IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

MANCINI LAW GROUP, P.C., Plaintiff, v. SCHAUMBURG POLICE DEPARTMENT, Defendant.	Case No. 2017 CH 13881 Calendar 03 Honorable Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Plaintiff, Mancini Law Group, P.C.'s Motion for Partial Summary Judgment and Defendant, the Schaumburg Police Department's Cross-Motion for Summary Judgment. For the reasons that follow, Plaintiff's motion is denied and Defendant's cross-motion is granted.

BACKGROUND

On July 13, 2017, Plaintiff, Mancini Law Group ("Mancini"), submitted a request, pursuant to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*, to the Village of Schaumburg (the "Village") through its police department seeking copies of "any and all traffic accident reports for motor vehicle accidents occurring in Schaumburg between 6/30/17 and 7/13/17." The request acknowledged that the Village could redact the driver's license number, license plate, and date of birth of the parties involved.

The Village responded to the FOIA request on August 7, 2017, granting in part and denying in part the request. The Village informed Mancini that private information is exempt from disclosure pursuant to Section 7(1)(b) of FOIA. As such, the home addresses, home phone numbers, driver's license numbers, and license plate numbers were redacted from the requested records. The names of the persons involved in accidents, both drivers or witnesses, however, were not redacted. The Village also redacted dates of birth and insurance policy numbers from the requested records pursuant to Section 7(1)(c) of FOIA.

On October 17, 2017, Mancini filed a one-count complaint (the "Complaint") against Defendant, the Schaumburg Police Department (the "Department"), alleging that the Department willfully and intentionally failed to produce un-redacted copies of the requested records in violation of FOIA. Mancini seeks, among other things, a declaration that the Department violated FOIA.

The Department filed an Answer denying the material allegations of the Complaint, as well as an Affirmative Defense that the Department properly the redacted home addresses, personal telephone numbers, license plate numbers, and driver's license numbers of individuals on the accident reports pursuant to 5 ILCS 140/7(1)(b) and 140/7(1)(c).

Mancini, in turn filed a motion for partial summary judgment and the Department filed a cross-motion for summary judgment. These fully briefed motions are before the Court.

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016); *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 691 (1st Dist. 1999). That is, summary judgment is appropriate when there is no dispute as to any material fact but only as to the legal effect of the facts. *Dockery v. Ortiz*, 185 Ill. App. 3d 296, 304 (2d Dist. 1989). The purpose of summary judgment is not to try a question of fact, but to determine whether one exists. *Id.* The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Medow v. Flavin*, 336 Ill. App. 3d 20, 28 (1st Dist. 2002). While the non-moving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment under the applicable law. *Pielet v. Pielet*, 407 Ill. App. 3d 474, 490 (2d Dist. 2010). In ruling on a motion for summary judgment, the court is required to strictly construe all evidentiary material submitted in support of the motion for summary judgment and liberally construe all evidentiary material submitted in opposition. *Kolakowski v. Voris,* 83 Ill. 2d 388 (1980).

In order to prevail on a motion for summary judgment in a FOIA case, the public body has the burden of showing that its search was adequate and that any withheld documents fall within a FOIA exemption. *BlueStar Energy Services, Inc. v. Illinois Commerce Commission*, 374 Ill. App. 3d 990, 996 (1st Dist. 2007). "Affidavits or declarations supplying facts indicating that the agency has conducted a thorough search and giving reasonably detailed explanations why any withheld documents fall within an exemption are sufficient to sustain the agency's burden." *Id.* at 996-97.

