



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 15, 2024

PUBLIC ACCESS OPINION 24-005
(Request for Review 2024 PAC 79729)

FREEDOM OF INFORMATION ACT:
Disclosure of Video Footage

Ms. Cindy Thomas
3360 East Chestnut
Decatur, Illinois 62521

Mr. Chad Gordy
FOIA Officer
Macon County Sheriff's Office
333 South Franklin Street
Decatur, Illinois 62523

Dear Ms. Thomas and Mr. Gordy:

This binding opinion is 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 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons discussed below, this office concludes that the Macon County Sheriff's Office (Sheriff's Office) violated the requirements of FOIA by withholding video footage responsive to Ms. Cindy Thomas's December 7, 2023, FOIA request.

BACKGROUND

Ms. Thomas first submitted an undated FOIA request to the Sheriff's Office seeking copies of "[v]ideo camera footage on Monday, Nov 6, 2023, 3:20pm-3:45pm. Both

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West end kennel areas (North & South)" from the Macon County Animal Control facility.¹ On November 14, 2023, the Sheriff's Office's denied the request in its entirety pursuant to section 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023). The denial letter stated: "This office wishes to release records and has collected the video footage requested. You are encouraged to please re-submit your request in thirty days as this office believes the investigation to have been completed within such time."² On December 7, 2023, Ms. Thomas submitted another FOIA request to the Sheriff's Office seeking the same records.³ On December 13, 2023, the Sheriff's Office denied the request in its entirety pursuant to section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023). The denial letter asserted that "[u]pon the culmination of the investigation, video records are not subject to FOIA."⁴ On January 12, 2024, Ms. Thomas submitted this Request for Review contesting the Sheriff's Office's denials.⁵

On January 25, 2024, the Public Access Bureau e-mailed the Sheriff's Office a copy of the Request for Review⁶ and a letter⁷ asking it to provide, for this office's confidential review, copies of the withheld records. This office's letter also requested that the Sheriff's Office provide a written answer describing its legal and factual bases for withholding the records under the section 7(1)(n) exemption.⁸ On February 1, 2024, the Sheriff's Office provided this office

¹Macon County Sheriff's Office Request for Public Record form submitted by Cindy Thomas (stamped received November 8, 2023).

²Letter from Chad Gordy, FOIA Officer, Macon County Sheriff's Office, to [Cindy] Thomas (November 14, 2023).

³E-mail from Cindy Thomas to Officer Gordy [FOIA Officer, Macon County Sheriff's Office] (December 7, 2023).

⁴Letter from Chad Gordy, FOIA Officer, Macon County Sheriff's Office, to [Cindy] Thomas (December 13, 2023).

⁵Request for Review from Cindy Thomas to Public Access Counselor, Office of the Attorney General (January 12, 2024).

⁶E-mail from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to foiainformation@sheriff-macon-il.us (January 25, 2024).

⁷Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Chad Gordy, FOIA Officer, Macon County Sheriff's Office (January 25, 2024), at 2.

⁸Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Chad Gordy, FOIA Officer, Macon County Sheriff's Office (January 25, 2024), at 2.

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with unredacted copies of the responsive video footage and an explanation of its reason for withholding that footage.⁹

On February 8, 2024, this office forwarded the Sheriff's Office's answer to Ms. Thomas.¹⁰ She did not submit a reply. In a February 22, 2024, telephone conversation with Deputy Public Access Counselor Christopher R. Boggs, Ms. Thomas limited her Request for Review to the Sheriff's Office's December 13, 2023, denial.¹¹ Accordingly, the scope of this opinion is limited to whether the video footage in question is a "public record" as defined under FOIA, and whether that footage is exempt from disclosure under section 7(1)(n) of FOIA.

