



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 9, 2011

Mr. Martin M. Stack
General Counsel
Cook County Sheriff's Office
50 West Washington Street
Room 704
Chicago, Illinois 60602

RE: FOIA Pre-Authorization Request – 2011 PAC 12718

Dear Mr. Stack:

We have received and reviewed the written notice from the Cook County Sheriff's Office of its intention to deny disclosure of a recording of a 911 call requested by Mr. Jeff Goldblatt of WMAQ TV pursuant to 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), because it asserts that the disclosure would constitute a "clearly unwarranted invasion of personal privacy." For purposes of FOIA, an "[u]nwarranted 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 the 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.

We have also listened to the recording of the 911 call, which the Sheriff's Office supplied after this Office sent a further inquiry letter on March 10, 2011. *See* 5 ILCS 140/9.5(c) (West 2009 Supp.). A nine-year old child made the 911 call to report an incident of domestic violence.

DETERMINATION

In *A.H. Belo Corp. v. Mesa Police Dep't*, 202 Ariz. 184, 42 P.3d 615 (2002), the Arizona Supreme Court held that a police department properly denied a television station's request for access under the Arizona Public Records Law to a 911 recording of a babysitter who reported that a sixteen-month-old child had just fallen from his crib and could be dying. The child could be heard crying and whimpering in the background on the tape. The babysitter was

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later indicted on several counts of child abuse and attempted child abuse. *A.H. Belo Corp.*, 42 P.3d at 616-17.

While recognizing that the 911 tape had broadcast value, the court stated that releasing it would not advance the central purpose of laws guaranteeing access to public records, which is to inform citizens of what the government is doing. *A.H. Belo Corp.*, 42 P.3d at 618. Furthermore, the court recognized that the child and his parents had a compelling privacy interest with regard to a recording that displayed their child's suffering. *Id.* The court stated that it could not imagine a more fundamental privacy concern "than the desire to withhold from public display the recorded suffering of [a] child." *A.H. Belo Corp.*, 42 P.3d at 619.

We agree with the Arizona Supreme Court's conclusion that there is a compelling privacy interest in a tape recording that displays a child's suffering.

The first 43 seconds of the recording contains the child's conversation with the 911 dispatcher. This portion of the recording contains information that is highly personal, consisting of a child's reaction to a horrific and tragic moment in her life. Disclosure of this portion of the 911 recording would be highly objectionable to a reasonable person under these circumstances. While there is a legitimate public interest in obtaining the portion of the 911 recording containing the child's comments, we conclude that the child's right to privacy outweighs the public interest in this instance. Release of this information could cause emotional damage to a young child who has already suffered tremendously. *See A.H. Belo Corp.*, 42 P.3d at 618-19. Accordingly, the Sheriff's Office has met its initial burden, and its request to assert section 7(1)(c) to exempt the portion of the recording of the 911 call with the child's comments is **approved**.

After the first 43 seconds of the recording, there are no comments from the child. Instead, this portion of the recording contains comments from the dispatcher and from officers who are responding to the emergency. With respect to this portion of the recording, the public interest in how public employees handle emergency situations outweighs any privacy interests that are at stake. Accordingly, although the first 43 seconds of the tape may be redacted under section 7(1)(c), the request of the Sheriff's Office to assert an exemption for the remainder of the tape is **denied**.

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If you have any questions, please contact me at 312-814-2770. This correspondence will serve to close this matter.

Very truly yours,

A solid black rectangular redaction box covering the signature of John Schmidt.

John Schmidt
Senior Assistant Attorney General
Public Access Bureau

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cc: Mr. Jeff Goldblatt
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