuant to section 7(1)(c) of FOIA. *McCorstin v. United States Dep't of Labor*, 630 F.2d 242, 245 (5th Cir. 1980) ("Exemption 7(C) is intended to protect the privacy of any person mentioned in the requested files, not only the person who is the object of the investigation."); *Coleman v. F.B.I.*, 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal privacy because "it is evident that release of any portion would reveal the identities of innocent third parties, witnesses or victims."). Accordingly, this office concludes that those portions of the e-mails and documents obtained from Western Union and MoneyGram are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

However, once de-identified, disclosure of the remaining portions of the records would not constitute an unwarranted invasion of privacy because they would not identify any suspects or other victims. *See* 5 ILCS 140/7(1) (West 2015 Supp.) (when a record contains both exempt and non-exempt information, "the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying."). Therefore, these records are not exempt from disclosure in their entireties pursuant to section 7(1)(c) of FOIA. The Village's assertion that the records are exempt from disclosure pursuant to section 7(1)(d)(v) is discussed below.

Lastly, the Village appears to have withheld certain records relating to search warrants and subpoenas which reflect that unspecified information was sought from or provided by Yahoo and Microsoft, which owns Skype, pursuant to section 7(1)(c). These portions of the records do not reveal the type of information that was sought. The Village has not explained how records that merely show unspecified information was sought or produced would constitute an unwarranted invasion of personal privacy. Accordingly, the Village has not sustained its burden of demonstrating that these records are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

Records Relating to Search Warrants and Subpoenas

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

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

> 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:
>
> * * *
>
> (v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request[.]

In construing a similar provision in Federal FOIA,[62] "[c]ourts have held that information pertaining to law enforcement techniques and procedures properly is withheld * * * where disclosure reasonably could lead to circumvention of laws or regulations." *Skinner v. United States Dep't of Justice,* 893 F. Supp. 2d 109, 112 (D.D.C. 2012). For example, in *Miller v. United States Dep't of Justice*, 562 F.Supp. 2d 82 (D.D.C. 2008), a Federal District court held that forms used by the FBI to develop psychological profiles of criminals were properly withheld based on the agency's explanation of how suspects could use the information to circumvent the effective use of techniques for developing profiles; *see also Piper v. United States Dep't of Justice*, 294 F.Supp. 2d 16, 30 (D.D.C. 2003) (even though the use of polygraph examinations is widely known, the question and answers used in the examinations themselves were within the scope of the law enforcement investigative technique exemption because disclosure could enable a criminal to "anticipate and avoid the questioning strategy of the FBI[,]" thereby doing "violence to the polygraph examination's function - the discerning of truth."); *but see American Civil Liberties Union of Southern California v. United States Citizenship and Immigration Services*, 133 F. Supp. 3d 234, 243-44 (D.D.C. 2015) ("vague and conclusory" assertions with "no explanation of how the information, if released, could risk circumvention of the law, no explanation of what laws would purportedly be circumvented, and little detail regarding what law enforcement purpose is involved" are insufficient to "justify withholding records under the FOIA.").

The Village's Second Supplemental Response to PAC stated that the information redacted pursuant to section 7(1)(d)(v) reflects specialized investigative techniques that were

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[62]Exemption 7(E) (5 U.S.C. § 552(b)(7)(E) (2012)) applies to law enforcement records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law[.]"

developed to assist in investigations of kidnapping cases. The Village provided additional information confidentially which asserts that disclosure of the information could harm the Village's Police Department by revealing the nature of specific investigative techniques that are not generally known to the public. The Village also withheld certain other records relating to search warrants and subpoenas, including the e-mails and documents obtained from Western Union and MoneyGram.