Where cross-motions for summary judgment are filed, the parties acknowledge that only a question of law is at issue and invite the court to decide the issues based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). However, even where parties file cross-motions for summary judgment, the court is not obligated to grant summary judgment. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 949 (2d Dist. 2009). It is possible that neither party alleged facts, even if undisputed, that were sufficient to warrant judgment as a matter of law. *Id.* It is also possible that, despite the parties' invitation to the court to decide the issues as questions of law, a genuine issue of material fact may remain. *Id.*

DISCUSSION

Mancini argues that it is entitled to partial summary judgment[1] because there is no genuine issue of material fact that the Department failed to produce all non-exempt records. In a FOIA case, notes Mancini, the party bearing the burden of proof is the public body, in this case, the Department. The Department, asserts Mancini, must come forward with clear and convincing evidence that it has produced all non-exempt records. Mancini maintains that the Department has not satisfied its burden.[2]

The Department counters that Mancini's motion for partial summary judgment should be denied, and that its own motion for summary judgment should be granted because there is no genuine issue of material fact that the Village properly redacted personal information from the responsive records pursuant to Sections 7(1)(b) and 7(1)(c) of FOIA.[3]

Section 7(1)(b), asserts the Department, applies in this case as that section provides that private information is exempt under FOIA unless disclosure is required under another FOIA provision, state or federal law or a court order. Nothing in FOIA, insists the Department, requires the release of an address in an accident report. Nor is there, according to the Department any state or federal law that requires accident reports or the personal information identified in the Village's response to be provided to Mancini. In fact, notes the Department, the Illinois Vehicle Code (the "Vehicle Code") expressly states that accident reports are confidential, citing 625 ILCS 5/11-412. Further, asserts the Department, courts interpreting the Vehicle Code have found that the Vehicle Code requires "drivers or the police to report accident to a governmental authority under certain circumstances," but it does not require disclosure of such reports to the public, citing *Pavone v. Law Offices of Anthony Mancini, Ltd.*, 205 F. Supp. 3d 961, 968 (N.D. Ill. 2016).

In addition, contends the Department, the Attorney General's Office has also issued Public Access Counselor opinions that confirm that home addresses, driver's license numbers, personal phone numbers, and license plate numbers of individuals can be redacted from traffic accident reports pursuant to Section 7(1)(b) of FOIA, citing Att'y Gen. PAC Req. Rev. Ltr. 34767, issued August 12, 2016, and Att'y Gen PAC Req. Rev. Ltr. 33047, issued May 4, 2015.

Section 7(1)(c), contends the Department, is also an inapplicable exemption in this case. Section 7(1)(c), notes the Department, exempts from disclosure "personal 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," citing 140/7(1)(c). Not only is a birthdate personal information exempted by FOIA from disclosure, asserts the Department, there is no legitimate public interest for someone

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[1] Mancini entitles its motion as a motion for "partial" summary judgment and similarly refers to it as such in its reply/response to the Department. However, nowhere in Mancini's motion does it indicate what portion of its Complaint it seeks to "partially" move on. The Court construes the motion to exclude Mancini's request for a declaration that the Department willfully and intentionally violating FOIA.

[2] Mancini does not submit any exhibits in its opening motion.

[3] In support of its motion, the Department submits various Public Access Counselor opinions by the Illinois Attorney General.

to obtain an individual's date of birth. Similarly, argues the Department, insurance policy numbers are recognized as personal information under FOIA that can be redacted pursuant to Section 7(1)(c). In addition, notes the Department, the Illinois Attorney General's Office has determined that insurance policy numbers are part of a private contractual relationship between an individual and the insurance company and an individual's right to privacy in these personal details outweighs any legitimate public interest in obtaining the information, citing Att'y Gen. PAC Req. Rev. Ltr 33047 issued May 4, 2015, Att'y Gen. PAC Pre-Auth. 17547, issued June 7, 2010, and Att'y Gen. PAC Pre-Auth. 6236, issued March 22, 2010.

Mancini, in its reply, concedes that the Vehicle Code on its own does not affirmatively require disclosure of the traffic accident reports.[4] Rather, asserts Mancini, the Vehicle Code allows for the disclosure of the accident reports under FOIA, citing 625 ILCS 5/11-408(a). Had the General Assembly intended to prevent the disclosure of the accident reports, posits Mancini, it would have said so, as it did in the case of Illinois Department of Transportation ("IDOT") reports. Section 11-412, notes Mancini, explicitly states that reports of IDOT are exempt from disclosure under FOIA. As such, reasons Mancini, the Department may not redact information from the accident reports it is required to disclose.

