

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 18, 2011

Nicole Wickham, FOIA Officer
Aurora Police Department
1200 E. Indian Trail
Aurora, IL 60505-1896

RE: FOIA Pre-Authorization Request - 2011 PAC 14156

Dear Ms. Wickham:

We have received and reviewed the written notice from the Aurora Police Department (APD) of its intention to deny certain information as exempt from disclosure under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). The APD is seeking to redact dates of birth from the requested documents.

On May 10, 2011, [REDACTED] submitted a FOIA request for all records pertaining to [REDACTED] as a victim of domestic violence or domestic battery, including pictures related to these offenses as well as 911 tapes. In its written notice, the APD asserts that dates of birth are exempt from disclosure under section 7(1)(c) of FOIA.

Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal 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." The exemption 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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

The APD's use of the exemption in section 7(1)(c) for the dates of birth is **approved**. We have determined that the APD has met its initial burden to demonstrate that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy.

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This type of information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information. *See, e.g., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. §552(b)(6)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and "would constitute a clearly unwarranted invasion of personal privacy"); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, ___ S.W.3d ___, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

Accordingly, the APD may issue a partial denial letter and release the reports with the dates of birth redacted, if it has not already done so.

The APD also indicates that it intends to redact additional information from the records pursuant to sections 7(1)(b) and 7(1)(d)(iii) (5 ILCS 140/7(1)(b), (d)(iii) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010) of FOIA. Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than sections 7(1)(c) and 7(1)(f) (5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010), we make no determination at this time regarding the applicability of any other exemptions.

If you have any questions about FOIA, please contact us at (877) 299-FOIA. This correspondence shall serve to close this matter.

Very truly yours,


DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

cc:

