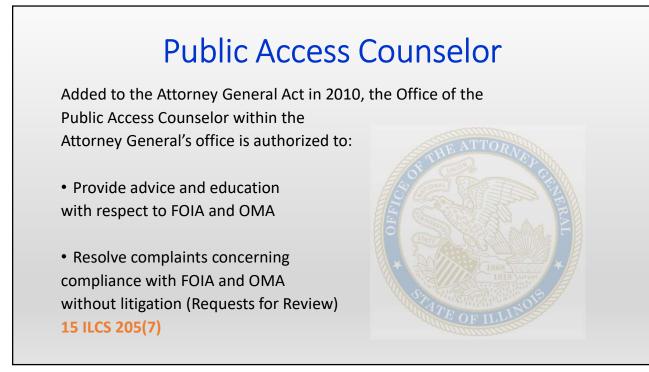


## FOIA for Law Enforcement Agencies – Reports

Public Access Bureau Illinois Attorney General's Office May 22, 2025



## **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
- 202 Binding Opinions issued since 2010
- Thousands of determination letters
- Required online training plus presentations
- Hotline (877-299-3642)

## **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?

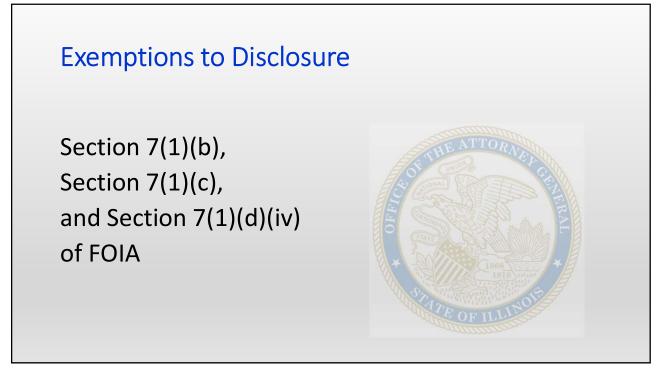
Generally, under FOIA, "clear and convincing" evidence requires the public body to "provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.)

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

## **Exemptions to Disclosure**

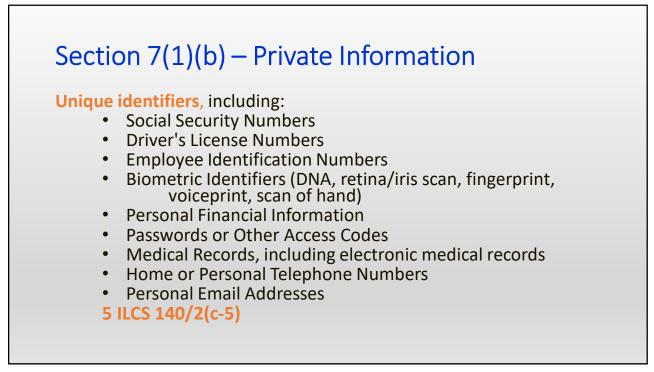
Exemptions allow public bodies to maintain certain types of sensitive public records or information confidentially. FOIA provides a number of exceptions to the requirement that public records are available for public inspection.

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



## 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.



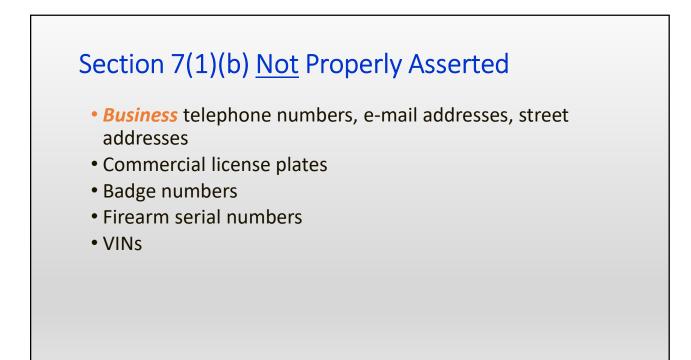
## Section 7(1)(b) – Private Information

Unique identifiers, including:

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

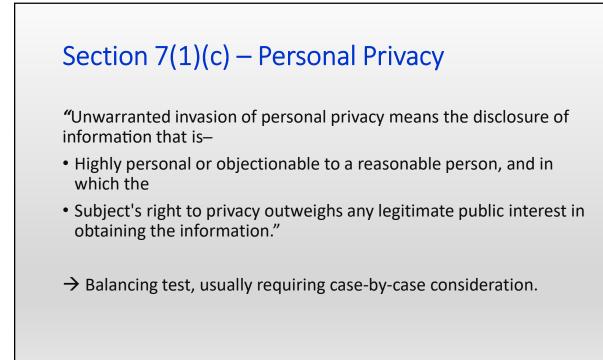
### Other unique identifiers:

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



## Section 7(1)(c) – Personal Privacy

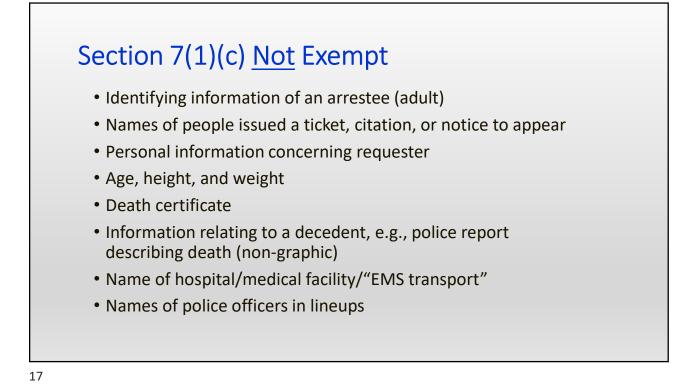
Exempts "[p]ersonal information contained within public records, the disclosure of which would constitute a *clearly unwarranted invasion of personal privacy*, unless the disclosure is consented to in writing by the individual subjects of the information."

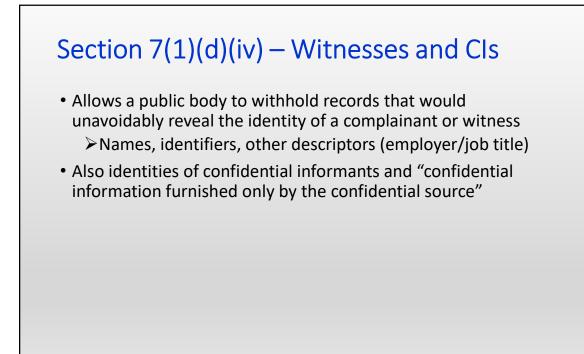


## Section 7(1)(c) – Personal Privacy, con't

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

# 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



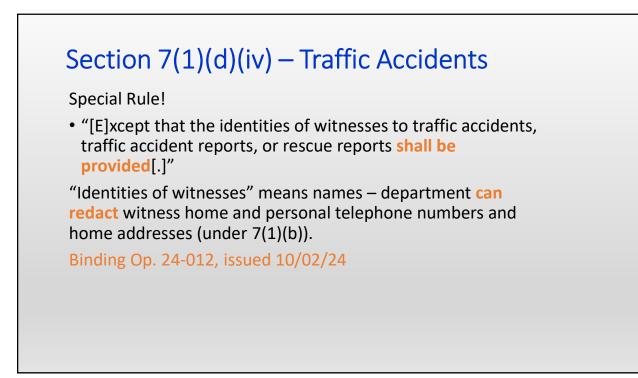


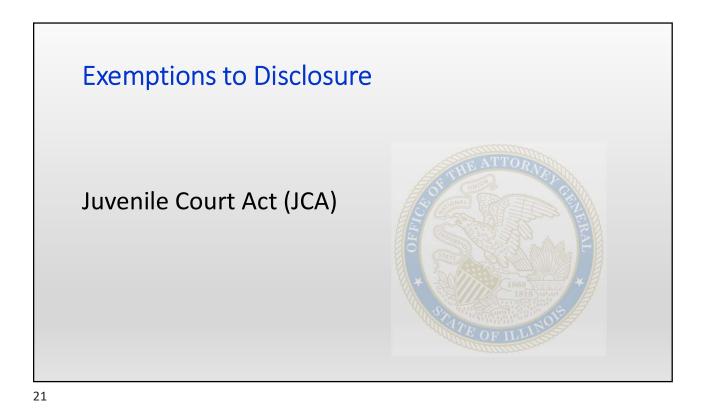
## Section 7(1)(d)(iv) – Statements?

