



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 9, 2011

Ms. Ann Kavanaugh
Freedom of Information Officer
Village of Schaumburg Police Department
1000 W. Schaumburg Road
Schaumburg, Illinois 60194

RE: FOIA Pre-Authorization Request – 2010 PAC 11180

Dear Ms. Kavanaugh:

We have received and reviewed the written notice from the Schaumburg Police Department of its intention to deny disclosure of certain information 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). On November 29, 2010, Ms. Sherry Fabina-Abney submitted a FOIA request to the Department for police incident report RD# 10-21536. The Department seeks to redact the alleged victim's statements and dates of birth pursuant to 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."

DETERMINATION

The Department's use of the exemption in section 7(1)(c) to redact the alleged victim's statements is **approved**. We have reviewed un-redacted copies of the police report, which pertains to a highly personal matter for which an individual was arrested but not charged. Victims expect the information they relay to law enforcement officials to be kept confidential and releasing this information would violate that trust. The alleged victim's right to privacy outweighs the public interest in obtaining this information. Accordingly, we conclude that the Department has met its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

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

The Department indicates that it intends to redact additional information from the records pursuant to section 7(1)(b) and section 7(1)(d)(iv) (5 ILCS 140/7(1)(b), (d)(iv) (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.

Accordingly, the Department may release the redacted records to Ms. Fabina-Abney in accordance with this letter, if it has not already done so. If you have any questions, please do not hesitate to contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,


STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

SS: nr

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cc: Ms. Sherry A. Fabina-Abney
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