Most of the records that were redacted or withheld pertaining to Facebook, Yahoo, Skype, and Microsoft concern the gathering of information through specialized investigative techniques that are not generally known.[63] It is apparent that disclosure of this information would result in demonstrable harm to the Village's Police Department by providing insights into specialized investigative techniques that could enable perpetrators to evade detection and circumvent investigations of crimes that involve communications over the Internet, including social media. Information redacted from the records provided in the Supplemental Response concerning a suspect's online profile image and communications with the FBI and authorities in another country also reflects specialized investigative techniques that are not generally known. Disclosure of such information could harm the Village's Police Department by undermining its ability to investigate crimes that originate in other countries. Accordingly, this office concludes that this information was properly redacted or withheld pursuant to section 7(1)(d)(v) of FOIA. In contrast, portions of records that merely document that records were sought from companies without revealing the type of information that was sought would not reveal any unique or specialized investigative techniques and therefore were improperly withheld.

In addition, certain information redacted from the records disclosed in the Supplemental Response and the e-mails and documents obtained from Western Union and MoneyGram, which were withheld in their entireties, appear to reflect routine investigative steps rather than specialized investigative techniques. The Village's assertion that disclosure of this information will impede the ability to investigate similar crimes is largely conclusory. It is unclear how release of this information would cause demonstrable harm to the Village's Police Department. Accordingly, the Village has not sustained its burden of demonstrating by clear and convincing evidence that this information is exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA.

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[63]The Village's response appears to assert that records obtained from Facebook, Yahoo, and Skype are exempt from disclosure only pursuant to section 7(1)(c). However, because disclosure of the content of the records would unavoidably reveal the specialized techniques used by investigators, this information is exempt from disclosure pursuant to section 7(1)(d)(v). This office declines to address the applicability of section 7(1)(c) to these records.

Illinois Constitution of 1970

The Village's September 8, 2016, Supplemental Response to this office cited the following provision of the Illinois Constitution of 1970.

> (a) Crime victims, as defined by law, shall have the following rights:
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> (1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.
>
> (2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law. Ill. Const. 1970, art. I, § 8.1(a)(1), (2).

Specifically, the Village's Supplemental Response to this office asserted: "As the victim of a crime, Mr. Sandack is afforded these protections of respect for his dignity and privacy. Accordingly, the information that was redacted in the initial incident report that was provided to the Requesters should remain redacted and private."[64]

The Village's reliance on this provision is misplaced. Article I, section 8.1 of the Illinois Constitution of 1970 was implemented by the Rights of Crime Victims and Witnesses Act (725 ILCS 120/1 *et seq.* (West 2014)). That Act provides, in relevant part:

> (a) "Crime victim" or "victim" means: (1) any natural person determined by the prosecutor or the court to have suffered direct physical or psychological harm as a result of a violent crime perpetrated or attempted against that person or direct physical or psychological harm as a result of (i) a violation of Section 11-501 of the Illinois Vehicle Code or similar provision of a local ordinance or (ii) a violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012; (2) in the case of a crime victim who is under 18 years of age or an adult victim who is incompetent or incapacitated, both parents, legal guardians, foster parents, or a single adult representative; (3) in the case of an adult deceased victim, 2 representatives who may be the spouse, parent, child or sibling of the victim, or the representative of the victim's

[64]Letter from Enza Petrarca, Village Attorney, Village of Downers Grove, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 8, 2016).

> estate; and (4) an immediate family member of a victim under clause (1) of this paragraph (a) chosen by the victim. If the victim is 18 years of age or over, the victim may choose any person to be the victim's representative. In no event shall the defendant or any person who aided and abetted in the commission of the crime be considered a victim, a crime victim, or a representative of the victim.
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> * * *
>
> (c) "Violent crime" means: (1) any felony in which force or threat of force was used against the victim; (2) any offense involving sexual exploitation, sexual conduct, or sexual penetration; (3) a violation of Section 11-20.1, 11-20.1B, 11-20.3, or 11-23.5 of the Criminal Code of 1961 or the Criminal Code of 2012; (4) domestic battery or stalking; (5) violation of an order of protection, a civil no contact order, or a stalking no contact order; (6) any misdemeanor which results in death or great bodily harm to the victim; or (7) any violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, or Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, if the violation resulted in personal injury or death. "Violent crime" includes any action committed by a juvenile that would be a violent crime if committed by an adult. For the purposes of this paragraph, "personal injury" shall include any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or medical facility. A type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene. 725 ILCS 120/3(a), (c) (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016.

