



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 23, 2011

Mr. Benjamin P. Henning
Assistant State's Attorney
St. Clair County State's Attorney's Office
10 Public Square
Belleville, Illinois 62220

RE: FOIA Pre-Authorization Request - 2011 PAC 14690

Dear Mr. Henning:

We have received and reviewed the written notice from the St. Clair County State's Attorney's Office 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 May 17, 2011, [REDACTED] submitted seven FOIA requests to the State's Attorney's Office. These included the following requests, which have been numbered for convenience:

1. "[A]ny and all annual pension contributions and employer matching contributions for the years 2008-2010 * * * for employee ([REDACTED])."
2. "[A]ny and all Contributions to Deferred Compensation amounts for employee ([REDACTED]) for the year 2008-2010."
3. "[A]ny and all employee and employer Contributions to the IL Municipal Retirement Fund for the year 2008-2011 * * * for employee ([REDACTED])."

The State's Attorney informed us that the only pension for county employees, including [REDACTED] is the Illinois Municipal Retirement Fund (IMRF), and therefore the same information is responsive to both requests one (1) and three (3).

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The State's Attorney seeks pre-authorization to deny these requests pursuant to 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."

DETERMINATION

The State's Attorney's request to assert the exemption in section 7(1)(c) to withhold the amount of employer contributions to the IMRF is **denied**. Section 2.5 of FOIA (5 ILCS 140/2.5 (West 2009 Supp.)) provides that "[a]ll records relating to the obligation, receipt, and use of public funds * * * are public records subject to inspection and copying by the public." This provision indicates that the General Assembly recognizes a strong public interest in obtaining information about how public funds are spent. The employer's contributions to the IMRF are expenditures of public funds that are essentially part of a public employee's compensation. The employees' right to privacy does not outweigh the strong public interest in obtaining this information. We conclude that the State's Attorney has not sustained its initial burden of demonstrating that the employer contribution amounts are exempt under section 7(1)(c).

With respect to employee contributions to IMRF, section 7-173 of the Illinois Pension Code (40 ILCS 5/7-173(a) (West 2008), as amended by Public Act 96-1258, effective July 23, 2010) requires that participating employees contribute to the IMRF at a rate of 3.75% of their earnings. That section also allows employees to make optional, additional contributions of up to 10% of their earnings. Because the amount of an employee's contributions reflects the employee's choice of how much of his income to invest, we agree that this information is highly personal, and that the employee's right to privacy outweighs any legitimate public interest in this information. The amount of the employee's contributions to the IMRF, which may or may not include optional, additional contributions above the required 3.75% of his salary, do not bear on his public duties or relate to the use of public funds. For these reasons, we **approve** the State's Attorney's request to withhold the amount of employee contributions to the IMRF.

The State's Attorney's request to withhold the amount of employee contributions to a deferred compensation program is also **approved**. As discussed above, the employee's investment of his income is highly personal, and this information does not bear on his public duties or relate to the use of public funds. The employee's right to privacy outweighs any legitimate public interest in this information. Thus, the State's Attorney has sustained its initial

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burden of demonstrating that employee contributions to deferred compensation are exempt under section 7(1)(c).

The State's Attorney may issue a partial denial letter directly to [REDACTED] and provide the non-exempt information to him. If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

[REDACTED]

SARAH KAPLAN
Assistant Attorney General
Public Access Bureau

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SK:jh

cc:

[REDACTED]