



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 14, 2018

PUBLIC ACCESS OPINION 18-016
(Request for Review 2018 PAC 54236)

FREEDOM OF INFORMATION ACT:
Disclosure of Records of Traffic Crashes
Involving Minor Passengers

Mr. James D. Carlson
Hupy and Abraham
6952 Rote Road
Suite 200
Rockford, Illinois 61107

Mr. Jeffrey R. VenHuizen
Chief of Police
Rock Island Police Department
1212 Fifth Avenue
Rock Island, Illinois 61201

Dear Mr. Carlson and Mr. VenHuizen:

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 2016)). For the reasons discussed below, this office concludes that the Rock Island Police Department's (Department) denial of Ms. Barbara Forster's July 17, 2018, FOIA request for a copy of a traffic accident report violated the requirements of FOIA.

BACKGROUND

On July 17, 2018, Ms. Forster, on behalf of the Hupy and Abraham law firm, submitted a FOIA request to the Department seeking a copy of Report Number 2018-007633, a

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"[c]rash report for accident on 7/4/2018 at 18th Ave. and 43rd St.[] Rock Island Illinois."¹ In a letter dated July 19, 2018, the Department cited section 1-7(A) of the Juvenile Court Act (JCA) (705 ILCS 405/1-7(A) (West 2016), as amended by Public Act 100-285, effective January 1, 2018) as its basis for denying the request, asserting that "all juvenile records" are sealed.²

On July 30, 2018, this office received via e-mail a Request for Review from Mr. James D. Carlson, on behalf of Hupy and Abraham, contesting the Department's denial of Ms. Forster's FOIA request.³ Mr. Carlson's correspondence stated that the records concern:

[a] rear-end motor vehicle accident that resulted in a traffic citation being issued to an adult driver. Although there were some minor passengers whose names are on the police report, to my knowledge none of them were investigated, arrested, or taken into custody. Their names were merely listed on a report, and therefore 705 ILCS 405/1-7(A) does not apply.⁴

On August 1, 2018, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide copies of the records it withheld for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of section 1-7(A) of the JCA.⁵ On August 7, 2018, legal counsel for the Department provided this office with a written answer and copies of the withheld records for case 2018-007633, including traffic crash and incident/investigation reports.⁶ On August 7,

¹[Rock Island] Police - Freedom of Information Request (FOIA) – Submission #964 from Barbara Forster, Hupy and Abraham, (July 17, 2018).

²Letter from Jeffrey R. VenHuizen, Chief of Police, Rock Island, Illinois [Police Department], to Barbara Forster, Hupy and [Abraham] (July 19, 2018).

³E-mail from James D. Carlson, Attorney At Law, Hupy and Abraham, to Public Access [Bureau, Office of the Attorney General] (July 30, 2018).

⁴E-mail from James D. Carlson, Attorney At Law, Hupy and Abraham, to Public Access [Bureau, Office of the Attorney General] (July 30, 2018).

⁵Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jeffrey R. VenHuizen, Chief of Police, Rock Island Police Department (August 1, 2018).

⁶Letter from David G. Morrison, Attorney at Law, Rock Island, Illinois, Legal Department, to AAG Matt Hartman (August 7, 2018).

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2018, the Public Access Bureau forwarded a copy of the Department's answer to Mr. Carlson.⁷ He replied on August 14, 2018.⁸ On September 26, 2018, this office extended the time in which to issue a binding opinion by 30 business days, to November 14, 2018, pursuant to section 9.5(f) of FOIA.⁹

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 2016). "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 (West 2016). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further provides: "Each 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." The exemptions from disclosure contained in section 7 of FOIA are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7.5(bb) of FOIA and the Juvenile Court Act

Section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2017 Supp.)) exempts from inspection and copying "[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987." The Department asserted that section 1-7(A) of the JCA prohibits the disclosure of the traffic crash reports requested by Ms. Forster because the crash involved six minors who were witnesses to the crash and listed as victims in the reports.¹⁰ At the time of Ms.

⁷Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to James D. Carlson, Hupy and Abraham (August 7, 2018).

⁸E-mail from James D. Carlson, Attorney At Law, Hupy and Abraham, to [Matt] Hartman (August 14, 2018).

⁹Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to James D. Carlson, Hupy and Abraham, and David G. Morrison, Legal Department, City of Rock Island (September 26, 2018).

