



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 17, 2021

PUBLIC ACCESS OPINION 21-002
(Request for Review 2020 PAC 65525)

FREEDOM OF INFORMATION ACT:
Police Records Concerning Sexual
Offenses Against Minors Allegedly
Perpetrated by Adults

Ms. Susan Sarkauskas
Staff Writer
Daily Herald Media Group
95 West Algonquin Road
Arlington Heights, Illinois 60005

Ms. Phyllis Severson
Records Supervisor
Village of Bartlett Department of Police
228 South Main Street
Bartlett, Illinois 60103

Dear Ms. Sarkauskas and Ms. Severson:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons discussed below, this office concludes that the Village of Bartlett (Village) Department of Police (Department) did not violate the requirements of FOIA by denying Ms. Susan Sarkauskas' FOIA request seeking records concerning an alleged sexual offense against a minor which did not result in an arrest or criminal charges.

BACKGROUND

On October 2, 2020, Ms. Sarkauskas, on behalf of the Daily Herald Media Group, submitted a FOIA request to the Department via the Village's online FOIA Center seeking copies

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of "any records regarding a complaint or allegation made involving [a named person], and also any involving Trinity Church of the Nazarene, in 2018, 2019 and 2020."¹

On October 14, 2020, the Department denied the request in its entirety pursuant to sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(c) (West 2018), as amended by Public Acts 101-434, effective January 1, 2020; 101-452, effective January 1, 2020; 101-455, effective August 23, 2019). In conjunction with section 7(1)(a), the Department cited the Juvenile Court Act of 1987 (JCA) (705 ILCS 405/1-1 *et seq.* (West 2018)), stating that "all Juvenile data must be redacted from all records prior to release."² The Department also quoted section 5-905(2) of the JCA (705 ILCS 405/5-905(2) (West 2018)), which provides that "[i]nformation identifying victims and alleged victims of sex offenses, shall not be disclosed or open to public inspection under any circumstances." The Department further stated: "We cite the above exemptions for denial of your request as we believe there is no way to effectively redact documents requested without disclosing exempted information."³

In two e-mails transmitted on November 2, 2020, Ms. Sarkauskas submitted a Request for Review contesting the Department's denial.⁴

On November 5, 2020, the Public Access Bureau sent a copy of the Request for Review to the Department. Along with a copy of the Request for Review, the Public Access Bureau also sent the Department a letter requesting unredacted copies of the withheld records for this office's confidential review, and a detailed written explanation of the legal and factual bases for the asserted exemptions.⁵

On November 13, 2020, the Village's attorney provided this office with a response on behalf of the Village and a copy of the requested records.⁶ On November 16, 2020,

¹Village of Bartlett, Certification, Request for Public Records under Freedom of Information Act (October 2, 2020).

²Letter from Phyllis Severson, Records Supervisor, Department of Police, Village of Bartlett, to reporter Susan Sarkauskas (October 14, 2020), at [1].

³Letter from Phyllis Severson, Records Supervisor, Department of Police, Village of Bartlett, to reporter Susan Sarkauskas (October 14, 2020), at [2].

⁴E-mails from Susan Sarkauskas, Staff Writer, Daily Herald Media Group, to Public Access [Bureau, Office of the Attorney General] (November 2, 2020).

⁵Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Phyllis Severson, Records Supervisor, Village of Bartlett Department of Police (November 2, 2020).

⁶E-mail from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua Jones (November 13, 2020).

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this office forwarded a copy of the Village's answer to Ms. Sarkauskas and notified her of her opportunity to reply to the Village's answer.⁷ On November 25, 2020, Ms. Sarkauskas submitted replies in three separate e-mails.⁸

On December 31, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to February 17, 2021, pursuant to section 9.5(f) of FOIA.⁹

ANALYSIS

Section 1 of FOIA (5 ILCS 140/1 (West 2018)) declares that it is "the public policy of the State of Illinois that all persons are entitled to 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 consistent with the terms of this Act." Under FOIA, "[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 2018).

Section 7(1)(a) of FOIA and the JCA

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Additionally, section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2018), as amended by Public Acts 101-013, effective June 12, 2019; 101-027, effective June 25, 2019; 101-081, effective July 12, 2019; 101-221, effective January 1, 2020; 101-236, effective January 1, 2020; 101-375, effective August 16, 2019; 101-377, effective August 16, 2019; 101-452, effective January 1, 2020; 101-466, effective January 1, 2020; 101-600, effective December 6, 2019; 101-620, effective December 20, 2019) exempts from disclosure "[i]nformation which is or was prohibited from disclosure by the Juvenile Court Act of 1987."

⁷Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Susan Sarkauskas, Staff Writer, Daily Herald Media Group (November 16, 2020).