Section 7(1)(d)(iv), argues Mancini, requires the disclosure of the traffic accident report. That section, notes Mancini, states that "traffic accident reports," "witnesses to traffic accidents," and "rescue reports" shall be provided. Section 7(1)(d)(iv)'s broad language, insists Mancini, requires the disclosure of traffic accident reports. Accepting the Department's interpretation that 7(b)(1) and 7(c)(1) allows for the redaction of nearly all information in traffic accident reports, reasons Mancini, would render the language in Section 7(1)(d)(iv) superfluous and meaningless, which is an impermissible interpretation of the statute.

Section 2.15 of FOIA, notes Mancini, actually supports his contention as it provides that "information that identifies the individual, including the name, age, address, and photographs, when available must be disclosed," citing 5 ILCS 140/2.15. This section, posits Mancini is consistent with FOIA's goal of transparency.

Further, according to Mancini, the Department's reliance on the Public Access Counselor's ("PAC") opinions for the proposition that it may redact information from traffic accident reports is misplaced because PAC opinions are not binding authority. Moreover, argues Mancini, the PAC opinions do not address the Vehicle Code, Section 7(1)(d)(iv), Section 2.15 or *Lieber v. Bd. of Trustees of S. Illinois Univ.*, 176 Ill. 2d 401 (1997) In other words, asserts Mancini, the PAC opinions do not address the law or controlling authority in this case. As to this point, Mancini insists that Illinois law requires the disclosure because voluntary disclosure in one situation precludes later claims that records are exempt from release to someone else, citing *Lieber*. For years, asserts Mancini, the Department has produced un-redacted copies of traffic accident reports to LexisNexis. LexisNexis, notes Mancini, is a third-party reseller that charges $13.00 for each report and remits $5.00 of that sum to the Department. Since the Department

[4] In support of its Reply, Mancini submits: (1) *Whitaker v. Appriss, Inc.*, No. 3-cv-826 (N.D. Ind. 2017), Ex. A; (2) a transcript of the Discovery Deposition of Jennifer Brack, August 16, 2018, Ex. B; and (3) a copy of "Law Enforcement Agency Agreement" with iyeTek LLC, Ex. C.

already discloses un-redacted traffic accident reports to a third-party, reasons Mancini, the Department must disclose un-redacted traffic accident reports to Mancini as well.

The Department replies that Mancini misinterprets the Vehicle Code. The Vehicle Code, according to the Department, does not only apply to IDOT reports, but instead, applies to all reports referenced in Section 11-412. Next, the Department contends that Mancini's arguments regarding waiver lack merit. *Lieber*, argues the Department, was decided in 1997 prior to various amendments to the FOIA statute in 2010. Second, asserts the Department, *Lieber* concerned Section 7(1)(c), not Section 7(1)(b), of FOIA. Lastly, contends the Department, Mancini, as the party asserting waiver, has the burden to establish waiver and failed to do so.

The Court turns to the relevant statute. Section I of FOIA sets forth the public policy of FOIA and provides:

> Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be 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. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.
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> The General Assembly hereby declares that it 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. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.
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> *** *** ***
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> Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.

5 ILCS 140/1 (West 2016).

The purpose of FOIA is "'to open governmental records to the light of public scrutiny.'" *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶ 13 (quoting *Bowie v. Evanston Cmty. Consol. Sch. Dist. No. 65*, 128 Ill. 2d 373, 378 (1989)). Thus, under FOIA, "public records are presumed to be open and accessible." *Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200*, 233 Ill. 2d 396, 405 (2009). Illinois courts have repeatedly emphasized the fundamental principle of public access to government records that animates FOIA. FOIA contemplates "full and complete disclosure of the affairs of government and recognizes that such disclosure is necessary to enable the people to fulfill their duties to monitor government." *Id.* Illinois's FOIA statute was modeled after the federal FOIA statute and case law interpreting the federal statute may guide Illinois courts' interpretation of the Illinois FOIA. *Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836.