¹⁰Letter from David G. Morrison, Attorney at Law, Legal Department, City of Rock Island, to AAG Matt Hartman (August 7, 2018), at [1].

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Forster's request,¹¹ section 1-7(A), titled "Confidentiality of law enforcement and municipal ordinance violation records[.]" provided, in pertinent part:

All juvenile records which have not been expunged are sealed and may never be disclosed to the general public or otherwise made widely available. Sealed records may be obtained only under this Section and Section 1-8 and 5-915 of this Act, when their use is needed for good cause and with an order from the juvenile court, as required by those not authorized to retain them. Inspection and copying of law enforcement records maintained by law enforcement agencies or records of municipal ordinance violations maintained by any State, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following[.] (Emphasis added.)

In its response to this office, the Department asserted that Public Act 100-285, effective January 1, 2018, which added the language emphasized above, demonstrates the General Assembly's intent to prohibit disclosure of all law enforcement records concerning minors: "The breadth of that first sentence is indisputable. The new statutory language plainly says 'All juvenile records'—not just those relating to investigation, arrest, or custody. And no modifiers limit the temporal scope of 'may never be disclosed.'"¹² The Department's denial rests on the premise that the traffic crash reports are "juvenile records." As discussed below, however, this office concludes that the traffic crash reports at issue simply do not fall within the scope of section 1-7(A) the Juvenile Court Act.

Standards for Statutory Construction

The primary objective of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997). The most reliable indicator of legislative intent is the language used in the statute. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). Legislative intent is determined by examining the statute as a whole. *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 181 (2007). As part of examining the

¹¹After Ms. Forster submitted her FOIA request on July 17, 2018, section 1-7(A) of the Juvenile Court was amended by Public Act 100-720, effective August 3, 2018, and Public Act 100-863, effective August 14, 2018.

¹²Letter from David G. Morrison, Attorney at Law, Rock Island, Illinois, Legal Department, to AAG Matt Hartman (August 7, 2018), at [1].

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statute as a whole, a court should consider the "words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Chenoweth*, 2015 IL 116898, ¶21, 25 N.E. 3d 612, 617 (2015). Viewing the statute as a whole includes "interpreting a specific provision in the context of other parts of the statute, including the heading under which the provision appears." *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 362 Ill. App. 3d 652, 659 (2005).

Juvenile Records

As noted above, section 1-7(A) of the JCA, which concerns the confidentiality of law enforcement records, provides that all "juvenile records" that have not been expunged are sealed and may not be publicly disclosed. The term "juvenile records" is not defined in the JCA, but a "law enforcement record" is defined in Article V of the JCA as:

"Law enforcement record" includes but is not limited to 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 or *evidence of interaction with law enforcement*. 705 ILCS 405/5-915(0.05) (West 2016), as amended by 100-285, effective January 1, 2018.

During the House debate on House Bill No. 3817, which, as Public Act 100-285, effective January 1, 2018, amended section 1-7(A) and section 5-915(0.05) of the JCA, Representative Nekritz explained:

I have just one other statement for legislative intent here. By law enforcement record, which as that term is defined as... as that term is in the Bill, it's our intent that this includes but is not limited to 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 suspecting of committing an offense. * * ** By records or documents relating to "evidence of interaction with law enforcement" it is our intent that this relates to records or documents that relate to the minor being suspected of committing an offense and *not related to the minor in other roles, such as being a possible victim, witness, or missing per... person...*

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missing person. (Emphasis added.) Remarks of Rep. Nekritz,
May 31, 2017, Senate Debate on House Bill No. 3817, at 93-94.

Although the definition of "law enforcement record" in section 5-915(0.05) of the JCA is limited to section 5-915 of the JCA (705 ILCS 405/5-915 (West 2016), as amended by 100-285, effective January 1, 2018), Representative Nekritz's remarks stating that the General Assembly did not intend "law enforcement record" in the JCA to refer to minors as victims or witnesses is instructive to the meaning of section 1-7(A) of the JCA. Those remarks coupled with the heading of section 1-7(A)—"[c]onfidentiality of law enforcement and municipal ordinance violation records"—and its statutory language identifying records that "have not been expunged" and which "relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday" as those that must be restricted from public disclosure provide insight into which "juvenile records" the legislature intended to seal. These factors all undercut an interpretation that requires sealing records concerning minors who were victims of or witnesses to a vehicle crash.