⁸E-mails from Susan Sarkauskas, Staff Writer, Daily Herald Media Group, to Joshua Jones (November 25, 2020, 11:13 a.m., 11:23 a.m., and 1:04 p.m.).

⁹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Susan Sarkauskas, Staff Writer, Daily Herald Media Group, and Kelly A. Coyle, Clark Baird Smith LLP (December 31, 2020).

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In its answer to this office, the Village's attorney stated that "[t]he requested report details allegations involving the sexual abuse of a minor."¹⁰ The Village argued that it is "required to withhold this information pursuant to the Juvenile Court Act," because section 5-905(2) of the JCA provides that "information identifying victims and alleged victims of sex offenses, shall not be disclosed or open to public inspection under any circumstances." (Emphasis in original.)¹¹ In reply, Ms. Sarkauskas disputed the applicability of the JCA, stating that "the alleged offender is an adult, and was an adult at the time of the complaint."¹²

The JCA governs the "[i]nspection, copying, and disclosure of juvenile law enforcement records maintained by law enforcement agencies[.]" 705 ILCS 405/1-7(A) (West 2018). Subsection 1-3(8.2) of the JCA (705 ILCS 405/1-3(8.2) (West 2018)) defines "juvenile law enforcement record" to include:

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, 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. (Emphasis added.)

Additionally, Article 5 of the JCA (705 ILCS 405/5-101 *et seq.* (West 2018)), which contains the specific section the Department cited in support of its denial, expressly applies to "delinquent minors." Section 5-105(3) of the JCA (705 ILCS 405/5-105(3) (West 2018)) defines "delinquent minor" as "any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance." Section 5-905(1) of the JCA (705 ILCS 405/5-905(1) (West 2018)) provides that the "[i]nspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been investigated, arrested, or taken into custody before his or her 18th birthday shall be restricted to the following and when necessary

¹⁰Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 1.

¹¹Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 1.

¹²E-mail from Susan Sarkauskas, Staff Writer, Daily Herald Media Group, to Joshua Jones (November 25, 2020, 11:13 a.m.).

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for the discharge of their official duties[.]" The Act then lists various authorized parties who are permitted to have access to the indicated law enforcement records. The ensuing subsection, which the Department cited, provides in full: "Information identifying victims and alleged victims of sex offenses, shall not be disclosed or open to public inspection under any circumstances. Nothing in this Section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing his or her identity." 705 ILCS 405/5-905(2) (West 2018).

In context, subsection 5-905(2) of the JCA prohibits disclosure of information identifying victims and alleged victims of sex offenses *committed by minors*. Law enforcement records concerning criminal offenses perpetrated or allegedly perpetrated by adults against minors are not within the scope of the JCA's protections. Ill. Att'y Gen. Pub. Acc. Op. No. 20-008, issued December 21, 2020, at 8 ("the JCA does not prohibit disclosure of police reports concerning a minor who is an alleged victim, unless the suspect or perpetrator is also a juvenile."). This office's review of the records in question confirmed that they involve a minor alleged victim and an adult suspect. Accordingly, the Village did not sustain its burden of proving by clear and convincing evidence that the responsive records are exempt from disclosure under section 7(1)(a) of FOIA based on the JCA.

This office notes, however, that section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/3 (West 2018)) addresses, among other things, the confidentiality of law enforcement records involving the investigation of a criminal sexual offense where a child is the victim or alleged victim. It provides, in pertinent part:

Notwithstanding any other law to the contrary, **inspection and copying of law enforcement records maintained by any law enforcement agency** or circuit court records maintained by any circuit clerk relating to any investigation or proceeding pertaining to a criminal sexual offense, by any person, except a judge, state's attorney, assistant state's attorney, psychologist, psychiatrist, social worker, doctor, parent, parole agent, aftercare specialist, probation officer, defendant or defendant's attorney in any criminal proceeding or investigation related thereto, **shall be restricted to exclude the identity of any child who is a victim of such criminal sexual offense or alleged criminal sexual offense.** (Emphasis added.)

Accordingly, information identifying children who are victims or alleged victims of criminal sex offenses is exempt from disclosure pursuant to section 7(1)(a) of FOIA based on section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act.

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Section 7(1)(b) of FOIA

In support of its denial of records, the Village also cited section 7(1)(b) of FOIA, which exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." "Private information" is defined as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. 5 ILCS 140/2(c-5) (West 2018).

The responsive records contain certain information that falls within the plain language of this definition, such as home addresses and home or personal telephone numbers. However, although section 7(1)(b) exempts from disclosure discrete information that could properly be redacted, section 7(1)(c), as discussed below, exempts the records in their entireties.