On March 11, 2024, this office extended the time for issuing a binding opinion by 30 business days, to April 23, 2024, pursuant to section 9.5(f) of FOIA.¹²

ANALYSIS

"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 2022). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2022)) 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." The exemptions from disclosure contained in section 7 of FOIA¹³ are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

The Sheriff's Office's response to this office appeared to assert that the video footage is not a public record subject to the requirements of FOIA. The Sheriff's Office also contended that the video footage is exempt from disclosure under section 7(1)(n) of FOIA. This office will consider each argument in turn.

⁹E-mail from Chad Gordy, FOIA Officer, Macon County Sheriff's Office, to Christopher [R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General] (February 1, 2024).

¹⁰Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Cindy Thomas (February 8, 2024).

¹¹Telephone call between Cindy Thomas and Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (February 22, 2024).

¹²Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to Cindy Thomas and Chad Gordy, FOIA Officer, Macon County Sheriff's Office (March 11, 2024).

¹³5 ILCS 140/7 (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-423, effective January 1, 2024; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023; 103-540, effective January 1, 2024; 103-554, effective January 1, 2024.

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Section 2(c) of FOIA

The requirements of FOIA apply to public records. *See* 5 ILCS 140/1 (West 2022) ("It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act."). Section 2(c) of FOIA (5 ILCS 140/2(c) (West 2022), as amended by Public Act 103-554, effective January 1, 2024) defines "public records" as:

all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

In its written answer to this office, the Sheriff's Office explained the reasons underlying its December 13, 2023, denial:

[T]his office found the investigation was completed. There was no arrest, only disciplinary action. This office was working in tandem with Macon County Animal Control, who were simultaneously consulting with their attorney. The response was directly from their attorney, whom instructed this office the video records were not subject to FOIA.^[14]

To the extent that response is intended to assert that the requested video footage does not constitute "public records[,]," the video footage relates to the Sheriff's Office's investigation of an alleged incident captured on the footage. In *Better Government Ass'n v. City of Chicago Office of the Mayor*, 2020 IL App (1st) 190038, ¶ 14, the Illinois Appellate Court explained:

[T]here are two criteria a record must satisfy in order to qualify as a public record under FOIA. First, the record must pertain to public business rather than private affairs. [Citation.] Second, the record must have been either (1) prepared by a public body, (2) prepared for a public body, (3) used by a public body, (4) received by a public body, (5) possessed by a public body, or (6) controlled by a public body.

¹⁴E-mail from Chad Gordy, FOIA Officer, Macon County Sheriff's Office, to Christopher [R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General] (February 1, 2024).

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The Sheriff's Office has not disputed that it obtained, and ostensibly still possesses, the video footage as part of its investigation into a November 6, 2023, incident that occurred at the Macon County Animal Control facility. Although it is unclear whether the individuals captured on the video footage are employees of Macon County Animal Control, the Sheriff's Office's investigation of the incident unequivocally pertains to the Sheriff's Office transaction of public business in its role as a local law enforcement agency. Because the video footage (1) pertains to public business and (2) was used, received, and possessed by the Sheriff's Office as part of its investigation of an alleged incident at the Macon County Animal Control facility, the footage constitutes a public record subject to disclosure under FOIA unless an exemption applies.

Section 7(1)(n) of FOIA

Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." Black's Law Dictionary defines the word "adjudication" as "[t]he legal process of resolving a dispute; the process of judicially deciding a case." Black's Law Dictionary 52 (11th ed. 2019). Applying a similar definition, the Illinois Appellate Court has construed an "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 13, *overruled in part by Perry v. Dep't of Financial and Professional Regulation*, 2018 IL 122349. Further, the court emphasized that "the phrase 'related to' [in section 7(1)(n)] must be read narrowly," and held that the scope of the exemption is limited to records generated during an adjudication, and does not encompass records of an underlying investigation. *Kalven*, 2014 IL App (1st) 121846, ¶ 22; *see also Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 16 (police department improperly withheld pursuant to section 7(1)(n) a report that "was created well before any adjudication took place and existed independent of any adjudication. That the report later led to disciplinary action against two officers is insufficient to make it exempt under FOIA.").

