



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

Lisa Madigan  
ATTORNEY GENERAL

June 22, 2010

Ms. Jennifer Hoyle  
FOIA Officer  
City of Chicago Department Law  
City Hall, Room 600  
Chicago, Illinois 60602

RE: FOIA Pre-Authorization Request – 2010 PAC 5602

Dear Ms Hoyle:

We have reviewed the documents that our Office received on February 23, 2010 with respect to your notice of intention to withhold certain information pursuant to Section 7(1)(c) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on January 13, 2010, [REDACTED] submitted a FOIA request to the City of Chicago Department of Law seeking the following information:

1. The name, age, sex, race and title (including division of employment), of each attorney promoted, hired or offered employment in any position (including unpaid positions) with the Department of Law from January 1, 2008 until the present;
2. For each such individual employed by the Department of Law, his or her initial and current salary or hourly rate if he or she is no longer employed by the Department of Law; or his or her initial and final salary or hourly rate if he or she is no longer employed by the Department of Law;
3. For each individual employed or offered employment as an Assistant Corporation Counsel; reflecting the qualifications for employment, including but limited to education, bar admission, and prior work experience; and
4. The name of each individual placed in the Assistant Corporation Counsel "hiring pool" on or after January 1, 2008; the current status of each such individual with respect to such "hiring pool" and all policies with respect to such "hiring pool."

On January 29, 2010, CCLD submitted a pre-authorization request with our Office, asserting that the names of the job applicants who had not been hired and the race of each attorney are highly personal in nature and may be properly withheld pursuant to Section 7(1)(c), which 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

disclosure is consented to in writing by the individual subjects of the information.” 5 ILCS 140/7(1)(c). The exemption defines “[u]nwarranted 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.” *Id.*

On February 8, 2010, our Office approved CCLD’s decision to withhold the names of job applicants who the City did not hire. Our Office concluded that the right to privacy of Department of Law applicants who had not been hired by the City outweighed the public’s legitimate interest in knowing the names of the applicants.

We also determined, however, that further inquiry was required as to the issue of the race of the CCLD employees. On February 23, 2010, CCLD supplied us with a detailed written analysis as to why race is exempt under Section 7(1)(c) and supported its argument by citing to *CBS v. Partee*, 198 Ill.App.3d 936 (1<sup>st</sup> Dist. 1990).

### **Determinations**

CCLD’s request for approval of its decision to withhold information concerning the race of Department of Law employees pursuant to Section 7(1)(c) is approved. It is our determination that CCLD, relying on *CBS v. Partee*, 198 Ill.App.3d 936 (1<sup>st</sup> Dist. 1990), has met its burden under Section 7(1)(c) and may withhold information regarding the race of Department of Law employees.

In *CBS*, the Court considered whether disclosure of the race of each Cook County Assistant State’s Attorney would amount to an unwarranted invasion of the personal privacy of the Assistant State’s Attorneys within the meaning of FOIA. The Court held that “it cannot be said, as a matter of law, that the Assistant State’s Attorneys, or any public employees, for that matter, have no reasonable expectation that their racial identification will not be made the subject of a public debate.” 198 Ill. App. 3d at 945. “To the contrary, they have a reasonable expectation that they will have some say as to ‘when, how or to what extent [such] information about them is communicated to others.’” *Id.* (quoting *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 109 S.Ct. 1468, 1477 n. 16 (1989)).

Based on this analysis, CCLD has met its burden under Section 7(1)(c) and may withhold the information regarding the race of the Department of Law employees. This correspondence shall serve to close this matter.

If you have any questions or concerns, please contact me at (312) 814-5383.

Sincerely,

Cara Smith  
Public Access Counselor

By:

Matthew C. Rogina  
Assistant Public Access Counselor

CC:

