



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

August 2, 2010

Lisa Madigan
ATTORNEY GENERAL

Ms. Mary Baudino
Freedom of Information Act Officer
Will County Coroner's Office
57 North Ottawa Street
Suite 412
Joliet, IL 60432

RE: FOIA Pre-Authorization Request – 2010 PAC 5223

Dear Ms. Baudino:

We have received and reviewed the written notice from Will County (County) of its intention to deny the disclosure of autopsy reports relating to [REDACTED]

[REDACTED] Ms. Becky Schlikerman of the SouthtownStar had requested any and all autopsy records for these individuals, who were murdered at a Lane Bryant store in Tinley Park on February 2, 2008. The County asserts that these documents are exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA) because they contain "personal information, the disclosure of which would result in a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c). The County also asserts that the autopsy reports are exempt from disclosure under other FOIA provisions, but we will not discuss those exemption claims because FOIA does not provide for the Public Access Counselor to preauthorize exemption claims under those provisions.

The autopsy records relating to the deaths of the Lane Bryant murder victims consist of five written autopsy reports, copies of which have been provided to this office for review. As discussed below, after considering the balancing test required under Section 7(1)(c) exemption, we conclude that the five autopsy reports are not exempt from disclosure under this provision, although several sentences may properly be redacted as will be discussed more fully below.

The Illinois General Assembly amended FOIA by enacting Public Act 96-542 effective January 1, 2010. The legislative history shows that the General Assembly intended the amendments to improve transparency in government and increase access to public records. Remarks of Sen. Raoul, May 28, 2009, Senate Debate on Senate Bill No. 189 at 41. With respect to Section 7(1)(c), the amendments set forth in Public Act 96-542 were intended to narrow and clarify the personal privacy exemption which "has been identified as the most abused" FOIA exemption. Remarks of Rep. Madigan, May 27, 2009, House Debate on Senate Bill No. 189, at 93.

Ms. Mary Baudino
August 2, 2010
Page 2

Under the amended version of Section 7(1)(c), the following is exempt from disclosure by public bodies:

(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 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(c). Thus, a public body seeking to rely on this exemption must show: 1) that the information is highly personal or that disclosure would be highly objectionable to a reasonable person; and 2) that the subject's right to privacy outweighs any legitimate public interest in obtaining the information. *Id.* Under Section 1.2 of FOIA, the public body has the burden of proving a claimed exemption by clear and convincing evidence. 5 ILCS 140/1.2.

In these circumstances, the privacy interests at stake are those of the family members of the murder victims. Although Illinois reviewing courts have not yet addressed the issue of whether a decedent's family members have a personal privacy interest in documents relating to the decedent's death that may be considered in determining whether disclosure of such information would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c) of FOIA, cases decided under the Federal FOIA and freedom of information laws from other states do recognize that family members have a privacy interest in records relating to a close relative's death, including death-scene images. *See National Archives & Records Administration v. Favish*, 541 U.S. 157 (2004) (a decedent's surviving family members have a personal privacy interest under Federal FOIA in death-scene images of close relatives); *Katz v. National Archives & Records Administration*, 862 F. Supp. 476 (D.D.C. 1994) *aff'd* 68 F.3d 1438 (D.C. Cir. 1995) (recognizing Kennedy family's privacy interests under the Federal FOIA in autopsy photographs of President Kennedy); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (recognizing the privacy interest of a murder victim's mother in crime scene photographs).

The language of section 7(1)(c) and the legislative debates regarding Public Act 96-542 contain no indication that the General Assembly intended to reject the established case law recognizing the privacy interests of surviving close relatives of a decedent. Accordingly, those interests

Ms. Mary Baudino
August 2, 2010
Page 3

should be considered in determining whether the release of autopsy records constitutes a clearly unwarranted invasion of personal privacy.

Under Section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information. 5 ILCS 140/7(1)(c). We have examined all five autopsy records carefully and determined that the privacy interests of surviving family members do not justify withholding the autopsy reports in their entirety especially in light of the strong public interest in obtaining information about the Lane Bryant murders.

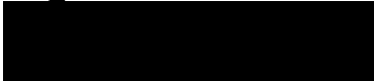
Several sentences in the autopsy reports, however, do contain personal medical or other information about the decedents that is unrelated to the cause of death and which may properly be redacted under Section 7(1)(c). We have determined that the disclosure of this information would constitute an unwarranted invasion of personal privacy. The type of information contained in these sentences is highly personal and its release would be objectionable to a reasonable person. In addition, we have determined that the surviving family members' right to privacy outweighs any legitimate public interest in obtaining this information, which, as noted above, is unrelated to the cause of death. In order to preserve the family's privacy interests, the specific redactions authorized will be provided only to you.¹

Therefore, the request to assert the exemption under Section 7(1)(c) is hereby denied except to the extent noted above. If you have any questions, please feel free to contact me at 312-814-2770. This correspondence will serve to close the matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


John Schmidt
Assistant Attorney General

cc: Ms. Lauren Fitzpatrick
SouthtownStar
6901 West 159th Street
Tinley Park, IL 60477

¹ Enclosed with this letter are the approved redactions highlighted in yellow. Only the public body will receive the enclosure.