



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

June 9, 2011

Ms. Joanne Wessels  
FOIA Officer  
Batavia Police Department  
100 North Island Avenue  
Batavia, Illinois 60510

RE: FOIA Pre-Authorization Request - 2011 PAC 14548

Dear Ms. Wessels:

We have received and reviewed the written notice from the Batavia 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).

Tanya Petermann of Smith Amundsen, LLC, submitted a FOIA request on May 23, 2010, for a police report and related records regarding a traffic accident in Batavia. In its written notice, the Department asserts that dates of birth, autopsy photographs of the decedent, and certain information involving the decedent's family members 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."

Ms. Joanne Wessels  
June 9, 2011  
Page 2

## DETERMINATION

The Department's use of the exemption in section 7(1)(c) for the dates of birth is **approved**. We have determined that the department has met its initial burden of demonstrating that the disclosure of the 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).

Additionally, the Department's use of the exemption in section 7(1)(c) for the autopsy photographs of the decedent is **approved**. You confirmed in a telephone conversation that the police report contains 30 graphic autopsy photographs depicting the decedent's body postmortem. Autopsy photographs of this nature are highly personal, the release of which would be objectionable to reasonable persons. *See Katz v. National Archives & Records Administration*, 862 F. Supp. 476, 485-86 (D.D.C. 1994), *aff'd on other grounds*, 68 F.3d 1438 (D.C. Cir. 1995).<sup>1</sup> Moreover, a decedent's surviving family members possess their own, separate personal privacy interest in their "close relative's death-scene images" and similar records. *See National Archives & Records Administration v. Favish*, 541 U.S. 157, 170, 124 S. Ct. 1570 (2004), *rehearing denied*, 541 U.S. 1057, 124 S. Ct. 2198 (2004); *see also Katz*, 862 F. Supp. at 485-86 ("allowing access to the autopsy photographs [of President Kennedy] would constitute a clearly unwarranted invasion of the Kennedy family's privacy" under Federal FOIA. On balance, the privacy interests of the decedent's family outweigh the public's legitimate interest in obtaining the autopsy photographs of the decedent.

Finally, the Department's use of the exemption in section 7(1)(c) for the references to the decedent's family members is **denied**. The Department has failed to meet its initial burden of demonstrating that the disclosure of this information would constitute an unwarranted invasion of the family members' personal privacy.

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<sup>1</sup>When Illinois FOIA does not provide a standard by which to address an issue, Illinois courts look to federal case law for guidance because the Illinois FOIA is patterned after the federal Freedom of Information Act (Federal FOIA)(5 U.S.C.A. §552 (West 2007 & West 2009 Supp.)).

Ms. Joanne Wessels  
June 9, 2011  
Page 3

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

If you have any questions, please contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Very truly yours,

  
SARA GADOLA GALLAGHER  
Assistant Attorney General  
Public Access Bureau

14548 pre-auth al dl 7(1)(c) dob vic priv pd

cc: Ms. Tanya N. Petermann  
Smith Amundsen, LLC  
150 North Michigan Avenue  
Suite 3300  
Chicago, Illinois 60601-7524