



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 19, 2025

PUBLIC ACCESS OPINION 25-004
(Request for Review 2025 PAC 85201)

FREEDOM OF INFORMATION ACT:
Evidentiary Records Obtained During
Investigation Not Exempt as Records
Relating to an Adjudication

Mr. Sam Stecklow
Reporter
Invisible Institute
6100 South Blackstone Avenue
Chicago, Illinois 60637

Mr. Marc Loftus
Deputy Chief – FOIA Officer
Burr Ridge Police Department
7700 County Line Road
Burr Ridge, Illinois 60527

Dear Mr. Stecklow and Mr. Loftus:

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 2023 Supp.)). For the reasons discussed below, this office concludes that the Village of Burr Ridge (Village) Police Department (Department) violated the requirements of FOIA by improperly withholding a video recording responsive to Mr. Sam Stecklow's December 12, 2024, FOIA request.

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BACKGROUND

On December 12, 2024, Mr. Stecklow submitted a FOIA request, on behalf of the Invisible Institute, to the Department seeking a copy of "[a]ny video from former Deputy Chief Ryan Husarik's DUI arrest in Virginia in April 2024."¹ On December 20, 2024, the Department denied the request in its entirety pursuant to section 7(1)(n) of FOIA.² The Department asserted:

This exemption applies to **records relating to a public body's adjudication of employee grievances or disciplinary cases**. It specifies that records concerning the adjudication process are exempt from disclosure, except for the final outcome of the case. The intent is to protect sensitive information related to internal personnel matters while still ensuring transparency regarding the ultimate resolution. (Emphasis in original.)³

On February 11, 2025, Mr. Stecklow submitted a Request for Review contesting that denial. He contended that "[a]s has been made clear in repeated Appellate Court decisions and PAC opinions [citation], 7(1)(n) only applies to records generated within the adjudicative process — not records considered during the adjudication of discipline, or records relating to a case that later resulted in an adjudicatory proceeding. The exemption is entirely inapplicable."⁴

On February 19, 2025, the Public Access Bureau sent a copy of the Request for Review to the Department. The Public Access Bureau also sent the Department a letter requesting an unredacted copy of the withheld video recording for this office's confidential review and a detailed written explanation of the legal and factual bases for the applicability of the asserted exemption.⁵

On February 27, 2025, counsel for the Department provided an unredacted copy of the withheld video for this office's confidential review, and a written explanation for the

¹FOIA portal message from Sam Stecklow, Invisible Institute, to [Village of Burr Ridge Police Department] (December 12, 2024).

²5 ILCS 140/7(1)(n) (West 2023 Supp.), as amended by Public Act 103-605, effective July 1, 2024.

³E-mail from Sam Temes, Burr Ridge FOIA Officer, to Sam [Stecklow] (December 20, 2024).

⁴Letter from Sam Stecklow, Reporter, Invisible Institute, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (February 11, 2025).

⁵Letter from Matt Goodman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Marc Loftus, Deputy Chief – FOIA Officer, Burr Ridge Police Department (February 19, 2025), at 2.

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applicability of the exemption in section 7(1)(n) of FOIA.⁶ On February 28, 2025, this office forwarded a copy of the Department's answer to Mr. Stecklow and notified him of his opportunity to reply in writing.⁷ He did not submit a written reply.

On April 11, 2025, this office extended the time for issuing a binding opinion by 30 business days, to May 23, 2025, pursuant to section 9.5(f) of FOIA.⁸

ANALYSIS

"[I]t is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government." 5 ILCS 140/1 (West 2022). To effectuate that public policy, FOIA provides that "[a]ll 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 FOIA⁹ are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

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." While "adjudication" is not defined in FOIA, the Illinois Appellate Court has construed the term 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 (citing Black's Law Dictionary 42 (7th ed. 1999)), *overruled in part on other grounds by Perry v. Department of Financial & Professional Regulation*, 2018 IL 122349.

⁶Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Matt Goodman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (February 27, 2025).