In support of its assertion that the JCA, as amended by Public Act 100-285, prohibits the disclosure of all law enforcement records concerning minors who were victims of or witnesses to traffic accidents, the Department stated the General Assembly's deletion of language in section 1-7(C) of the JCA (705 ILCS 405/1-7(C) (West 2016), as amended by Public Act 100-285, effective January 1, 2018) altered the types of juvenile records available under FOIA. Section 1-7(C) previously provided:

(C) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or *when provided by law*. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court. (Emphasis added.) 705 ILCS 405/1-7(C) (West 2016).

Section 1-7(C) was subsequently amended by Public Act 100-285 to state:

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(C) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 18 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public[.] For purposes of obtaining documents under pursuant to this Section, a civil subpoena is not an order of the court.

The Department asserted that the deletion of language from section 1-7(C) expanded the protection of records concerning juveniles. According to the Department, "[b]efore the legislature deleted *or when provided by law*, FOIA was reasonably viewed as an exception to the general rule that records concerning juveniles could [not] be disclosed. That exception no longer operates, however, so the FOIA's provisions no longer permit the disclosure of records concerning juveniles."¹³ (Emphasis in original.)

The Department's argument is misplaced. FOIA has never been an exception to the confidentiality requirements of the JCA. Section 7.5(bb) of FOIA expressly provides that records prohibited from being disclosed by the JCA are exempt from disclosure. Section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2017 Supp.)) also permits a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Notably, Public Act 100-285 left unchanged sections 1-7(C)(1), 1-7(C)(2), and 1-7(C)(3) of the JCA (705 ILCS 405/1-7(C)(1), (2), (3) (West 2016), as amended by Public Act 100-285, effective January 1, 2018), which provide:

(1) In cases where the law enforcement, or independent agency, records concern a pending juvenile court case, the party seeking to inspect the records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.

(2) In cases where the records concern a juvenile court case that is no longer pending, the party seeking to inspect the records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.

(3) In determining whether the records should be available for inspection, the court shall consider the minor's interest in

¹³Letter from David G. Morrison, Attorney at Law, Rock Island, Illinois, Legal Department, to AAG Matt Hartman (August 7, 2018), at [2].

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confidentiality and rehabilitation over the moving party's interest in obtaining the information. Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office or securing employment, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.

Reading section 1-7 as a whole, it is apparent that section 1-7(C) is intended to require notice when a court order seeking records is sought in cases that are or were the subject of a proceeding in juvenile court, and to require the court to give priority to the minor's interests in determining whether to disclose the records. The elimination of the words "or when provided by law" in section 1-7(C) harmonizes that provision with section 1-7(A), which was amended to require a court order to unseal records encompassed by the Act. There is no indication that these changes were intended to expand the types of records that are prohibited from being disclosed by the JCA.

This office's interpretation of "juvenile record" to mean a minor who has been investigated, arrested, or taken into custody is consistent with the express purpose of the JCA. Section 1-2 of the JCA (705 ILCS 405/1-2 (West 2016)) expresses the Act's purpose and policy, such as "to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community[.]" The Illinois Supreme Court has stated that "[t]he overriding purpose of the Juvenile Court Act is to ensure that the best interests of the minor, the minor's family, and the community are served." *In re C.N.*, 196 Ill. 2d 181, 209 (2001). Additionally, the General Assembly's intent articulated in Article V of the JCA, which governs juvenile delinquency proceedings, is "to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively." 705 ILCS 405/5-101(1) (West 2016). To fulfill this intent, section 5-101(1) enumerates four purposes of the JCA: (1) to protect citizens from juvenile crime; (2) to hold juvenile offenders accountable for their actions; (3) to provide an individualized assessment of each alleged and adjudicated delinquent juvenile to prevent further delinquent behavior; and (4) to provide due process to the minor and all other interested parties. The policy statement embodied by section 5-101, which was added to the JCA in 1998,¹⁴ "represents a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the

¹⁴See Public Act 90-590, effective January 1, 1999.

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law." *In re B.C.P.*, 2013 IL 113908, ¶13, 990 N.E.2d 1135, 1139 (2013) (quoting *People v. Taylor*, 221 Ill. 2d 157, 167 (2006)).

