



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2011

Ms. Kathleen M. Kunzer
Freedom of Information Officer
McHenry Police Department
33 South Green Street
McHenry, Illinois 60050

RE: FOIA Pre-Authorization Request – 2010 PAC 9206

Dear Ms. Kunzer:

We have received and reviewed the written notice from the McHenry 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 August 17, 2010, [REDACTED] submitted a FOIA request to the Department for police incident report No. 10-9453. The Department is seeking to withhold the report in its entirety.

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 suspects 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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

The Department's use of the section 7(1)(c) exemption to withhold information in the report is **approved in part and denied in part**. The report in question pertains to an incident for which a suspect was arrested and charged with battery. There is a legitimate public interest in examining how police officers respond to reports of this nature that compels the release of certain information while still protecting the privacy of the alleged victim.

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The Department's use of section 7(1)(c) to withhold the name of the alleged victim and all information that could be used to identify the alleged victim, including physical characteristics and relationship to other parties in the report, is **approved**. We previously have determined that disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Ill. Att'y Gen. PAC Pre-Auth. al12017, issued January 28, 2011. Given the highly personal nature of the incident, the alleged victim's privacy rights outweigh any legitimate public interest in disclosing this information. Accordingly, we conclude that the Department has sustained its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

The Department's use of section 7(1)(c) to redact the alleged victim's statement and other portions of the report which contain narrative accounts of the alleged battery or other physical contact is **approved**. We have reviewed an un-redacted copy of the report and determined that disclosure of this information would constitute a clearly unwarranted invasion of the alleged victim's personal privacy. Accordingly, we conclude that the Department has sustained its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

The Department's use of the exemption in section 7(1)(c) for dates of birth also is **approved**. We have concluded 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. 150, 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. Att'y 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 Texas Public Information Act (*see* Tex. Gov't Code §§ 552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

The remaining information in the report is not within the scope of the section 7(1)(c) exemption. In particular, we note that the Department is required to disclose the following information regarding the arrestee pursuant to section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2009 Supp.):

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(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

However, additional redactions may be available under other sections of FOIA. In particular, section 7(1)(d)(iv) exempts information to the extent that disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information" to law enforcement officials. 5 ILCS 140/7(1)(d)(iv) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. 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 issue a partial denial letter directly to Ms. Segerstorm and release the report to her with information redacted in accordance with this letter.

If you have any questions, please 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: 