⁷Letter from Matt Goodman, Assistant Attorney, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Reporter, Invisible Institute (February 28, 2025).

⁸Letter from Matt Goodman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Sam Stecklow, Reporter, Invisible Institute, and Marc Loftus, Deputy Chief – FOIA Officer, Burr Ridge Police Department (April 11, 2025).

⁹5 ILCS 140/7 (West 2023 Supp.), as amended by Public Acts 103-605, effective July 1, 2024; 103-865, effective January 1, 2025.

In *Kalven*, the Illinois Appellate Court considered whether section 7(1)(n) exempts from disclosure complaint register (CR) files documenting investigations of citizen complaints filed against Chicago Police Department (CPD) officers. In determining whether investigations of complaints constitute adjudications of employee disciplinary cases, the court described the CR process:

When a public citizen files a complaint against a police officer, either CPD's internal affairs division (IAD) or the Independent Police Review Authority (IPRA) begin investigating the complaint. The CRs are an effort to gather factual information about the complaint, but they do not involve any formalized legal proceedings. While the record indicates that a substantiated complaint can result in disciplinary proceedings being instituted against an officer, those proceedings are a different matter entirely. The CRs are instead part of an investigatory process that is separate and distinct from disciplinary adjudications. *Kalven*, 2014 IL App (1st) 121846, ¶ 14.

The court emphasized that "the phrase 'related to' [in section 7(1)(n)] must be read narrowly," in light of FOIA's purpose to generally provide open access to public records, and determined that the scope of the exemption is limited to records generated during an adjudication; it does not encompass records of an underlying investigation. *Kalven*, 2014 IL App (1st) 121846, ¶¶ 19-22. Accordingly, the court held that investigative records in CR files "are not 'related to' disciplinary adjudications in a way that might exempt them from disclosure." *Kalven*, 2014 IL App (1st) 121846, ¶ 22.

In *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 16, the Illinois Appellate Court elaborated on the distinction between records that relate to investigations of complaints or grievances against employees and records that relate to the adjudication of employee discipline or grievances. Citing *Kalven*, the court explained:

A complaint or grievance is part of an investigatory process that is separate and distinct from a disciplinary adjudication. [Citation.] A complaint or grievance initiates an investigative process; any disciplinary adjudication that may take place as a result of the investigation comes later. [Citation.] Even if a substantiated complaint or grievance results in disciplinary proceedings being instituted, the complaint or grievance does not fall within the section 7(1)(n) exemption because the disciplinary proceedings "are a different matter entirely." [Citation.] *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶ 14 (quoting *Kalven*, 2014 IL App (1st) 121846, ¶¶ 14, 20).

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The court further explained that the report at issue "constituted a grievance that was investigated, substantiated and ultimately resulted in disciplinary proceedings." *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶ 16. Because the grievance report "was created well before any adjudication took place and existed independent of any adjudication[.]" the court concluded that subsequent disciplinary action "'based on the report[]'" was "insufficient to make it exempt under FOIA." *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶¶ 15-16.

In its written answer to this office, the Department argued that the responsive video recording is exempt under the *Kalven* court's narrow construction of section 7(1)(n).¹⁰ The Department claimed that "[t]he Village did not generate, use or otherwise come into possession of the video record until it was required for the adjudication of the disciplinary matter resulting from the arrest of Officer Husarik for driving under the influence of alcohol in Virginia in April 2024."¹¹ The Department stated that it considered the video recording as evidence while conducting an adjudication to determine the level of discipline to impose, which ultimately resulted in a final enforceable decision to suspend Officer Husarik.¹² The Department concluded:

Based on the fact that the video record at issue was obtained by the Village in order to be used as evidence in this disciplinary case, which resulted in a final and enforceable decision to issue discipline, the video record should be determined to be a record related to the adjudication of a disciplinary case and, therefore, exempt pursuant to Section 7(1)(n) of FOIA.^{13]}

Like the grievance report in *Peoria Journal Star* and the CRs in *Kalven*, the withheld video recording was created well before any disciplinary proceedings took place and existed independently of any such adjudication. Construing the scope of the exemption to encompass underlying evidence that was the basis for discipline would allow public bodies to withhold from the public a wide range of preexisting records pertaining to potential misconduct by public employees and officials. As in *Kalven*, the Department's "interpretation of 'relating to'

¹⁰Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Matt Goodman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (February 27, 2025), at 2.