The Department has asserted that the amendment to section 1-7(A) of the JCA exempts all law enforcement records concerning minors in all contexts. Under this interpretation, any law enforcement record involving a minor would be exempt from disclosure under FOIA in its entirety. For example, reports of an officer-involved shooting in which a minor is incidentally mentioned as being present at the scene, or dashboard camera footage of a police chase that captured a minor walking on the sidewalk, would not be accessible under FOIA. Construing those types of records as "juvenile records" protected by the confidentiality provisions of the JCA simply because a juvenile is involved is contrary to the express public policy of FOIA:

[A]ll persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest. 5 ILCS 140/1 (West 2016).

Nothing in the JCA suggests that the General Assembly intended the term "juvenile records" to be so broadly applied as to include law enforcement records in which minors are victims or merely witnesses to incidents concerning adults. To the contrary, it must be assumed that the General Assembly did not intend the amendment of section 1-7(A) of the JCA to produce absurd and unjust results such as this, in which an attorney for an individual injured in a traffic crash has been denied a routine accident report simply because it was witnessed by minor passengers who were not arrested or investigated in connection with the crash. Consequently, the requested traffic crash reports are not exempt from disclosure in their entirety under section 7.5(bb) of FOIA.

FINDINGS AND CONCLUSIONS

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

1) On July 17, 2018, Ms. Barbara Forster, on behalf of Hupy and Abraham, submitted a FOIA request to the Rock Island Police Department seeking copies of traffic crash reports of an accident occurring on July 4, 2018, at 18th Avenue and 43rd Street in Rock Island.

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2) In a letter dated July 19, 2018, the Department denied the request for traffic crash reports pursuant to section 1-7(A) of the JCA.

3) On July 30, 2018, this office received a Request for Review from Mr. James D. Carlson, on behalf of Hupy and Abraham, contesting the Department's denial, asserting that the traffic crash reports involving minors as passengers were not exempt from disclosure because section 1-7(A) of the JCA only exempts law enforcement records of minors who have been investigated, arrested, or taken into custody. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA.

4) On August 1, 2018, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide copies of the withheld traffic crash reports for this office's confidential review, together with a detailed explanation of the factual and legal bases for the Department's claim that disclosure of the reports was specifically prohibited from disclosure by section 1-7(A) of the JCA.

5) On August 7, 2018, the Department, through its legal counsel, provided this office with the requested materials, and asserted that the plain language of section 1-7(A) of the JCA prohibits the disclosure of all law enforcement records concerning minors. The same day, this office forwarded a copy of the Department's answer to Mr. Carlson for comment. Mr. Carlson submitted a reply on August 14, 2018.

6) On September 26, 2018, this office extended the time within which to issue a binding opinion by 30 business days, to November 14, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 7.5(bb) of FOIA exempts from disclosure "[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987." Section 1-7(A) of the JCA states: "All juvenile records which have not been expunged are sealed and may never be disclosed to the general public or otherwise made widely available[,]" unless their use is needed for good cause and the juvenile court orders them to be disclosed. Section 1-7(A) further provides that disclosure of "law enforcement records maintained by law enforcement agencies or records of municipal ordinance violations maintained by any State, local, or municipal agency that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted" to certain authorized individuals.

8) The traffic crash report at issue concerns a traffic accident in which minors are listed as passengers in one of the vehicles. None of the minors listed in the reports was investigated, arrested, or taken into custody in connection with the crash. Therefore the crash report is not a "juvenile record" within the meaning of the JCA. The Department's interpretation

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of a single sentence in section 1-7(A) of the JCA to apply to records of incidents in which the minor was a victim or witness is incongruous with the intent of the JCA and its other provisions concerning minors. It is also contrary to the legislative history of the amendment to section 1-7(A) and the public policy of FOIA. Accordingly, the traffic crash reports are not exempt from disclosure under section 7.5(bb) of FOIA.

For the reasons stated above, it is the opinion of the Attorney General that the Department's denial of Ms. Forster's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the Department is directed to take immediate and appropriate action to comply with this binding opinion by providing Hupy and Abraham with a copy of the requested traffic crash report.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. James D. Carlson as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

cc: Mr. David G. Morrison
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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 18-016) 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 14, 2018.



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