Section 7(1)(c) of FOIA

In its FOIA denial response, the Department also asserted section 7(1)(c) as a basis for withholding the requested records. 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." 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."

A public body's assertion 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 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). 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).

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In its answer to this office, the Village argued that the responsive records are exempt from disclosure under section 7(1)(c) because "[i]t is axiomatic that sexual abuse allegations are incredibly sensitive, and disclosing information regarding those involved, particular[ly] for minors, constitutes an unwarranted invasion of privacy."¹³ The Village further argued that "[t]here are numerous examples of Illinois taking extra precautions when it comes to maintaining the confidentiality of child sexual abuse information[.]" referencing the Privacy of Child Victims of Criminal Sexual Offenses Act. As noted above, that Act provides that the dissemination of law enforcement records "shall be restricted to exclude the identity of any child who is a victim of [a] criminal sexual offense or alleged criminal sexual offense." 725 ILCS 190/3 (West 2018). The Village claimed that "it would be nearly impossible for the Village to redact the report to remove any information that could be used to identify the minor."¹⁴ Moreover, the Village argued that "the report is additionally exempt from disclosure on the basis of Section 7(1)(c) as information regarding the suspect is identified throughout the report."¹⁵ Because "[t]he suspect was never arrested[.]" * * * any information disclosed which could lead to his/her identification would be incredibly invasive and an unwarranted invasion of privacy."¹⁶

In her replies, Ms. Sarkauskas did not directly reference section 7(1)(c), instead she stated that "the victim has chosen to file a lawsuit - albeit as a 'Jane Doe' - accusing [the person named in her FOIA request] of abusing and assaulting her, including giving her 'a loathsome disease,' according to her petition to file as a 'Jane Doe.'"¹⁷ Ms. Sarkauskas further stated that "[t]he victim filed the lawsuit as an adult."¹⁸

Under the first factor of the four-factor balancing test, Ms. Sarkauskas is a Staff Writer for the Daily Herald Media Group. Although she did not state her personal interest in the responsive records, to the extent she seeks to report news concerning the responsive records, her

¹³Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 1.

¹⁴Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 2.

¹⁵Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 2.

¹⁶Letter from Kelly A. Coyle, Clark Baird Smith LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (November 13, 2020), at 2.

¹⁷E-mail from Susan Sarkauskas, Staff Writer, Daily Herald Media Group, to Joshua Jones (November 25, 2020, 11:23 a.m.).

¹⁸E-mail from Susan Sarkauskas, Staff Writer, Daily Herald Media Group, to Joshua Jones (November 25, 2020, 11:23 a.m.).

interest aligns with the public interest in disclosure. There is no indication, however, that the public interest in disclosure is particularly strong. FOIA evinces the strong public interest in arrests in general, as section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2018), as amended by Public Act 101-433, effective August 20, 2019) requires police departments to disclose basic information about each arrest within 72 hours. See Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7. Further, "[t]he public has an interest in monitoring law enforcement to ensure it is acting in the public's interest." *McGee v. Kelley*, 2017 IL App (3d) 160324, ¶18, 95 N.E.3d 1179, 1183 (2017). On the other hand, there is a lesser public interest in disclosure of information about an incident that did not result in an arrest. The person named in Ms. Sarkauskas' FOIA request is not a public figure, nor an employee or representative of the church identified in the request. The public interest in disclosure of the actual details of an alleged sexual offense under such circumstances is even weaker. *McGee*, 2017 IL App (3d) 160324, ¶18, 95 N.E.3d at 1183 (finding the public interest in disclosure of the details of a sexual offense to be "slight"). When the alleged victim is a minor, the public interest in such details is at its lowest.

The only information provided to this office indicating a potential public interest in disclosure of the particular records at issue is the alleged victim's lawsuit. Her petition to file as a "Jane Doe," however, indicates a substantial interest in safeguarding her personal privacy. Information regarding a victim of a sexual offense is inherently highly personal. The invasion of personal privacy is particularly acute when the victim is a minor. This office's review of the records confirmed that they contain extensive highly personal information about the alleged victim when she was a minor. The records are replete with details about the alleged sexual offense. Under these circumstances, redactions would not suffice to avoid a severe invasion of the alleged victim's personal privacy. Moreover, as to the alleged perpetrator, 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. U.S. Dep't of Justice*, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (quoting *American Civil Liberties Union v. U.S. Dep't of Justice*, 655 F.3d 1, 7 (D.C. Cir. 2011)); see also Ill. Att'y Gen. Pub. Acc. Op. No. 16-009, issued November 7, 2016, at 16 (disclosure of information identifying suspect of a crime who had not been arrested or charged would constitute a clearly unwarranted invasion of personal privacy). Because the suspect is a private citizen who has not been arrested or charged with a criminal offense, disclosure of the records would constitute a significant invasion of the suspect's personal privacy.

