

# FOIA for Law Enforcement Agencies – Reports

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

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## Public Access Counselor

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

- Provide advice and education with respect to FOIA and OMA
  - Resolve complaints concerning compliance with FOIA and OMA without litigation (Requests for Review)
- 15 ILCS 205(7)**



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## Public Access Counselor

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

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## Presumption of Openness

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

5 ILCS 140/1.2

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## What is Clear and Convincing?

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

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

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## Exemptions to Disclosure

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

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

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## Exemptions to Disclosure

Section 7(1)(b),  
Section 7(1)(c),  
and Section 7(1)(d)(iv)  
of FOIA



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### Section 7(1)(b) – Private Information

- Allows withholding of ***private information***, unless required by another provision of FOIA, a State or federal law or a court order.
- Private information is defined in section 2(c-5) of FOIA.

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## Section 7(1)(b) – Private Information

### **Unique identifiers**, including:

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

### **5 ILCS 140/2(c-5)**

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## Section 7(1)(b) – Private Information

### **Unique identifiers**, including:

- Home addresses
  - Personal license plates
- ➔ Except when compiled without possibility of attribution to any person.

### Other **unique identifiers**:

- Zip codes (when coupled with identifying info like name)
- Signature/signed initials

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## Section 7(1)(b) Not Properly Asserted

- **Business** telephone numbers, e-mail addresses, street addresses
- Commercial license plates
- Badge numbers
- Firearm serial numbers
- VINs

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## Section 7(1)(c) – Personal Privacy

Exempts “[p]ersonal information contained within public records, the disclosure of which would constitute a *clearly unwarranted invasion of personal privacy*, unless the disclosure is consented to in writing by the individual subjects of the information.”

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## Section 7(1)(c) – Personal Privacy

“Unwarranted invasion of personal privacy means 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.”

→ Balancing test, usually requiring case-by-case consideration.

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

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

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## Section 7(1)(c) – Personal Privacy

Exempt personal information:

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

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## Section 7(1)(c) Not Exempt

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

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

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

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## Section 7(1)(d)(iv) – Statements?

- A statement made by regular witness can be redacted/withheld under 7(1)(d)(iv) **only if** disclosure of contents would identify and **redaction cannot be meaningfully accomplished** (see Binding Op. 19-008)
- For example: When requester knows the name of the witness (provided in FOIA, requester present at incident), providing the witness’ statement with witness’ name redacted does not protect identity.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 68694, issued January 5, 2022.

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## Section 7(1)(d)(iv) – Traffic Accidents

Special Rule!

- “[E]xcept that the identities of witnesses to traffic accidents, traffic accident reports, or rescue reports **shall be provided**[.]”

“Identities of witnesses” means names – department **can redact** witness home and personal telephone numbers and home addresses (under 7(1)(b)).

Ill. Att’y Gen. PAC Req. Rev. Ltr. 54174, issued October 9, 2018.

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## Exemptions to Disclosure

Juvenile Court Act (JCA)



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

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

- ✓ Arrested
- ✓ Investigated, or
- ✓ Taken into custody

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

705 ILCS 405/1-7(A)

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## Definition of Juvenile Law Enforcement Record

Includes:

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

705 ILCS 405/1-3(8.2)

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## Section 7.5(bb) – Juvenile Court Act

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

705 ILCS 405/1-3(8.2)

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## Scenarios under JCA – Juvenile Arrested

- FOIA to Sheriff’s Office requested all records related to a specific case number. Request denied, citing JCA. Requester appealed.
- Records related to a vehicle accident.
- A juvenile was arrested in connection with the accident.
- PAC held request was **properly denied**.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 52318, issued 3/30/18

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## Scenarios under JCA – Juveniles Involved

- Law firm submitted FOIA to police department for accident report. Request denied, citing JCA. Requester appealed.
- Department argued that JCA applied because the crash involved six minors who were witnesses to the crash and listed as victims in the report.
- PAC held request was ***improperly denied***; involved driver was adult, and no minors were arrested or investigated in connection with the incident.

Binding Op. 18-016, issued 11/14/18

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## Scenarios under JCA – Juvenile Ticketed

- FOIA to police department requested all records related to a vehicle accident. Request denied, citing JCA. Requester appealed.
- Juvenile driver was issued citation but not arrested.
- No indication in records that the juvenile was investigated.
- Because ticket adjudicated in open court and tickets are not “municipal ordinance violations,” PAC held JCA does not apply to record, and request was ***improperly denied***.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 58028, issued 8/20/19

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## Juvenile & Adult Arrestees

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

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

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## Section 7.5(bb) – Some Disclosure Permitted

Some people/agencies may obtain JCA records

- See JCA section 1-7(A)(0.05)-(13) for the list
- List includes “[t]he minor who is the **subject** of the juvenile law enforcement record, his or her parents, guardian, and counsel.”  
705 ILCS 405/1-7(A)(0.05)
- **Subject** = minor investigated or arrested
- Parent of a juvenile who is identified in report as **victim** is **not** entitled to a juvenile law enforcement record that identifies some other juvenile as arrestee/suspect

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## Section 7.5(bb) – Parent Request

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

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

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## Minor Victims – Other FOIA Exemptions

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

Binding Op. 21-002, issued February 17, 2021.

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## Minor as victim and suspect

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

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## Exemptions to Disclosure

Pre-trial matters and  
Open Investigations



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

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

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## Section 7(1)(d)(vii) – Obstruction of Ongoing Criminal Investigation

- Section 7(1)(d)(vii) allows a public body to withhold records if “**disclosure would obstruct** an ongoing criminal investigation by the agency that is the recipient of the request.”

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

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

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## Sections 7(1)(d)(i) and 7(1)(d)(vii): How Can Agency Satisfy the Burden?

*Ballew v. Chgo. Police Dep’t.*, 2022 IL App. (1st) 210715: CPD disclosed redacted original case report and withheld remainder; court found CPD met burden with affidavit

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

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

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

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## Exemptions to Disclosure

Complaints Against Public Employees and Internal Investigations



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## Complaints Against Employees and Investigations of those Complaints

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

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

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## Complaints Against Employees

**Founded and Unfounded Complaints** against public employees generally need to be disclosed when requested.

- Section 7(1)(c) of FOIA states that “the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy.”
- Complaint, even one determined to be unfounded, bears on public duties of public employee or official. *Gekas v. Williamson*, 393 Ill. App. 3d 573 (2009).

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## Investigations and Adjudications of Employee Discipline

Allows a public body to withhold “records relating to a public body's **adjudication** of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.”

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

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## Section 7(1)(n) of FOIA

Investigative records (summary reports, interview summaries) that do not relate to an actual adjudication are **not exempt**.

- *Kalven v. City of Chicago*, 2014 IL App. (1st) 121846 (2014): CPD “Complaint Register” – recorded complaints against officers and records reflecting investigations of complaints – **not exempt** under 7(1)(n).
- *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838 (2016): Report of investigation of grievance created before adjudication – **not exempt** under 7(1)(n).

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## Complaints Against Employees and Records of Investigations

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

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

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The screenshot displays the website for the Office of the Illinois Attorney General. At the top, there is a search bar and the office's name. Below this, several service areas are listed in a grid:

- Consumer Protection**: Protecting consumers and businesses from fraud, deception, and unfair business practices.
- Safer Communities**: Fighting crime, protecting children, serving crime victims, and providing resources for law enforcement.
- Preserving the Environment**: Safeguarding Illinois' air, water, land, and community health.
- Rights of the People**: Defending civil rights. Upholding the rights of workers, immigrants, individuals with disabilities, and veterans & military service members. Advocating for children, women and seniors.
- Honest & Open Government**: Keeping public information and meetings transparent, combating fraud against Medicaid & government programs, and investigating corruption by officials or employees. This section is circled in red.

Below the grid is a section titled "File a Complaint with our Office". It includes a keyboard image with the word "COMPLAINTS" on a key. The text explains that the office has authority to uphold laws and advocate for Illinois residents. It lists the types of complaints they manage:

- Consumer Fraud
- Disability Rights
- Health Care Fraud
- Civil Rights
- Hate Crimes
- Workplace Rights
- Crime Victim Rights

A URL is visible at the bottom left: <https://www.illinoistattorneygeneral.gov/Open-and-Honest-Government>.

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Home ▶ Open and Honest Government

Translate Website

Search

**Jump To:**

- Consumer Protection ▶
- Honest and Open Government ▶**
- Preserving the Environment ▶
- Rights of the People ▶
- Safer Communities ▶

**File a Complaint**

**Quick Links:**

- Legal Assistance Referrals
- Milestones Reports

**LEARN MORE ABOUT THESE TOPICS:**

- Public Access Counselor**
- Using the Freedom of Information Act for OAG records
- Public Integrity and Corruption Investigations
- Medicaid Fraud and Elderly Abuse
- Ethics in the OAG
- Inspector General

The Attorney General has the duty and responsibility to ensure that Illinois has an open and honest government that is accountable to the people it serves. The office has oversight of several important laws that ensure the free and open exchange of information between government and the public. Two pillars that uphold a functioning democracy are the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA).

The office also investigates fraud against government bodies and employees or officials who break the public trust.

**The Attorney General's Public Access Counselor (PAC) promotes**

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concerning FOIA requests and compliance with OMA (Requests for Review)

- Issue binding opinions on FOIA and OMA in response to Requests for Review submitted by members of the public.
- Provide electronic training to all FOIA Officers, all elected and appointed officials, and persons designated by public bodies to receive OMA training.
- Provide educational presentations and materials to public bodies and to respond to informal inquiries from public bodies and the public.

**To Explore our Resources Select from Below:**

- Information for FOIA Officers**  
FOIA Officers can complete required training and can access resources to assist them in responding to FOIA requests and making public information easily accessible.
- Information for Elected and Appointed Officials**  
Members of public bodies, for example councils, boards, committees and other entities, can complete required training and access resources about compliance with the Open Meetings Act.
- Ensuring Illinois Residents Have Access to Open Government**  
Individuals can learn more about their rights to obtain copies of public records from public bodies and to attend public meetings, and how the Illinois Attorney General's Office can assist in resolving disputes with those laws.

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## PAC Contact Information

PAC Hotline: **877-299-3642**

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

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**<https://www.illinoisattorneygeneral.gov/open-and-honest-government/pac/>**