Neither this office's review of the incident report nor any information provided by the Village indicates that Mr. Sandack is a victim of a violent crime entitled to the rights guaranteed by Article I, Section 8.1(a) of the Illinois Constitution. There is no allegations that he suffered direct physical or psychological harm as a result of a violent crime as that term is defined in section 3(e) of the Rights of Crime Victims or Witnesses Act, or a violation of section

11-501 of the Vehicle Code (625 ILCS 5/11-501 (West 2014))[65] or section 9-3 of the Criminal Code of 2012 (720 ILCS 5/9-3 (West 2014)).[66] Moreover, the protections guaranteed by article I, sections 8(a)(1) and 8(a)(2) of the Illinois Constitution of 1970 apply to the criminal justice process and court and other proceedings related to criminal charges that have been filed.

Complaints for Search Warrants and Search Warrants

Lastly, the Village withheld complaints for search warrants and search warrants for Skype and Facebook asserting that disclosure was precluded by court order. The Village's Second Supplemental Response to PAC explained:

> The complaints and search warrants have similar language as follows: "Due to the ongoing nature of this investigation, it is hereby ordered that the complaint for search warrant, search warrant, proof of service for the search warrant and the search warrant inventory are to be impounded by the Circuit Court Clerk and not disclosed or released to the public in any manner until further order of the court." * * * It is the position of the Village that neither the complaints nor the warrants can be released at all without a court order.[67]

The Illinois Appellate Court has held that "[t]rial courts have discretion to determine whether justice requires a protective order – and what the parameters of the order should be." *Willeford v. Toys "R" Us-Delaware, Inc.*, 385 Ill. App. 3d 265, 273 (5th Dist. 2008). The United States Supreme Court also has recognized that a public body enjoined from releasing information by court order must obey the order when responding to FOIA requests. *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 100 S. Ct. 1194 (1980). In that case, the Court held that a Federal agency did not violate the Federal FOIA by withholding several consumer safety reports after manufacturing groups that were identified in the reports obtained an injunction prohibiting their disclosure: "To construe the lawful obedience of an injunction issued by a federal district court with jurisdiction to enter such a decree as 'improperly' withholding documents under the Freedom of Information Act would do

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[65]Section 11-501 of the Vehicle Code applies to "[d]riving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof."

[66]Section 9-3 of the Criminal Code of 2012 applies to "[i]nvoluntary Manslaughter and Reckless Homicide."

[67]Letter from Enza Petrarca, Village Attorney, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 28, 2016).

violence to the common understanding of the term 'improperly' and would extend the Act well beyond the intent of Congress." *GTE Sylvania, Inc.*, 445 U.S. at 387, 100 S. Ct. at 1202.

Likewise, the Village has confirmed for this office that the judge who issued the search warrants included language in the complaints for search warrants and the warrants that specifically prohibits their disclosure. Accordingly, this office concludes that the Village did not improperly withhold those records.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On July 25, 2016, Ms. Sarah Mueller, on behalf of NPR Illinois, submitted a FOIA request to the Village of Downers Grove seeking "[a] copy of all police reports filed by Ron Sandack of Downers Grove between July 1, 2016 and July 24, 2016."

2) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to section 7(1)(c) and 7(1)(d)(vii) of FOIA.

