



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 22, 2011

Ms. Heather Kruse
FOIA Officer
City of Des Plaines
City Manager's Office, Legal Division
1420 Miner Street
Des Plaines, IL 60016

RE: FOIA Pre-Authorization Request - 2011 PAC 14753

Dear Ms. Kruse:

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). The City is seeking to redact dates of birth from the requested documents.

On June 7, 2011, Apollo Casualty Company submitted a FOIA request, with regard to claim number 11E0384, for all records pertaining to IDOT Control No. U100241719 and Des Plaines Police Department Agency Crash Report Number 2011-17550. In its written notice, the City asserts that dates of birth are exempt from disclosure under section 7(1)(c) of FOIA.

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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

The City's use of the exemption in section 7(1)(c) for the dates of birth is **approved**. We have determined that the City has met its initial burden of demonstrating that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information. *See, e.g., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. §552(b)(6)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and "would constitute a clearly unwarranted invasion of personal privacy"); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, ___ S.W.3d ___, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

Accordingly, the City may issue a partial denial letter and release the reports with the dates of birth redacted, if it has not already done so.

The City also indicates that it intends to redact additional information from the records pursuant to section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010) of FOIA. 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.

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If you have any questions about FOIA, please contact us at (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,



DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

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cc: Apollo Casualty Company
1001 E. Touhy
Suite 200
Des Plaines, IL 60018