The FOIA process begins when an individual requests copies of public records from a public body. See 5 ILCS 140/3(c). Section 2 of FOIA defines "public records" as:

> All records, reports, forms, writings, letter, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

5 ILCS 140/2 (West 2016).

Once a public body receives a FOIA request, it must search for and provide information responsive to the request within five business days unless an extension is requested. 5 ILCS 140/3 (West 2016). The public body must provide information responsive to the request unless the information is exempt under Section 7 of FOIA. 5 ILCS 140/7 (West 2016). Under Section 1.2 of FOIA, "any public body that asserts that a record is exempt from disclosure has the burden by clear and convincing evidence that it is exempt." 5 ILCS 140.1.2 (West 2016). Actions under FOIA arise when the public body fails to respond to the FOIA request or when the public body improperly asserts an exemption. 5 ILCS 140/11 (West 2016).

Section 11(a) of FOIA provides that a requesting party denied access to a public record may sue the public body that denied its request "for injunctive or declaratory relief." 5 ILCS 140/11(a) (West 2016). If "the court determines that that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each of occurrence." 5 ILCS 140/11(j) (West 2016).

As previously noted, courts are guided by the principle that under FOIA, public records are presumed to be open and accessible. *Illinois Education Association v. Illinois State Board of Education*, 204 Ill. 2d 456, 462 (2003). The General Assembly, however, recognized that legitimate governmental interests and private interests could be harmed by the release of certain

types of information. Accordingly, the General Assembly, in an effort to balance between the right of the public to know and the need to keep information in confidence, established exemptions to the general rule of disclosure. These exemptions are contained in section 7 of FOIA. The exemptions at issue are 7(1)(b) and 7(1)(c).

Section 7(1) of FOIA states in pertinent part:

> [T]he following shall be exempt from inspection and copying:
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> *** **** ****
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> (a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.
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> (b) Private information, unless the disclosure is required by another provision of this Act, a State or federal law or a court order.
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> (c) Personal 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. "Unwarranted invasion of 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...
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> (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:
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> (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request...

5 ILCS 140/7(1) (West 2016).

A public body must comply with a valid request for information unless one of the narrow statutory exemptions set forth in FOIA applies. *Watkins*, 2012 IL App (1st) 100632, ¶ 13 (citing *Day v. City of Chicago*, 388 Ill. App. 3d 70, 73 (1st Dist. 2009)). "If the public body seeks to invoke one of the exemptions in section 7 as grounds for refusing disclosure, it is required to give written notice specifying the particular exemption claimed to authorize the denial." *Ill. Educ. Ass'n v. Ill. State Bd. of Educ.*, 204 Ill. 2d 456, 464 (2003) (quoting *Lieber v. Bd. of Trs. of S. Ill. Univ.*, 176 Ill. 2d 401, 408 (1997), and 5 ILCS 140/9(b) (West 2016)).

Thereafter, if the party seeking disclosure of information under FOIA challenges the public body's denial in circuit court, the public body has the burden of proving that the records in question fall within the exemption it has claimed. *Id.* (citing *Lieber*, 176 Ill. 2d at 408 and 5 ILCS 140/11 (West 2016)). "To meet this burden and to assist the court in making its determination, the agency must provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." *Id.* (emphasis in original) (quoting *Baudin v. City of Crystal Lake,* 192 Ill. App. 3d 530, 537 (2d Dist. 1989)); *accord Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007, 1012 (1st Dist. 1994); *Carbondale Convention Center, Inc. v. City of Carbondale*, 245 Ill. App. 3d 474, 477 (5th Dist. 1993). "'If the public body's claims are conclusory, merely recite statutory standards, or are too vague or sweeping,' affidavits will not suffice to satisfy the public body's burden of proof." *Id.* (quoting *Illinois Educ. Ass'n v. Illinois State Bd. of Educ.*, 204 Ill. 2d 456, 469 (2003)).

Resolution of the issues presented by the parties requires an examination of FOIA and application of the rules of statutory construction. In construing FOIA, the Court is guided by familiar principles. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Wade v. City of N. Chicago Police Pension Bd.*, 226 Ill. 2d 485, 509-10 (2007). The best indication of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Caveney v. Bower*, 207 Ill. 2d 82, 88 (2003). A court must examine the language of the statute as a whole, and consider each part or section in connection with every other part or section. *Grady v. Sikorski*, 349 Ill. App. 3d 774, 776-77 (1st Dist. 2004). Where possible, courts will adopt a construction that will give effect to every word, clause, and sentence. *In re Marriage of Murphy*, 203 Ill. 2d 212, 219 (2003). Courts strive to read statutes so as not to render any portion inoperative or superfluous. *Id.* Where the statutory language is clear and unambiguous, it is unnecessary to turn to other tools of construction. *Caveney*, 207 Ill. 2d at 88. Unless a different intention is manifested, a reviewing court must give the words of a statute their plain and ordinary meaning. *Estate of Heanue v. Edgcomb*, 355 Ill. App. 3d 645, 649 (2d Dist. 2005).

The Department argues that traffic accident reports may be redacted to remove any private information, citing 7(1)(b) and 7(1)(c). The Department, as the public body, has the burden of proving that the requested records fall within the exemptions it has asserted. The Court addresses each in turn.

EXEMPTION 7(1)(b)

The first exemption asserted by the Department is Section 7(1)(b). This exemption exempts information that is "[private] information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." 5 ILCS 140/7(1)(b) (West 2016).

FOIA defines "private information" as:

> ...[U]nique identifiers, including a person's social security number, driver's license number, employee identification, 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 2016).

Mancini requested "any and all traffic accident reports for motor vehicle accidents occurring in Schaumburg between [June 30, 2017] and [July 13, 2017]." These reports contain the telephone numbers, home addresses, personal license plate numbers, and insurance policy numbers of those individuals involved in a traffic accident. Under Section 2(c)(5) of FOIA, home or personal telephone numbers, home addresses and personal license plates constitute "private information." 5 ILCS 140/2(c)(5). Therefore, unless the disclosure of "private information" is required by another FOIA provision, state or federal law, as indicated in Section 7(1)(b), that information is exempt.

Mancini maintains that Section 11-408 of the Vehicle Code and Section 7(1)(d)(iv) of FOIA require disclosure of the private information. Section 11-408 of the Illinois Vehicle Code, entitled "Police to report motor vehicle accident investigations," governs a law enforcement officer's duties to prepare a written report following motor vehicle accident investigations. Section 5/11-408 states, in pertinent part:

> (a) Every law enforcement officer who investigates a motor vehicle accident for which a report is required by this Article or who prepares a written report as a result of an investigation either at the time and scene of such motor vehicle accident or thereafter by interviewing participants or witnesses shall forward a written report of such motor vehicle accident to the Administrator on forms provided by the Administrator under Section 11-411 [625 ILCS 5/11-411] within 10 days after investigation of the motor vehicle accident, or within such other time as it is prescribed by the Administrator. Such written reports and the information contained in those reports required to be forwarded by law enforcement officers shall not be held confidential by the reporting law enforcement officer or agency. The Secretary of

> State may also disclose notations of accident involvement maintained on individual driving records...

625 ILCS 5/11-408 (West 2016).

A plain reading of 11-408 reveals that under this section, an officer investigating a traffic accident is required to file a detailed report with the Department of Transportation and the Secretary of State. Section 11-408 further provides that the traffic accident reports and the information contained therein shall not be held confidential by the reporting law enforcement officer or agency. This Court construes this language as prohibiting the officer or the law enforcement agency from refusing to provide the report or the information contained therein to the Department of Transportation or the Secretary of State on the basis of confidentiality. The Court does not read it as a requirement that traffic accident reports or the private information contained therein must be disclosed under FOIA. See *Pavone v. Law Offices of Anthony Mancini Ltd.*, 205 F. Supp. 3d 961 (N.D. Ill. 2016).