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¹²Letter from Thomas J. Halleran, Storino, Ramello & Durkin, to Matt Goodman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (February 27, 2025), at 2.

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would give section 7(1)(n) an expansive interpretation and render a broad category of public documents immune to public scrutiny. That is contrary to the intent of FOIA." *Kalven*, 2014 IL App (1st) 121846, ¶ 19.

Instead, records can only "relate to" an adjudication within the meaning of section 7(1)(n) if they are created in the process of conducting the adjudication itself. It is axiomatic that records that pre-date or exist independently of an adjudication cannot "relate to" an adjudication because the adjudication has not been initiated and might never occur. The Department has offered no legal support for the notion that the initiation of an adjudication serves to retroactively shield any records that may have been the impetus for the adjudication. The withheld video recording, which documents a police officer's arrest for driving under the influence, plainly pre-dates and exists independently of any adjudication. Therefore, *Kalven* and *Peoria Journal Star* compel the conclusion that the video recording does not fall within the scope of the section 7(1)(n) exemption.

Accordingly, the Department has not sustained its burden of proving by clear and convincing evidence that the withheld video recording is exempt from disclosure under section 7(1)(n) of FOIA.

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 12, 2024, Mr. Sam Stecklow, on behalf of the Invisible Institute, submitted a FOIA request to the Village of Burr Ridge Police Department seeking a copy of a video of former Deputy Chief Ryan Husarik's DUI arrest in Virginia in April 2024.
- 2) On December 20, 2024, the Department denied the request in its entirety pursuant to section 7(1)(n) of FOIA.
- 3) On February 11, 2025, Mr. Stecklow submitted a Request for Review contesting the Department'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 2023 Supp.)).
- 4) On February 19, 2025, the Public Access Bureau forwarded a copy of the Request for Review to the Department and asked it to provide unredacted copies of the requested records for this office's confidential review, together with a written explanation of the factual and legal basis for the applicability of section 7(1)(n).

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5) On February 27, 2025, the Department provided this office with an unredacted copy of the video recording and its written explanation. On February 28, 2025, the Public Access Bureau forwarded a copy of that answer to Mr. Stecklow and notified him of his opportunity to reply to that answer. Mr. Stecklow did not submit a reply.

6) On April 11, 2025, the Public Access Bureau extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases[.]"

8) The Department did not demonstrate that the responsive video recording is a record "relating to" its adjudication of Officer Husarik's disciplinary case. Rather, the video recording plainly pre-dated and existed independently of the adjudication. Such records are not retroactively cloaked from public scrutiny by virtue of being used as evidence in a subsequent adjudicatory proceeding. Accordingly, this office concludes that the Department has not met its burden of proving that the withheld video recording is exempt from disclosure under section 7(1)(n) of FOIA.

Therefore, it is the opinion of the Attorney General that the Village of Burr Ridge Police Department violated FOIA by withholding video footage responsive to Mr. Sam Stecklow's December 12, 2024, Freedom of Information Act request. Accordingly, the Department is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Stecklow with a copy of the video.

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 Mr. Sam Stecklow as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

Mr. Sam Stecklow
Mr. Marc Loftus
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cc: Mr. Thomas J. Halleran
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CERTIFICATE OF SERVICE

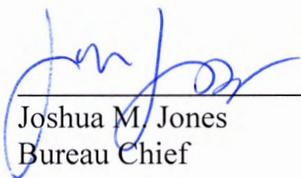
Joshua M. Jones, Bureau Chief, Public Access Bureau, Chicago, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 25-004) upon:

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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 Chicago, Illinois on May 19, 2025.



Joshua M. Jones
Bureau Chief

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