OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 4, 2019

Via electronic mail
[redacted]

Via electronic mail
Ms. Deborah Palmsiano
Freedom of Information Officer
City of Crystal Lake Police Department
100 West Woodstock Street
Crystal Lake, Illinois 60014
dpalmsiano@crystallake.org

RE: FOIA Request for Review – 2018 PAC 53979

Dear [redacted] and Ms. Palmsiano:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the response by the City of Crystal Lake Police Department (Department) to [redacted] July 6, 2018, FOIA request did not violate the requirements of FOIA.

On that date, [redacted] submitted a FOIA request to the Department seeking all reports pertaining to two named individuals. On July 10, 2018, the Department provided a redacted arrest report to [redacted], but denied her request for other records pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv) (West 2017 Supp.)). In her July 10, 2018, Request for Review, [redacted] challenged the Department's response; she stated that her son visits the individuals' home and she wants to investigate whether he was present during any domestic disputes.

On July 17, 2018, this office sent a copy of the Request for Review to the Department and asked it to provide the Public Access Bureau with un-redacted copies of records responsive to [redacted]'s request, together with a detailed explanation of the factual and legal

bases for the applicability of the 7(1)(b), 7(1)(c), and 7(1)(d)(iv) exemptions to the withheld information. On July 15, 2018, the Department provided the requested records and an answer to the Request for Review, clarifying its assertion that the withheld records were exempt pursuant to section 7(1)(c) of FOIA. On July 26, 2018, this office forwarded the Department's answer to [redacted]; she replied on the same day.

DETERMINATION

"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 (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(c) of FOIA exempts from disclosure "[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) defines "unwarranted invasion of personal privacy" as "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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the government agency having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994). Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

Under the first factor of the balancing test, [redacted] asserted that she sought the records out of concern that her son had been subjected to abuse while visiting his father and his father's wife. [redacted] also referenced ongoing legal issues concerning her son's custody to which she believes that the records could be relevant. Regarding the second factor, under FOIA, the public has an interest in "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[.]"[1] The records at issue do reflect the activities of police officers. However, there is a lesser public interest in the disclosure of information about a private incident that did not result in an arrest. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 30341, issued October 15, 2014, at 3 (FOIA request for all police records concerning an individual was not improperly denied when the records concerned a highly personal matter that did not result in any arrests or criminal charges).

As to the third factor—the degree of invasion of personal privacy—this office's review of the responsive records revealed that the records consist of information that is highly personal.[2] The right to privacy "is strongest where the individuals in question 'have been investigated but never publicly charged.'" *Citizens for Responsibility and Ethics in Washington v. United States Department of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012), quoting *American Civil Liberties Union v. United States Department of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011). Further, the Public Access Bureau has previously determined that domestic disturbances are highly personal by their nature. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 32478, issued October 4, 2016, at 3 (report of domestic disturbance involving a police officer properly withheld where no arrests were made and the case was closed). The disclosure of the identities of the individuals, third parties, and witnesses appearing in the records would be an unwarranted invasion of those individuals' personal privacy interests. *See Coleman v. F.B.I.*, 13 F. Supp. 2d 75, 80 (D.D.C. 1998) (disclosure of FBI documents would constitute an unwarranted invasion of personal privacy because "it is evident that release of any portion would reveal the identities of innocent third parties, witnesses or victims."). Because [redacted] has identified some of the records' subjects by name in her FOIA request, redaction of those individual's names and identifying information from the responsive records would not protect those individuals' identities. The specific nature of the conduct and circumstances described in the report could potentially lead to the disclosure of the identities of the records' subjects and the witnesses involved.

Finally, with respect to the fourth factor, there do not appear to be any other means of obtaining the requested records without resorting to the discovery process, and it is

[1]5 ILCS 140/1 (West 2016).

[2]Because the Department provided the records to this office confidentially, section 9.5(c) of FOIA precludes this office from further identifying the nature of the records.

unclear, given the posture of [redacted] child custody case, whether discovery is available to her.

After carefully reviewing the responsive records, and based on our analysis of the four factors set out in *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, this office concludes that the public interest in the disclosure of the records is outweighed by the privacy interests of the records' subjects. Although this office recognizes [redacted] personal interest in the responsive records, the records at issue concern highly personal matters involving individuals whose identities could potentially be discerned from the content of the records even if the individuals' names, home addresses, and other personally identifying information were redacted. The Department's response asserted that [redacted] son was not involved in the incidents documented in the records, and there is no indication from this office's review of the records that he was present during those incidents. [redacted] appears to contend in her reply that the Department may not withhold the records after it acknowledged their existence, but the mere acknowledgement of the records did not waive the Department's ability to withhold the substance of the records to protect the subjects' privacy interests. Further, in light of the extensive exempt information in the records, they cannot be meaningfully redacted and therefore the records may be withheld in full. *See Copley Press, Inc. v. City of Springfield*, 266 Ill. App. 3d 421, 427 (4th Dist. 1994) (concluding that public body properly withheld records that could not be "meaningfully redacted to avoid the disclosure" of exempt information). Accordingly, on balance, the Department has sustained its burden of demonstrating by clear and convincing evidence that the withheld records are exempt from disclosure in their entireties pursuant to section 7(1)(c) of FOIA.[3]

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at LHarter@atg.state.il.us or (217) 524-7958.

Very truly yours,

[redacted]

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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[3]In her reply, [redacted] asked this office if her attorney could subpoena the withheld records. However, because the Public Access Counselor is not [redacted] attorney, and because this office's authority is limited to resolving alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2016)), this office cannot provide [redacted] with legal advice she seeks.