



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 5, 2010

Via E-Mail & U.S. Mail
Ms. Jennifer Hoyle
Director of Public Affairs
City of Chicago Department of Law
City Hall, Room 600
121 North LaSalle Street
Chicago, Illinois 60602

RE: Pre-Authorization Request – 2010 PAC 6072

Dear Ms. Hoyle:

We have received and reviewed the March 2, 2010, written notice (Notice) from the City of Chicago (City) of its intent to deny disclosure of certain records as exempt from disclosure under subsection 7(1)(c) of the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, as amended (FOIA).

██████████ e-mailed a FOIA request to the City on February 22, 2010, seeking copies of "all applications for the vacant 1st and 29th ward Alderman positions advertised by the city including but not limited to copies of the cover letter, resumes, and letters of recommendation for all applicants." The City asserted in its Notice that it intends to deny this request pursuant to 5 ILCS 140 140/(1)(c). In support of this assertion, the City stated in its Notice:

Individuals who apply for positions with the City of Chicago have an expectation of privacy and a trust that their names and personal information will not be shared with outside individuals or entities. To release the requested information would be a violation of that trust and potentially cause them irreparable harm which could include the loss of their current jobs. Additionally, release of this information could adversely impact the City of Chicago's ability to attract qualified and

capable applicants if it is understood that any third party, even current employers, could request and receive a list of job applicants.

The City's use of the subsection 7(1)(c) exemption with regard to these records is denied. Subsection 7(1)(c) of FOIA exempts from inspection and copying "personal information, 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." 5 ILCS 140/7(1)(c). 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." *Id.*

In this case, the City has failed to establish either that disclosure of the information in these job application packets would be highly personal or objectionable to a reasonable person or that the applicants' right to privacy outweighs any legitimate public interest in obtaining information about the people seeking appointment to this public office. City aldermen are public officials who represent the residents of their ward in the City Council. Once appointed, aldermen who wish to remain in the position eventually must submit valid nominating petitions to qualify for the ballot and be elected to a four-year term by the voters of their ward. *See* 65 ILCS 20/21-22(a), 21-28. When this public office becomes vacant, it follows that the public has a legitimate interest in knowing who has applied for the position so that they may evaluate whether the individuals are qualified to represent a particular ward and discern why one applicant was appointed over others. Moreover, an applicant for a vacant aldermanic position must meet a residency requirement for representing a particular ward. *See* 65 ILCS 20/21-14. The public has a legitimate interest in evaluating whether these applicants have met that residency requirement before the vacancy is filled.

Because applying the exemption in subsection 7(1)(c) of FOIA involves a fact-based balancing test, our analysis and determination in response to notices of intent to deny other documents using this exemption, such as applications for other employment, are distinguishable. For example, in 2010 PAC 5602, a pre-authorization request that the City submitted on January 29, 2010, the City asserted, in part, that the names of applicants in its Department of Law hiring pool (who had not yet been hired) were exempt from disclosure under subsection 7(1)(c) of FOIA. In approving the City's use of this exemption with respect to this information, we concluded that the right to privacy of Department of Law applicants who have not been hired outweighs the public's legitimate interest in knowing the names of these applicants. In our application of the 7(1)(c) balancing test, we noted that disclosure of that information could jeopardize the applicants' ability to retain or secure employment, and thus could adversely impact the City's ability to attract qualified and capable applicants for those positions. Any right to privacy of applicants for aldermanic positions, however, does not outweigh the public's legitimate interest in obtaining information regarding the process for filling vacancies in the City Council.

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As such, the City should release copies of the requested application information for the positions of 1st and 29th Ward alderman directly to [REDACTED]. Should you have questions or concerns, please feel free to contact me directly at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,



Cara Smith
Public Access Counselor

cc:

