

**KTJ**

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## LEGAL ALERT

### **DISCIPLINARY RECORDS OVER (4) YEARS OLD NOT SUBJECT TO RELEASE UNDER FOIA**

An Illinois appellate court has held that certain disciplinary records of public employees are not subject under FOIA. The Court held that disciplinary records which are over (4) years old are not subject to disclosure under FOIA due to express protections set forth for such records under the Illinois Personnel Records Review Act

A detailed summary of the decision of the Appellate Court in *Johnson V. Joliet Police Department*, is set forth herein.

A copy of the Appellate Court decision in *Johnson v Joliet Police Department* is available at:

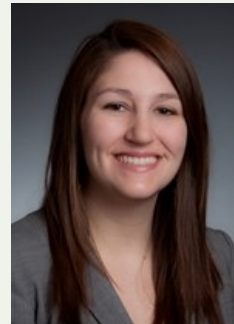
[\*Johnson v Joliet Police Department\*](#)

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The Third District Appellate Court held in *Johnson v. Joliet Police Department*, that a public body could withhold disciplinary records more than four (4) years old under FOIA. 2018 IL App (3d) 170726. The basis for this decision lies within the language of the Personnel Records Review Act, 820 ILCS 40/1 et seq.

In reaching its decision, the Appellate Court relied on Section 7.5(q) of FOIA, which exempts from disclosure “information prohibited from being disclosed by the Personnel Records Review Act.” The Appellate Court looked at the language of the Personnel Records Review Act, specifically Section 8 of the Personnel Records Review Act. Section 8 of the Review Act provides that “An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.” 820 ILCS 40/8 (West 2016).

This case distinguished the case of *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, and *Watkins v. McCarthy*, 2012 IL App (1st) 100632, emphasizing that those cases involved requests for citizen complaint registers and not disciplinary action. As such, complaints that are more than four (4) years old should still be produced, with redactions. Finally, this case did not provide any clarification as to whether the investigative records associated with the complaint and ultimate discipline are exempt from disclosure, if the discipline is more than four (4) years old. This issue is currently being considered by the Public Access Counselor and you should consult your KTJ attorney prior to responding to this type of FOIA request.