



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 20, 2011

Mr. Robert Morgan
Deputy General Counsel
Department of Central Management Services
201 E. Madison, Ste. 3A
Springfield, IL 62794-9208

RE: Pre-Authorization Request – 2011 PAC 13717

Dear Mr. Morgan:

We have received from the Department of Central Management Services (CMS) a notice of 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). Specifically, on April 5, 2011, Mr. Ray Long of the *Chicago Tribune* submitted a FOIA request to CMS for documents provided in response to specific subpoenas. CMS seeks to withhold workers' compensation files.

We determined that further inquiry was warranted and requested that CMS provide us with copies of the records in question in order to determine whether the section 7(1)(c) exemption applies. CMS declined to do so, claiming that disclosing the records to our office would violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Pub. L. No. 104-191, 110 Stat. 1936 (2006). However, CMS has provided us with blank copies of several forms which are commonly included in workers' compensation files.

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."

Mr. Robert Morgan
June 20, 2011
Page 2

DETERMINATION

The Department's use of the exemption in section 7(1)(c), to withhold the information in workers' compensation files is **approved in part and denied in part**. We have previously determined that disclosure of information which identifies an individual's *specific* medical condition, diagnosis, and treatment would constitute an unwarranted invasion of personal privacy under section 7(1)(c). Ill. Att'y Gen. PAC Pre-Auth. al11619, issued January 14, 2011. The subject's right to privacy outweighs any legitimate public interest in disclosure of such specific medical information. We have also determined, however, that disclosure of *general information* regarding work-related injuries would not constitute an unwarranted invasion of personal privacy. Ill. Att'y Gen. PAC Pre-Auth. al12813, issued May 12, 2011.

We note that our review of this matter is severely limited by CMS's refusal to provide copies of the actual records in question. Based on the information requested on the blank forms which CMS did provide, it appears that the withheld records consist, in part, of listings of job duties and general descriptions of injuries together with corroborating information, such as details of how injuries occurred and whether witnesses were present or medical attention was sought. Such general information is not within the scope of the section 7(1)(c) exemption. Further, general information regarding workers' compensation claims filed by State employees relates to the use of public funds and, therefore, is subject to disclosure under section 2.5 of FOIA (5 ILCS 140/2.5 (West 2009 Supp.)). Accordingly, we conclude that CMS has not sustained its initial burden of demonstrating that such information is exempt from disclosure pursuant to section 7(1)(c).

CMS's response indicates that the records in question also contain individually identifiable information concerning *specific* medical conditions, testing, and treatment. Such specific information may be redacted pursuant to section 7(1)(c).

CMS also indicates that it intends to redact additional information from the records pursuant to section 7(1)(a), section 7(1)(b), and section 7(1)(s) of FOIA (5 ILCS 140/7(1)(a), (b), (s) (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, CMS may issue a partial denial letter and release the records to Mr. Long, if it has not already done so.

Mr. Robert Morgan
June 20, 2011
Page 3

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

13717 preauth al dl emp priv sa

cc: *Via Electronic Mail*
Mr. Ray Long
RLong@tribune.com