3) On July 26, 2016, Ms. Mueller submitted a Request for Review (2016 PAC 43168) with the Public Access Counselor and the Public Access Bureau in which she disputed the redaction of the information in the narrative of the complaint, the type of incident, and the offense classification. Ms. Mueller's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

4) On July 25, 2016, Mr. John O'Connor, on behalf of the Associated Press, submitted a FOIA request to the Village's Police Department seeking "a copy of any report filed by Ron Sandack or involving alleged cyber-security threats or fraudulent impersonation using social media since July 1, 2016."

5) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

6) On July 26, 2016, Mr. O'Connor filed a Request for Review (2016 PAC 43184) with the Public Access Counselor and the Public Access Bureau in which he asserted that the report was excessively redacted and requested that this office "direct the Downers Grove Police Department to disclose all relevant and public information under FOIA." Mr. O'Connor's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) On July 26, 2016, Mr. Chris Fusco, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to the Village "seeking to review and/or obtain copies of any police reports, audio and/or video recordings, and/or any other records involving incidents since Jan. 1, 2016 – including but not limited to cyberhacking – involving state Rep. Ronald Sandack, whose home and office are in Downers Grove."

8) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and denied evidentiary documents under sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

9) On July 27, 2016, Mr. Fusco filed a Request for Review (2016 PAC 43186) with the Public Access Counselor and the Public Access Bureau in which he questioned whether the information that was redacted and withheld is exempt from disclosure under FOIA. Mr. Fusco's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

10) On July 26, 2016, Mr. Nathan Lurz, on behalf of Shaw Media, submitted a FOIA request to the Village of Downers Grove seeking copies of "[a]ny police reports involving former IL State Rep. Ron Sandack filed in the past six months, including any legally releasable ongoing cases."

11) On July 27, 2016, the Village's Police Records/Information Manager responded by providing a copy of an incident report but redacted most of the information therein pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

12) On July 27, 2016, Mr. Lurz submitted a Request for Review (2016 PAC 43193) to the Public Access Counselor and the Public Access Bureau questioning whether the information redacted from the incident report is exempt from disclosure under FOIA. Mr. Lurz's

Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

13) On July 25, 2016, Ms. Natasha Korecki, on behalf of Politico Illinois, submitted a FOIA request to the Village seeking a "copy or copies of any police report filed by Ronald Sandack (state Representative) from March[ ] 1, 2016 to the present."

14) On July 26, 2016, the Village's Police Records/Information Manager responded by providing a copy of the report but redacted information pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(vii) of FOIA. The response also stated that investigative supplements had not been completed, and that evidentiary documents were being withheld pursuant to sections 7(1)(c) and 7(1)(d)(vii) of FOIA.

15) On August 7, 2016, Ms. Korecki submitted a Request for Review (2016 PAC 43370) to the Public Access Counselor and the Public Access Bureau questioning whether the information that was redacted from the report is exempt from disclosure under FOIA. Ms. Korecki's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

16) On August 3, 2016, the Public Access Bureau forwarded copies of Requests for Review 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193 to the Village's Police Department and asked it to provide unredacted copies of the records in question for our confidential review together with detailed explanations of the factual and legal bases for the applicability of the section 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted and withheld. This office also asked the Village's Police Department to clarify the reasons for withholding the investigative supplements that had not been completed.

17) On August 5, 2016, the Village Attorney provided the materials requested to the Public Access Bureau in a consolidated response to 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193.

18) On August 5, 2016, this office sent copies of the non-confidential portions of the Village's responses to Ms. Mueller, Mr. O'Connor, Mr. Fusco, and Mr. Lurz.

19) On August 9, 2016, Mr. O'Connor submitted a reply to the Village's response. Ms. Mueller, Mr. Fusco, and Mr. Lurz did not comment on the Village's response.

20) On August 11, 2016, this office sent a copy of Ms. Korecki's Request for Review (2016 PAC 43370) to the Village's Police Department and asked it to provide a detailed

explanation of the factual and legal bases for the applicability of the section 7(1)(b), 7(1)(c), and 7(1)(d)(vii) exemptions to the information that was redacted from the report.

21) On August 12, 2016, an Assistant Village Attorney asked an Assistant Attorney General in the Public Access Bureau by e-mail to send Ms. Korecki a copy of the non-confidential portions of its consolidated response to this office in 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193.

22) On August 12, 2016, this office sent a copy of that response to Ms. Korecki; she did not submit a reply.

23) On September 8, 2016, this office received from the Village a supplemental response in which it asserted that the information redacted from the incident report should remain confidential based on Mr. Sandack's rights as a crime victim under article I, sections 8.1(a)(1) and 8.1(a)(2) of the Illinois Constitution of 1970.

24) On September 8, 2016, this office forwarded copies of the Village's supplemental response to Ms. Mueller, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki; none submitted replies to that response.

25) On September 16, 2016, the Village issued a supplemental response to each requester in which it provided portions of the records that had previously been denied as well as additional records that were generated or obtained subsequent to the FOIA request. The supplemental response indicated that portions of the records were still being redacted or withheld pursuant to sections 7(1)(b) and 7(1)(c) as well as section 7(1)(d)(v). The supplemental response also cited a court order as the basis for withholding other unspecified records.

26) On September 16, 2016, this office received correspondence from Mr. O'Connor indicating that he continued to seek review of the information that was redacted and withheld in the Village's supplemental response. On September 19, 2016, Mr. Fusco submitted correspondence indicating that he also continued to seek review of the redacted and withheld information; similar correspondence was received from Mr. Lurz and Ms. Korecki on September 20, 2016. In a telephone conversation with the Public Access Counselor, Ms. Vinicky also confirmed that NPR continued to seek review of the information that was redacted and withheld.

27) On September 22, 2016, this office sent a letter to the Village and asked it to provide a detailed explanation of the applicability of sections 7(1)(b), 7(1)(c), 7(1)(d)(v) and the court order to the information that continued to be redacted and withheld, adding that the Village could incorporate by reference any portions of its previous response to this office which remained relevant. The letter also asked the Village to furnish copies of any responsive records that were not previously provided for this office's confidential review.

28) On September 23, 2016, this office extended the time to issue a binding opinion in 2016 PAC 43168, 2016 PAC 43184, 2016 PAC 43186, and 2016 PAC 43193 by 30 business days, to November 7, 2016, pursuant to section 9.5 of FOIA. On the same date, this office extended the time to issue a binding opinion in 2016 PAC 43370 by 30 business days, to November 23, 2016, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue binding opinions with respect to these matters.

29) On September 28, 2016, the Village provided the additional materials that this office requested.[68]

30) On September 30, 2016, this office sent the non-confidential portions of the Village's written response to Ms. Vinicky, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki. They did not reply to that response.

31) With respect to the specific information redacted or withheld from the documents in question, the Attorney General makes the following findings:

(a) Mr. Sandack's home addresses and personal telephone numbers constitute "private information" under the plain language of the definition of that term in section 2(c-5) of FOIA, and therefore are exempt from disclosure pursuant to section 7(1)(b) of FOIA. The tracking numbers for wire transfers which were redacted constitute "personal financial information," which also is defined as a form of "private information" in section 2(c-5) of FOIA. In addition, Mr. Sandack's Facebook account identification numbers, the Uniform Resource Locator (URL) for his Facebook page and that of another individual – which are specific website addresses – are unique identifiers within the scope of section 7(1)(b). Mr. Sandack's Facebook account names and Skype usernames, however, are not exempt from disclosure pursuant to section 7(1)(b).

(b) Mr. Sandack's birth date is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(c) Most of the redacted portions of Mr. Sandack's statement and the documents he provided to police contain highly personal and specific information that is unrelated to Mr. Sandack's former public duties. There is no legitimate public interest in disclosure of these portions of the records that outweighs Mr. Sandack's right to privacy. Accordingly, that information is exempt from disclosure pursuant to section 7(1)(c) of FOIA. However, the Village has not demonstrated that the amounts of money that were

[68]Letter from Enza Petrarca, Village Attorney, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 28, 2016).

requested or sent in response to extortion attempts and receipts of those transactions would constitute an unwarranted invasion of personal privacy. Therefore, that information is not exempt from disclosure pursuant to section 7(1)(c).

