

LEGAL ALERT

PAC FINDS COPIES OF “UNFOUNDED” COMPLAINTS AGAINST PUBLIC EMPLOYEE HAVE TO BE DISCLOSED

In response to a FOIA request the Metropolitan Reclamation District of Greater Chicago (MWRD) denied access to 2 complaints made against a police officer and the final investigatory reports which resulted. MWRD claimed disclosure of the complaints and reports would constitute an unwarranted invasion of personal privacy due to the fact that the investigations into the claims resulted in the complaints being considered unfounded and meritless. The Public Access Counselor concluded that since FOIA requires records to be produced which directly bear on the public duties of an employee, such complaints and reports were subject to disclosure, even when unfounded.

A more detailed summary of the PAC opinion and reasoning is included below.

A copy of the full PAC binding opinion is available at:

[Public Access Opinion 18-018](#)

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Inside This Issue

Link to full decision.....1

*Summary of PAC
Decision 18-018.....2-3*

PAC Findings and Conclusions.....3

SUMMARY OF PAC DECISION 18-018 (DECEMBER 31, 2018)

Background

A local newspaper made a request to the MWRD for records concerning complaints of misconduct against a former District police officer. The District responded by denying the request as to two complaints and the final investigatory reports involving the officer. The District initially claimed the documents were exempt from disclosure since they were records relating to the adjudication of employee grievances or discipline. The newspaper appealed the denial to the Public Access Bureau of the Illinois Attorney General. The newspaper asserted that investigations into allegations of misconduct against law enforcement officers are not subject to exemption as unwarranted invasions of personal privacy, since such investigations relate to the public duties of a public employee. In its written position statement defending its decision, the MWRD indicated that there had been no actual adjudication of either of the complaints because "after thorough investigation, both complaints were considered to be unfounded and without merit". The District then added in its position statement that the records should also be exempt because disclosure would be an unwarranted invasion of personal privacy by damaging the employee's reputation with unfounded accusations of misconduct.

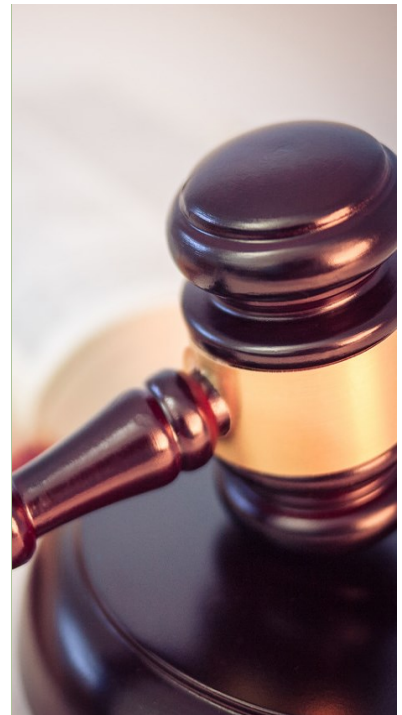
MWRD Position

The MWRD in its response noted that one of the complaints involved was made by another employee and that the investigation showed there was no evidence to substantiate the allegation. The investigation of the other complaint, made by a member of the public, resulted in a determination that the officer's actions had been appropriate and reasonable. On that basis, the MWRD took the position that:

"unfounded accusations against an individual undoubtedly would be objectionable, and constitute an absolute invasion of privacy to a reasonable person if disclosed to any requestor. ... Releasing reports of unfounded allegations to any requestor would be embarrassing to [the police officer] and besmirch an otherwise unblemished career."

Position of [Newspaper] Entity Seeking Release of Records

The newspaper asserted that allegations of misconduct against a law enforcement officer cannot be exempt and must be released, relying on the Illinois appellate decision in *Gekas v. Williamson*, 393 Ill. App. 3d 573 (4th Dist. 2009). The *Gekas* court considered whether records related to citizen complaints against a deputy sheriff were exempt from disclosure under a prior version of section 7(1)(c). The court held that FOIA required that records



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concerning alleged wrongdoing in the course of the law enforcement officer's public duties were subject to disclosure regardless of whether the underlying allegations had merit. (See also *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶ 25, 980 N.E.2d 733, 741 (2012))

PAC FINDINGS AND CONCLUSIONS

Based on the allegations and circumstances regarding this request, the PAC found:

- Section 7(1)(c) of FOIA exempts personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- The PAC noted that the FOIA standard for determining what is an "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 PAC emphasized that FOIA specifically provides that the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.
- The records at issue concern two complaints against a named police officer alleging improper conduct while on duty.
- The District's investigations determined that "there is no evidence to substantiate the employee complaint" and that in the other incident the officer's actions were "appropriate and reasonable".
- Since these records directly bear on the police officer's public duties, the fact that they were "meritless" or "unfounded" does not exempt them from disclosure as an unwarranted invasion of personal privacy.
- The complainants' identifying information may be redacted pursuant to section 7(1)(c) because disclosure of that information would constitute a clearly unwarranted invasion of the complainants' personal privacy.