 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





## 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:

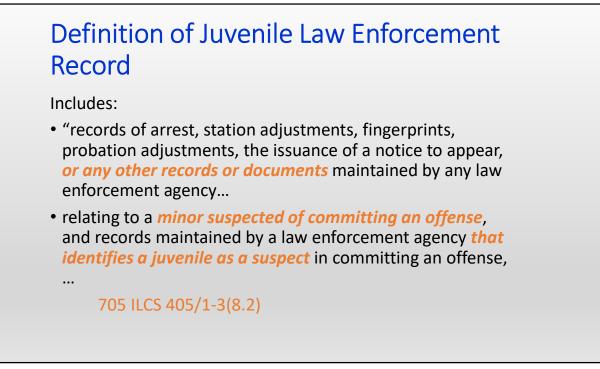
✓Arrested

✓ Investigated, or

✓ Taken into custody

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

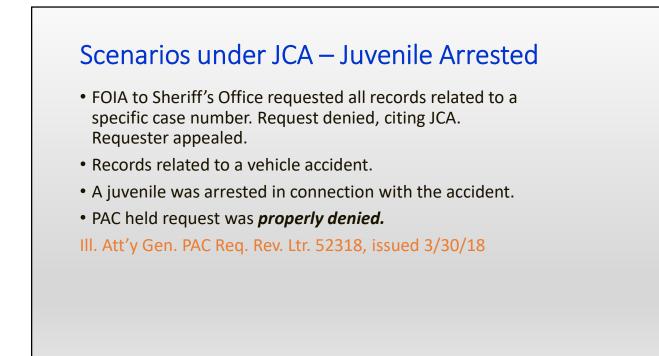
705 ILCS 405/1-7(A)



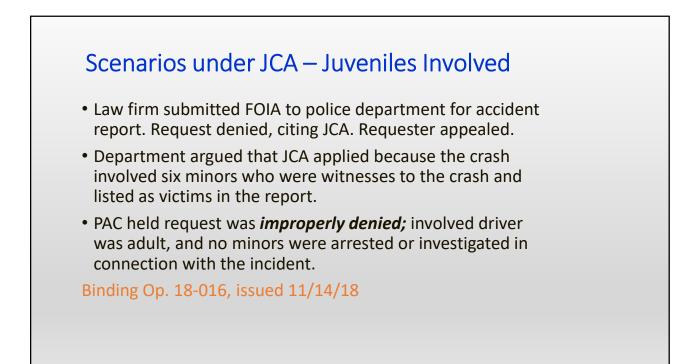
## Section 7.5(bb) – Juvenile Court Act

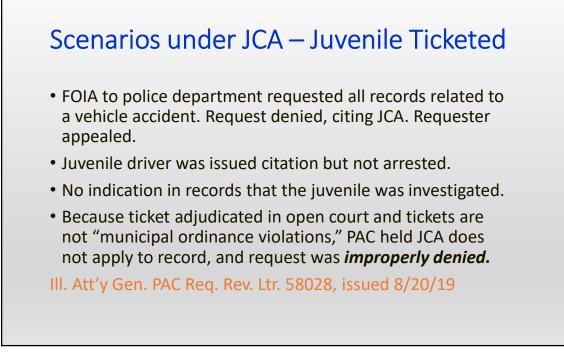
"...but does *not* include records identifying a juvenile as a *victim, witness, or missing juvenile* and any records created, maintained, or used for purposes of referral to programs relating to diversion as defined in subsection (6) of Section 5-105."

705 ILCS 405/1-3(8.2)













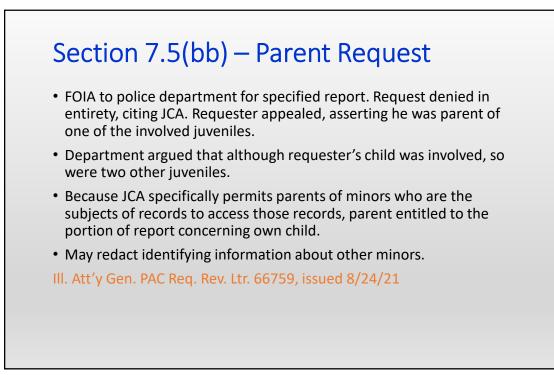
## Section 7.5(bb) – Some Disclosure Permitted

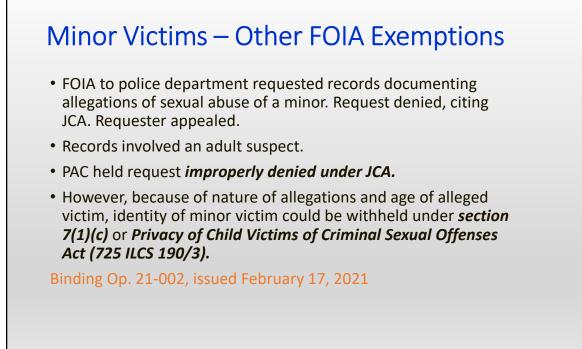
Some people/agencies may obtain JCA records

- 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."