Section 11-412 of the Vehicle Code supports the Court's reasoning. Section 11-412 of the Illinois Vehicle Code governs the confidentiality of motor vehicle accident reports. Section 11-412 states in relevant part:

> (a) All required motor vehicle accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department and the Secretary of State ...except that the Administrator or the Secretary of State or the Commission may disclose the identity of a person involved a motor vehicle accident when such identity is not otherwise known or when such person denies his presence at such motor vehicle accident and the Department shall disclose the identity of the insurance carrier, if any, upon demand. The Secretary of State may also disclose notations of accident involvement maintained of individual driving records.
> (b) Upon written request, the Department shall furnish copies of its written accident reports or any supplemental reports to federal, State, and local agencies that are engaged in highway safety research and studies and to any person or entity that has a contractual agreement with the Department or a federal, State, or local agency to complete a highway safety research and study for the Department or the federal, State, or local agency. Reports furnished to any agency, person, or entity other than the Secretary of State or the Illinois Commerce Commission may be used only for statistical or analytical purposes and shall be held confidential by that agency, person, or entity. *These reports shall be exempt from inspection and copying under the Freedom of Information Act* and shall not be used as evidence in any trial, civil or criminal, arising out of a motor vehicle accident... .

625 ILCS 11-412 (West 2016) (emphasis added).

Section 11-412 of the Vehicle Code expressly precludes from disclosure traffic accident reports. As such, the Court finds that the Vehicle Code does not mandate disclosure of either traffic accident reports or "private information" contained within those reports.

Mancini insists that traffic accident reports are not exempt, but also must be disclosed, citing Section 7(1)(d)(iv). The Department, on the other hand, maintains that Section 7(1)(d)(iv) does not mandate disclosure. Rather, reasons the Department, Section 7(1)(d)(iv) merely prevents a public body from relying on Section 7(1)(d)(iv) to withhold the identities of witnesses to accidents. The Court disagrees with the Department's interpretation.

Section 7(1)(d)(iv) expressly exempts:

> (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:
>
> (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; *except that the identities of witnesses to traffic accidents, traffic accident reports*, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request...

5 ILCS 140/7(1)(d)(iv) (West 2016) (emphasis added).

Under the plain language of Section 7(d)(1)(iv), neither the identity of witnesses to traffic accidents nor the traffic accident reports themselves are exempt from disclosure. FOIA's exemptions to disclosure are to be construed narrowly so as not to detract from the intended statutory purpose. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006). The Department's interpretation of Section 7(1)(d)(iv) expands the scope of the exemption in contravention to FOIA's stated purpose.

Further, the Court notes that the Department has not argued that the traffic accident reports are exempt under Section 7(1)(d)(iv). Rather, the Department's position is that it may redact private information from traffic accident reports. The Court agrees with this interpretation and finds that the Department has satisfied its burden, by clear and convincing evidence, that it may redact "private information" from the traffic accident reports. While the Court could end its analysis at this juncture, it will proceed to consider the Department's proffered Section 7(1)(c) exemption.

EXEMPTION 7(1)(c)

The Department argues that the Village properly redacted the dates of birth and policy account numbers pursuant to Section 7(1)(c).

Section 7(1)(c) expressly exempts:

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

5 ILCS 140/7(1)(c) (West 2016).

Section 7(1)(c)'s exemption applies only to "unwarranted" invasions of personal privacy, not just any invasion of personal privacy. Mancini, in its reply, notes that in order to alleviate the Department's concerns, it does not object to the redaction of the driver's license numbers and birth dates from the traffic accident reports. Therefore, the only issue remaining is whether the Village's redaction of the insurance policy numbers constitutes a clearly unwarranted invasion of the personal privacy of those motorists involved in traffic accidents in Schaumburg during the relevant time period.

The Department argues that insurance policy numbers are personal information under FOIA that can be redacted pursuant to Section 7(1)(c). An insurance policy number, asserts the Department, can be attributed to a certain individual and therefore be classified as personal. The Department cites an Attorney General PAC opinion for the proposition that an insurance policy is part of a contractual relationship between an individual and an insurance company and the public has no legitimate interest in that information. Mancini counters that the Attorney General opinion is not binding on this court and, notwithstanding this, the PAC opinion involved a different FOIA exemption.

To determine whether disclosure would constitute an unwarranted invasion of personal privacy, courts consider: (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 information. *National Association of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010). Neither party addressed these factors in their respective briefs.

In applying these factors, the Court finds that disclosure of the insurance policy numbers would constitute an unwarranted invasion of privacy. Mancini's motion fails to articulate its

interest in the disclosure of the insurance policy numbers of motorists involved in traffic accidents. Thus, the public interest in the disclosure is negligible at best, and disclosure would not advance the core purpose of FOIA, "'to open governmental records to the light of public scrutiny.'" *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶ 13 (quoting *Bowie v. Evanston Cmty. Consol. Sch. Dist. No. 65*, 128 Ill. 2d 373, 378 (1989)). On the other hand, the invasion of personal privacy is significant. "An individual's interest in personal privacy is not limited to his or her interest in keeping personal facts private." *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 500 (1994). Rather, the privacy interest encompasses the individual's control of information concerning his or her person. *Id.* at 502.

Further, while the Court agrees with Mancini that the Public Access Opinion[5] is not binding on this Court, the Court agrees with the reasoning articulated by the Attorney General's Office, namely that an insurance policy is part of a contractual relationship between an individual and an insurance company, and the public has no legitimate interest in that information. Indeed, at no point in its brief does Mancini articulate any public interest relating to the disclosure of such private information. In sum, disclosure of an individual's insurance policy number would constitute an unwarranted invasion of the individual's personal privacy.

Last, the Court addresses Mancini's claim that since the Department has provided un-redacted copies of traffic accident reports to LexisNexis, it cannot refuse to provide these records to Mancini, citing *Lieber v. Bd. of Trustees of S. Illinois Univer.*, 176 Ill. 2d 401, 413 (1997). The Department counters that *Lieber* has been overruled by a subsequent amendment to FOIA and that in any event, *Lieber* involved Section 7(1)(b), not Section 7(1)(c).

At the outset, the Court notes that Mancini raises the issue of voluntary disclosure for the first time in its reply. In fact, Mancini not only raises it for the first time there, but also submits evidence in support of this new argument, to which the Department did not object nor address. The Court notes, generally, that arguments raised for the first time in a reply brief are discouraged and not considered. See, *e.g.* Ill. S. Ct. R. 341(h)(7) (eff. Nov. 11, 2017) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing"). While it is the Department's burden to establish that all applicable exemptions apply in this case, it is nevertheless still Mancini's burden on its own motion for summary judgment to raise what it views to be any relevant arguments as to why the Department cannot prove that it properly exempted the requested materials. As demonstrated in Mancini's opening motion for summary judgment, Mancini did not raise the issue of voluntary disclosure under *Lieber*:

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[5] Pursuant to Section 9.5 of FOIA, any person "whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General." 5 ILCS 140/9.5(a) (West 2016). Interestingly, while not mentioned by either party, Section 9.5 prohibits this option to any person who seeks to inspect or copy a public record for a commercial purpose as defined further in the statute. See 5 ILCS 140/9.5(b).

Nonetheless, any opinion issued by the Public Access Counselor is binding *only* upon the requestor and the public body, subject to administrative review pursuant to Section 11.5 of FOIA. 5 ILCS 140/9.5(f).