In its written answer to this office, the Sheriff's Office stated that, upon completion of the investigation, disciplinary action was instituted against an unidentified individual.¹⁵ However, the Sheriff's Office's answer did not explain whether or to what extent any formalized legal proceeding that could be considered an "adjudication" occurred following the investigation. Even if an adjudication did occur, this office's confidential review of the withheld footage revealed that it consists of investigatory information that predates and exists independently of any adjudication. Accordingly, this office concludes that the Sheriff's Office has not sustained its burden of demonstrating by clear and convincing evidence that the withheld video footage is exempt from disclosure under section 7(1)(n) of FOIA.

¹⁵E-mail from Chad Gordy, FOIA Officer, Macon County Sheriff's Office, to Christopher [R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General] (February 1, 2024).

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 December 7, 2023, Ms. Cindy Thomas submitted a FOIA request to the Macon County Sheriff's Office seeking specific video footage from the Macon County Animal Control facility from November 6, 2023.

2) On December 13, 2023, the Sheriff's Office denied the request in its entirety pursuant to section 7(1)(n) of FOIA. The Sheriff's Office also asserted that the video footage was not subject to FOIA.

3) On January 12, 2024, Ms. Thomas submitted this Request for Review contesting the Sheriff's Office's denial. The 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 2022), as amended by Public Act 103-069, effective January 1, 2024).

4) On January 25, 2024, the Public Access Bureau forwarded a copy of the Request for Review to the Sheriff's Office and asked it to provide for this office's confidential review unredacted copies of the requested records, together with a written response, including a detailed explanation of the factual and legal basis for the applicability of section 7(1)(n).

5) On February 1, 2024, the Sheriff's Office provided this office with unredacted copies of the video footage and its written explanation. On February 8, 2024, the Public Access Bureau forwarded that answer to Ms. Thomas. Ms. Thomas did not reply to the answer, but in a February 22, 2024, telephone call with the Deputy Public Access Counselor, she limited the scope of her Request for Review to the Sheriff's Office's December 13, 2023, denial.

6) On March 11, 2024, the Public Access Bureau extended the time in which to issue a binding opinion by 30 business days to section 9.5(f) of FOIA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2(c) of FOIA defines "public records" as "all * * * documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body."

8) The responsive video footage pertains to the transaction of public business of the Sheriff's Office and was received and used by the Sheriff's Office in the course of its investigation of an alleged incident at the Macon County Animal Control facility. Therefore, those recordings are public records subject to the requirements of FOIA.

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9) Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases[.]" The Illinois Appellate Court has construed "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision."

10) The information provided by the Sheriff's Office does not establish that the responsive video footage related to a public body's "adjudication" of an employee disciplinary case. Rather, the footage plainly constituted investigatory materials that predated and existed independently of any adjudication that may have ultimately occurred. Accordingly, this office concludes that the Sheriff's Office has not met its burden of demonstrating that the withheld video footage is exempt from disclosure under section 7(1)(n) of FOIA.

Therefore, it is the opinion of the Attorney General that the Macon County Sheriff's Office has violated FOIA by withholding video footage responsive to Ms. Cindy Thomas's December 7, 2023, Freedom of Information Act request. Accordingly, the Sheriff's Office is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. Thomas with copies of that footage.

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 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with 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 Ms. Cindy Thomas as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

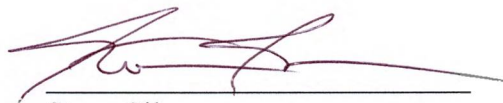
CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 24-005) upon:

Ms. Cindy Thomas
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Decatur, Illinois 62521
tlcinthom@gmail.com

Mr. Chad Gordy
FOIA Officer
Macon County Sheriff's Office
333 South Franklin Street
Decatur, Illinois 62523
foiainformation@sheriff-macon-il.us

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 Chicago, Illinois on March 15, 2024.



Steve Silverman
Bureau Chief

Steve Silverman
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