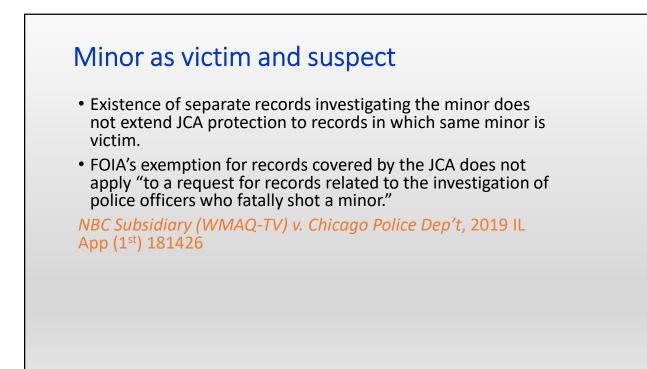
705 ILCS 405/1-7(A)(0.05)

- 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

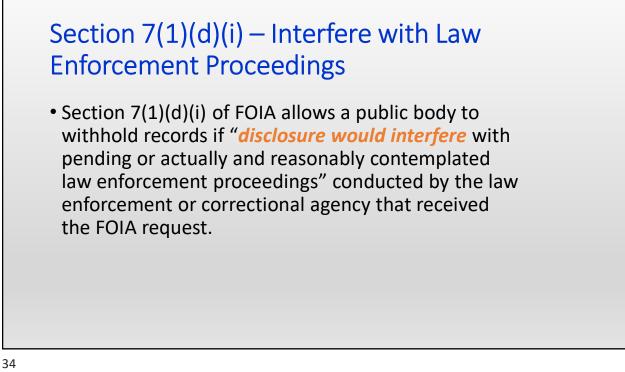












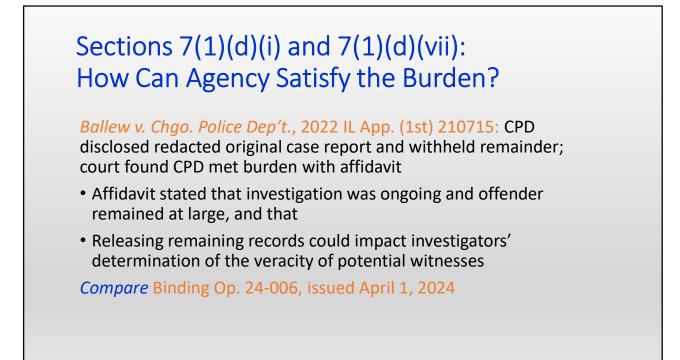
# Section 7(1)(d)(vii) – Obstruction of Ongoing Criminal Investigation

 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."

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

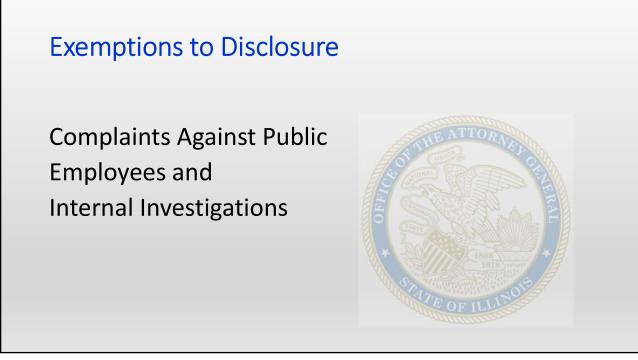
- Fact that arrest has been made, or that an investigation has commenced or remains open on department's end, *is not by itself sufficient to meet burden* of demonstrating that the request can be denied in whole.
- Agency may not "use the term 'ongoing criminal investigation' . . . as some sort of magic talisman."

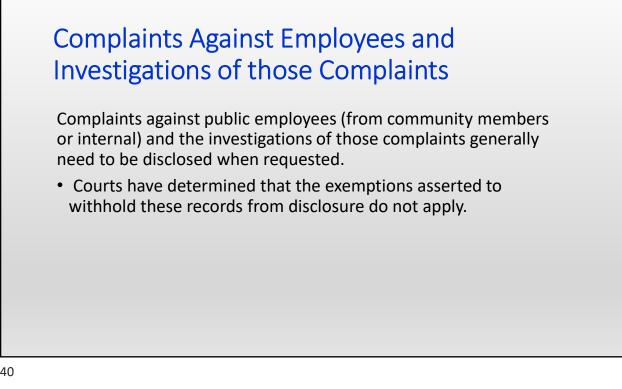
*Day v. City of Chicago*, 388 III. App. 3d 70 (2009); III. Att'y Gen. Pub. Acc. Op. 24-006 (issued Apr. 1, 2024)

