



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 17, 2011

Mr. David Wiltse
City Attorney
City of Des Plaines
1420 Miner Street
Des Plaines, Illinois 60016

RE: FOIA Pre-Authorization Requests – 2011 PAC 14720, 2011 PAC 14723

Dear Mr. Wiltse:

We have received and reviewed the written notice from the City of Des Plaines 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 4, 2011, Ms. Jennifer Delgado of *The Chicago Tribune* submitted a FOIA request to the City seeking settlement agreements involving [REDACTED] and [REDACTED]. Ms. Delgado specifically requested the amount of each settlement agreement and the reasons the City agreed to pay that amount. On May 24, 2011, Mr. Todd Wessell of the *Journal & Topics Newspapers* requested the settlement agreement in the case involving [REDACTED]. In responding to both of these FOIA requests, the City seeks pre-authorization to withhold the amounts of the settlements under section 7(1)(c).

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."

DETERMINATION

The City's request to assert the exemption in section 7(1)(c) with respect to the amounts of the settlement agreements is **denied**. Section 2.20 of FOIA (5 ILCS 140/2.20 (West 2009 Supp.)) provides that "[a]ll settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted." Additionally, 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."

These two provisions indicate that the General Assembly recognizes a strong public interest in obtaining information concerning how public funds are spent, including amounts of settlement agreements. The subjects' right to privacy does not outweigh the strong public interest in obtaining the settlement amounts. We conclude that the City has not sustained its initial burden of demonstrating that the settlement amounts are exempt under section 7(1)(c).

The City also asserts that the settlement amounts are exempt under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2009 Supp.)), as amended by Public Act 96-1378, effective July 29, 2010), which exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Specifically, the City asserts that disclosure of this agreement would violate a federal court order prohibiting the parties from disclosing the terms of the settlements. Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than those in 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.

If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

Sarah Kaplan by: AA

SARAH KAPLAN
Assistant Attorney General
Public Access Bureau

Mr. David Wiltse

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cc: Ms. Jennifer Delgado
The Chicago Tribune, TribLocal
1717 Penny Lane
Schaumburg, Illinois 60173

Mr. Todd Wessell
Editor & Publisher
Journal & Topics Newspapers
622 Graceland Avenue
Des Plaines, Illinois 60016