(d) Disclosure of information identifying victims of crimes and those suspected of committing a crime who have not been arrested or charged with a crime would constitute a clearly unwarranted invasion of those individuals' personal privacy. Therefore, that information is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(e) The Village has not demonstrated how disclosure of records reflecting that unspecified information was sought from or provided by Yahoo and Microsoft, which owns Skype, would constitute an unwarranted invasion of personal privacy. Therefore that information is not exempt from disclosure pursuant to section 7(1)(c).

(f) The Village has provided clear and convincing evidence that disclosure of most of the remaining redacted or withheld records concerning Facebook, Yahoo, and Skype would cause harm to the Village's Police Department by revealing or providing insights into specialized investigative techniques that perpetrators could exploit to evade detection and circumvent investigations of crimes that involve communications over the Internet, including social media. Information redacted from the records provided in the supplemental response concerning a suspect's online profile image and communications with the FBI and authorities in another country also reflects specialized investigative techniques that are not generally known. Disclosure of such information could harm the Village's Police Department by undermining its ability to investigate crimes that originate in other countries. Accordingly, this office concludes that those records are exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA.

(g) The Village has not, however, sustained its burden of demonstrating that certain portions redacted from the records provided in the Village's supplemental response, as well as e-mails and records obtained from Western Union and Money Gram, are exempt from disclosure pursuant to section 7(1)(d)(v) of FOIA. As discussed above, portions of those records identifying victims of crimes and those suspected of having committed a crime who have not been arrested or charged as well as the amounts of money demanded from or sent by Mr. Sandack are exempt from disclosure pursuant to section 7(1)(c) of FOIA.

(h) Because the complaints for search warrants and the search warrants issued expressly prohibit their disclosure, the Village did not improperly withhold those records.

Therefore, it is the opinion of the Attorney General that the Village's response to the Freedom of Information Act requests submitted by Ms. Mueller, Mr. O'Connor, Mr. Fusco, Mr. Lurz, and Ms. Korecki violated the requirements of the Act, as specified in subparagraph (f) of paragraph 31above. Accordingly, the Village is directed to take immediate and appropriate action to comply with this opinion by furnishing the requesters with the non-exempt portions of additional records responsive to their requests. This office is providing the Village Attorney under separate cover a copy of the pertinent portions of the incident report, e-mails, and records obtained from Western Union, MoneyGram, Yahoo, and Microsoft. The additional portions of records provided to the requesters in the supplemental response to the FOIA request that the Attorney General has concluded must be disclosed are highlighted in yellow. In addition, the Village should locate and disclose portions of the records reflecting Mr. Sandack's Facebook account name and Skype user names.This office has also indicated information in the records that may be properly redacted pursuant to sections 7(1)(b) and 7(1)(c), in accordance with the analysis in this opinion.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq*. (West 2014). The Village may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Amanda Vinicky, John O'Connor, Chris Fusco, Nathan Lurz, and Natasha Korecki as defendants. *See* 5 ILCS 120/7.5 (West 2014). If it chooses to pursue review, the Village should consider whether Mr. Sandack is a necessary party under section 2-405 of the Code of Civil Procedure. 735 ILCS 5/2-405 (West 2014). A requester may also obtain judicial review of this decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois, the Village and the other requesters as defendants or co-plaintiffs. *See* 5 ILCS 120/7.5 (West 2014). If a requester chooses to pursue review, the requester should also consider whether Mr. Sandack is a necessary party under section 2-405 of the Code of Civil Procedure. 735 ILCS 5/2-405 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 

Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-009) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on November 7, 2016.

Sarah L. Pratt

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