



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

August 24, 2010

P.O. Rory P. O'Brien # 7818
Assistant FOIA Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Pre-approval Request – 2010 PAC 6137

Dear Officer O'Brien:

We have received from the Chicago Police Department (CPD) a written notice of its intention to assert the Section 7(1)(c) exemption in response to a Freedom of Information Act (FOIA) request dated February 16, 2010 submitted by Mick Dumke (Requester), Associate Editor with the Chicago Reader. The request sought:

1. A copy of CPD's electronic records of general information about each homicide committed in 2008, including the address and time of the incident, the beat it occurred in, the cause of death, the case number and code, the type of crime, any secondary crime type associated with it, and additional categorization (e.g. gang-related, domestic, etc.);
2. Copies of CPD's electronic records for these homicides that shows available information about the victim and perpetrator, including name, age, race/ethnicity, gender, gang affiliation, home address, and, if available, citizenship status;
3. Electronic records showing the status of the investigation into each homicide (i.e., whether it has been cleared, cleared by arrest, cleared exceptionally, etc.)

CPD has indicated that it intends to withhold "the names and addresses of 2008 homicide victims and perpetrators" as exempt under Section 7(1)(c) of FOIA.

Determinations

Section 7(1)(c) of the Freedom of Information Act permits a public body to withhold “[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” That provision further defines an “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.” It also 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.”

We have determined that CPD has not met its burden to justify redacting the names of the 2008 homicide victims. As a general principle, victims of crimes have a personal privacy interest in the release of information identifying them as such, which may justify the application of Section 7(1)(c) of FOIA to withhold the victim’s identity. The details of the crime may be highly personal, and the release of the name of the victim in conjunction with the disclosure of facts regarding the crime may be highly invasive and embarrassing. When the victim of the crime is deceased as a consequence thereof, however, the personal privacy interest of the victim in the disclosure of his or her identity ceases to exist.¹ Accordingly, the release of the names of the homicide victims does not constitute an unwarranted invasion of privacy, for purposes of Section 7(1)(c) of FOIA.

With respect to the CPD’s proposed redaction of the homicide victims’ addresses, it is not necessary to determine whether these addresses are proper for redaction under Section 7(1)(c). Residential addresses are generally exempt from disclosure under Section 7(1)(b), which allows the withholding of “[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.” *See, also*, 5 ILCS 140/2(c-5) (defining “private information” to include “home address[es] . . . except as otherwise provided by law or when compiled without possibility of attribution to any person.”) Please note that FOIA only requires public bodies to submit a Notice of Intent to Deny and request for pre-authorization with regard to their assertions of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials). Where information is specifically exempt under other sections of the Act, public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization.

We have also determined that CPD has not met its burden to justify redacting the names and addresses of the perpetrators of these 2008 homicides, to the extent that these perpetrators have been arrested in connection with the investigation of these crimes. The fact that an individual was arrested is public information (*see, e.g.*, 5 ILCS 140/2.15) and any privacy interest at stake is outweighed by a legitimate public interest in disclosing this type of information.²

¹ It is not necessary, for purposes of this analysis, to determine the precise nature or extent of a decedent’s privacy rights. It is sufficient to note that with reference to deaths by homicide, those rights, if any, do not encompass the identity of the victim.

² To the extent that the records responsive to this request contain the names and addresses of suspects who have not been arrested in connection with the investigation of these 2008 homicides, we have determined that the release of the names and addresses of such suspects referenced in an investigation which did not lead to the arrest of those suspects would likely be objectionable to a reasonable person and that the privacy rights of any unarrested suspects outweigh any public interest in the release of their names and addresses.

If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:

Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc: Mick Dumke
Associate Editor
Chicago Reader