As to the fourth factor, it is plausible that Ms. Sarkauskas could gain substantial insight into the contents of the responsive records by monitoring the legal proceedings and interviewing relevant parties. Although courts in some jurisdictions have recognized that otherwise exempt information is subject to disclosure if the requester demonstrates that is in the public domain, Ms. Sarkauskas has made no showing that the alleged victim's lawsuit contains

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information derived from the police report or that such information is otherwise publicly available. *Davis v. U.S. Dep't of Justice*, 968 F.2d 1276, 1280 (D.C. Cir. 1992) (plaintiff "has the burden of showing that there is a permanent public record of the exact portions he wishes.").

Weighing the four factors together, it is clear that disclosure of the records would constitute a clearly unwarranted invasion of personal privacy. The significant personal privacy interests of the alleged victim, who was a minor at the time of the alleged offense, and the suspect, who was not arrested or charged with a crime, outweigh the relatively weak public interest in disclosure. Therefore, the Village sustained its burden of proving by clear and convincing evidence that the responsive records are exempt from disclosure under section 7(1)(c) 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 October 2, 2020, Ms. Susan Sarkauskas, on behalf of the Daily Herald Media Group, submitted a FOIA request to the Department seeking copies of records regarding a complaint or allegation against a named person, and any records involving Trinity Church of the Nazarene, in 2018, 2019, and 2020.

2) On October 14, 2020, the Department denied the request in its entirety pursuant to sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA. In conjunction with section 7(1)(a), the Department cited the Juvenile Court Act of 1987 (JCA), specifically quoting section 5-905(2) of that Act.

3) In two e-mails transmitted on November 2, 2020, Ms. Sarkauskas 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 2018)).

4) On November 5, 2020, the Public Access Bureau sent a copy of the Request for Review to the Department and requested unredacted copies of the withheld records for this office's confidential review, and a detailed written explanation of the legal and factual bases for the asserted exemptions.

5) On November 13, 2020, the attorney for the Village provided this office with the requested materials.

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6) On November 16, 2020, this office forwarded a copy of the Village's answer to Ms. Sarkauskas and notified her of her opportunity to reply. On November 25, 2020, Ms. Sarkauskas submitted three e-mails in reply.

7) On December 31, 2020, this office extended the time within which to issue a binding opinion by 30 business days, to February 17, 2021, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Section 5-905(2) of the JCA provides that "[i]nformation identifying victims and alleged victims of sex offenses, shall not be disclosed or open to public inspection under any circumstances." In context, this provision pertains to information identifying victims and alleged victims of sex offenses committed by minors. Because it is undisputed that the suspect in this matter was an adult at the time of the alleged offense, the JCA is not a basis upon which to withhold the requested records.

9) However, section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act prohibits disclosure of information in law enforcement records which identifies a child who is a victim or alleged victim of a criminal sexual offense. Therefore, certain information in the responsive reports is exempt from disclosure pursuant to section 7(1)(a) of FOIA based on section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act.

10) The Village properly asserted section 7(1)(b) of FOIA, which exempts from disclosure "private information" within the records, as defined in section 2(c-5) of FOIA. However, only certain information contained in the responsive records may be withheld under section 7(1)(b).

11) 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." Under the four-factor balancing test used by the Illinois courts to assess personal privacy claims, Ms. Sarkauskas' personal interest and the public interest in disclosure are weak compared to the personal privacy interests of both the alleged victim and the suspect. The Village sustained its burden of proving by clear and convincing evidence that the responsive records are exempt from disclosure under section 7(1)(c).

Therefore, it is the opinion of the Attorney General that the Village of Bartlett Department of Police did not violate the requirements of FOIA by denying Ms. Susan Sarkauskas' Freedom of Information Act request.

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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 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Village of Bartlett Department of Police as defendants. *See* 5 ILCS 140/11.5 (West 2018).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

cc: Ms. Kelly A. Coyle
Clark Baird Smith LLP
6133 North River Road, Suite 1120
Rosemont, Illinois 60018

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-002) upon:

Ms. Susan Sarkauskas
Staff Writer
Daily Herald Media Group
95 West Algonquin Road
Arlington Heights, Illinois 60005
ssarkauskas@dailyherald.com

Ms. Phyllis Severson
Records Supervisor
Village of Bartlett Department of Police
228 South Main Street
Bartlett, Illinois 60103
c/o shughes@vbartlett.org

Ms. Kelly A. Coyle
Clark Baird Smith LLP
6133 North River Road, Suite 1120
Rosemont, Illinois 60018
kcoyle@cbslawyers.com

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 Springfield, Illinois on February 17, 2021.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548