



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 14, 2011

Mr. Jeff Fronczak
Freedom of Information Officer
Office of the President
Cook County Board of Commissioners
118 North Clark Street
Chicago, Illinois 60602

RE: FOIA Preauthorization Request- 2011 PAC 14670

Dear Mr. Fronczak:

We have received and reviewed the written notice from the Office of the President of the Board of Commissioners of Cook County of its intention to deny certain information requested by Ms. Pam Zekman of CBS as exempt from disclosure 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. Ms. Zekman requested a copy of the autopsy photograph or photographs showing the ligature mark on the decedent's neck in Medical Examiner Case No. 003. As discussed below, after considering the balancing test required under the section 7(1)(c) exemption, we conclude that the County has met its initial burden of demonstrating that any such photographs are exempt from disclosure.

DETERMINATION

A public body seeking to rely on the exemption set forth in section 7(1)(c) of FOIA must show: 1) that the requested information is highly personal or that disclosure would be highly objectionable to a reasonable person; and 2) that the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The Attorney General has recognized that surviving family members "have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which interest must be considered" in determining whether such records are exempt from disclosure under section 7(1)(c). Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 6. Under section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information.

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After carefully reviewing the materials submitted by the County, we have determined that the privacy interests of surviving family members justify withholding the photograph or photographs. By their nature, post-mortem photographs depicting a human being are "gruesome and graphic" and their disclosure would be highly objectionable to a reasonable person. *See Ill. Att'y Gen. Pub. Acc. Op. No. 10-003 at 7-10.* With respect to these photographs, the privacy interests of the surviving family members outweigh the public interest in obtaining the information. We therefore conclude that the County has met its burden of showing by clear and convincing evidence that this information is exempt, and the request to assert the exemption under section 7(1)(c) to withhold these autopsy photographs is accordingly **approved**.

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

Very truly yours,


JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

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cc: Ms. Pam Zekman
CBS2
22 West Washington St.
Chicago, Illinois 60602