> It is undisputed that [the Department] is a public body and that Mancini made requests for records that were denied in whole or in part. As discussed above, [the Department] must prove, by clear and convincing evidence, that anything withheld is exempt from disclosure under the statute. Mancini will address [the Department's] evidence and arguments once they are provided *in response* to this motion.

Pl. Mot. Summ. Judg., p. 5. (emphasis added).

On this basis alone, the Court could choose not to consider Mancini's contentions regarding *Lieber* and voluntary disclosure. However, given the Department's acquiescence, the Court will address the substance of the argument.

The Court first examines *Lieber.* In *Lieber*, the plaintiff requested the names and addresses of individuals who had been accepted to attend Southern Illinois University, a public university. The university asserted that the information was exempt from disclosure because, among other reasons, it constituted personal information maintained with respect to students or other individuals receiving educational services from a public body. *Lieber*, 176 Ill. 2d at 406. The trial court granted the university's motion for summary judgment and the plaintiff appealed. The appellate court reversed, finding in part that the university had failed to meet its burden of showing that the requested information was exempt.

The Illinois Supreme Court affirmed. The court found that the names and addresses of the students constituted basic information that did not rise to the level of "personal information" considered "private" or "confidential" as intended by the legislature. *Id.* at 412. In addition, the court found that while the university insisted that the names and addresses of students were private and must be protected from disclosure, the university disclosed the same requested information to other groups. The court found that "the only reason the university has treated [the plaintiff] differently is that he is in direct competition with the university for what is apparently a dwindling freshmen housing market." *Id.* at 413.

The Court agrees with Mancini that the 2010 amendments to FOIA, specifically 5 ILCS 140(7), are not relevant to the issue before the Court.[6] Nor is the Court persuaded that this amendment overrules *Lieber*. The Court also finds the Department's contention that *Lieber* is inapplicable unpersuasive. The Department argues that the FOIA exemption in *Lieber* is distinguishable from the ones asserted here. However, Mancini does not cite *Lieber* for a specific FOIA exemption; rather, Mancini cites *Lieber* for the proposition that voluntary disclosure by a public body to one entity precludes the public body from denying the records to another.

However, the Court nonetheless still finds *Lieber* distinguishable from the instant action. In *Lieber*, the university *selectively* and voluntarily disclosed the disputed requested information

[6] Pursuant to Public Act 96-542, FOIA was amended in 2010 to provide that: "When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, *the public body may elect to redact* the information that is exempt. The public body shall make the remaining information available for inspection and copying." 5 ILCS 140(7)(1) (emphasis added). Other changes included the creation of the Public Access Counselor. *Id.*

to other third parties on a routine basis, while here, there is no evidence of the Department voluntarily or selectively releasing such information previously requested by Mancini to other third parties. Rather, any disclosure by the Village is to comply with Illinois law. Specifically, the Village is statutorily mandated to provide similar information, namely un-redacted accident reports, to Lexis Nexis to comply with the Vehicle Code's mandatory reporting requirements. See Pl. Mot. for Summ. Judg., Dep. of Jennifer Brack, Ex. B., 10:3-8, 21:11-24, 22:1-4. The Court finds that this disclosure to LexisNexis does not rise to the level of selective, voluntary disclosure articulated in *Lieber* and thus does not find any waiver of the asserted exemptions by the Village.

Accordingly, the Court finds that the Department has met its burden in establishing that there is no genuine issue of material fact that the Village properly redacted personal information from the responsive records pursuant to Sections 7(1)(b) and 7(1)(c) of FOIA. Accordingly, Mancini has not met its burden in establishing that the Department failed to produce all non-exempt records under FOIA.

CONCLUSION

For the foregoing reasons, Plaintiff, Mancini Law Group, P.C.'s Motion for Partial Summary Judgment is denied, and Defendant, the Schaumburg Police Department's Cross-Motion for Summary Judgment is granted.

ENTERED:

ENTERED
JUDGE FRANKLIN ULYSES VALDERRAMA-1968
APR 29 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Franklin U. Valderrama, Judge Presiding

DATED: April 29, 2019