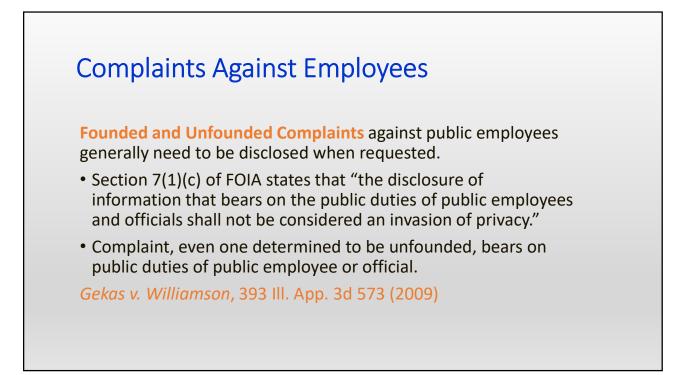




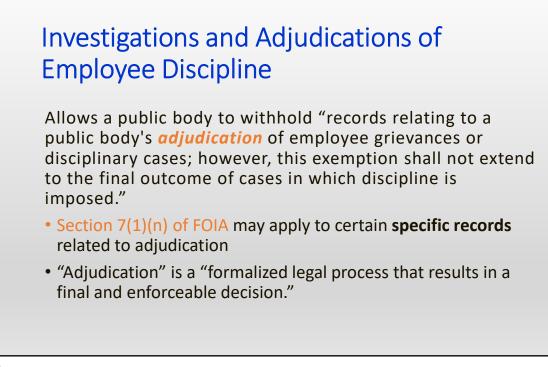


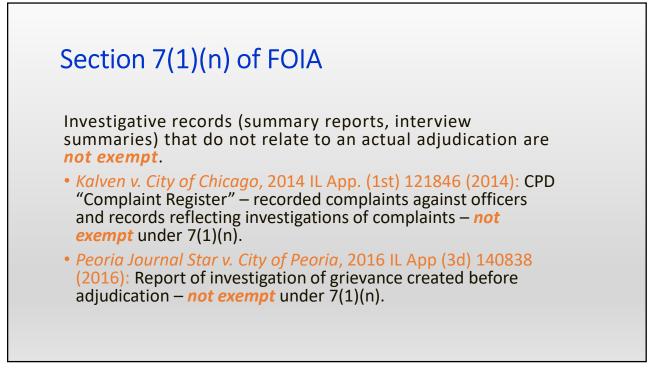


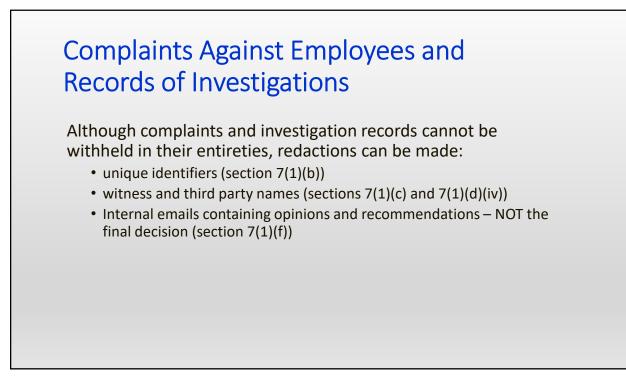












## Automated License Plate Reader (ALPR): Section 7(1)(d-7)

- New in 2024!
- Information gathered or records created from the use of automatic license plate readers in connection with Section 2-130 of the Illinois Vehicle Code.

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## ALPRs: 625 ILCS 5/2-130 Illinois Vehicle Code

- (a) "Automated license plate reader" or "ALPR" means an electronic device that is mounted on a law enforcement vehicle or positioned in a stationary location and that is capable of recording data on or taking a photograph of a vehicle or its license plate and comparing the collected data and photographs to existing law enforcement databases for investigative purposes. "ALPR" includes a device that is owned or operated by a person or an entity other than a law enforcement agency to the extent that data collected by the reader is shared with a law enforcement agency.
- "ALPR information" means information gathered by an ALPR or created from the analysis of data generated by an ALPR.
- (d) ALPR information shall be held confidentially to the fullest extent permitted by law.

