



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 9, 2011

Ms. Sharon McDowell
Freedom of Information Act Officer
Village of Alsip
4500 West 123rd Street
Alsip, Illinois 60803

RE: FOIA Pre-Authorization Request – 2010 PAC 9937, 9938

Dear Ms. McDowell:

We have received and reviewed the written notice from the Village of Alsip (Village) of its intention to deny disclosure of certain information pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2009 Supp.), amended by Public Act 96-1378, effective July 29, 2010).

On September 14, 2010, [REDACTED] submitted two FOIA requests to the Village seeking copies of the entire personnel files of Lieutenant [REDACTED] and Officer [REDACTED].

On October 1, 2010, the Village submitted a Pre-Authorization Request to the Office of the Public Access Counselor with regard to both requests and sought our approval to withhold the records responsive to [REDACTED] request under section 7(1)(c) of FOIA, which 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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. Section 7(1)(c) of FOIA further provides that "*[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.*" (Emphasis added.)

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This Office initiated further inquiry on October 8, 2010. On October 21, 2010, Attorney Paul Stephanides, of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., submitted a response on behalf of the Village, supplying us with the entire personnel files of both officers. Contained in these files are records including employee evaluations, disciplinary records, resumes, academic transcripts, employee attendance forms, employee transaction notices, letters of recognition, transfer requests, employee contact information, and tuition reimbursement forms.

Subsequent to the receipt of the Village's request, section 11 of the Personnel Record Review Act (the Record Review Act) was amended to expressly exempt the disclosure under FOIA of the performance evaluations of public employees. See 820 ILCS 40/11 (West 2009 Supp.), as amended by Public Act 96-1483, effective December 1, 2010. Therefore, the Village may withhold any employee performance evaluations of Lt. [REDACTED] and Officer [REDACTED] pursuant to section 11 of the Record Review Act and section 7.5(q) of FOIA (5 ILCS 140/7.5(q) (West 2009 Supp.)).

Because the pre-authorization process under section 9.5(b) of FOIA (5 ILCS 140/9.5(b) (West 2009 Supp.)) is limited to reviewing assertions of section 7(1)(c) and section 7(1)(f) exemptions, we will not consider the applicability of any other exemptions raised in [REDACTED] letter at this point.¹

DETERMINATIONS

The Village's proposed use of section 7(1)(c) to withhold the entire personnel files of Lt. [REDACTED] and Officer [REDACTED] is **approved** in part and **denied** in part.

The Illinois Appellate Court has previously concluded that records that concern a disciplinary matter involving a public employee clearly relate to the public duties of that employee, and the disclosure of those records therefore cannot be said to be an invasion of privacy pursuant to section 7(1)(c). *Gekas v. Williamson*, 393 Ill. App. 3d 573 (4th Dist. 2009). In *Gekas*, the Court considered the applicability of the privacy exemption with regard to a FOIA request seeking the disclosure of citizen complaints filed against a deputy sheriff. The Court analyzed the personal privacy exemption as it applied to the deputy's personnel files and decided that what a police officer did by the authority of his or her badge does not have the personal connotations of an employment application, tax form, or a request for medical leave. *Gekas v. Williamson*, 393 Ill. App. 3d at 584.

¹ Mr. Stephanides argues that the disciplinary records are also exempt pursuant to 7(1)(n) of FOIA which allows a public body to withhold "records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." 5 ILCS 140/7(1)(n) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

Similarly, all records in this matter concerning disciplinary matters involving Officer [REDACTED] and Lt. [REDACTED] clearly relate to their public duties and, therefore, are not exempt pursuant to section 7(1)(c).²

After reviewing the remaining records in the personnel file, we determine that the records relate to the public duties of Lt. [REDACTED] and Officer [REDACTED] and may not be withheld in their entirety pursuant to section 7(1)(c). The Village may redact information in the employee attendance forms that disclose any personal information beyond the general description of the category of absence taken. The privacy interests of the employees with respect to their specific circumstances for taking leave outweighs the public's general interest in the disclosure of that information. Although the public may have a legitimate interest in verifying whether a public employee's compensated time is properly accounted for, there is no compelling public interest in the disclosure of the specific nature of an employee's illness or whether he or she plans to travel for vacation. *See* 2010 PAC 10606 (Ill Att'y Gen. PAC Pre-Auth al dl 10606, issued November 19, 2010, at 2).

Further, the Village may redact any signatures, names of emergency contacts of the employees, beneficiary information, and dates of birth contained in the records pursuant to section 7(1)(c).

Finally, the Village may withhold any academic transcripts contained in the personnel files that *pre-date* Lt. [REDACTED] and Officer [REDACTED] employment with the Village. Transcripts that pre-date an individual's employment with a public body and include detailed information concerning classes taken and grades received that have no direct relationship to the employee's public duties can be considered highly personal. Thus, although college transcripts may play a role in the hiring of public employees, they contain significant information that does not bear on their public duties. *See* 2010 PAC 6419 (Ill Att'y Gen. PAC Pre-Auth al 6419, issued June 16, 2010, at 2).

Academic transcripts and records, however, of any courses that were taken by Lt. [REDACTED] and Officer [REDACTED] during their employment with the Village pursuant to the Village's tuition reimbursement program must be disclosed to the requester. These records relate to the public duties of the employee and clearly fall within the provisions of section 2.5 of FOIA (5

²The Department may redact the names of any complainants or individuals who provided information to the Department in the disciplinary matters involving Lt. McGreal and Officer Franey pursuant to section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2009 Supp.), as amended by Public Act 96-1378, effective, July 29, 2010) which exempts from inspection and copying information that 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 administrative, investigative or law enforcement or penal agencies."

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ILCS 140/2.5 (West 2009 Supp.)), which provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."

In sum, the Village has not met its burden of demonstrating that the personnel files of Officer [REDACTED] and Lt. [REDACTED] are exempt in their entirety under section 7(1)(c) of FOIA. Accordingly, the Village must disclose these records, with the redactions described above, to [REDACTED]

If you have any questions, you may contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,

[REDACTED]
MATTHEW C. ROGINA /
Assistant Attorney General
Public Access Bureau

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cc: [REDACTED]