



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 27, 2011

Ms. Joanne Wessels
FOIA Officer
Batavia Police Department
100 N. Island Ave.
Batavia, IL 60510

RE: FOIA Pre-Authorization Request - 2011 PAC 14183

Dear Ms. Wessels:

We have received and reviewed the written notice from the Batavia Police Department (BPD) of its intention to deny certain information as exempt from disclosure 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 BPD is seeking to redact decedent's family information, information with regard to the removal of decedent's clothes, autopsy photos and dates of birth from the requested documents.

On May 5, 2011, Tri-County Claims Service Inc. submitted a FOIA request for all records pertaining to IDOT Control No. U100192841 and Batavia Police Department Agency Crash Report Number 2010-00022752. In its written notice, the BPD asserts that decedent's family information, information with regard to the removal of decedent's clothes, autopsy photos and 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.

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DETERMINATION

The BPD's use of the exemption in section 7(1)(c) for the redaction of decedent's family information, information with regard to the removal of decedent's clothes and autopsy photos is **approved**. We have concluded that the BPD has met its initial burden of demonstrating that the disclosure of decedent's family information, information about the removal of decedent's clothes, and autopsy photos would be highly objectionable to the reasonable person. Under these circumstances, the right to privacy outweighs any public interest in the information that the BPD intends to withhold.

The BPD's use of the exemption in section 7(1)(c) for the redaction of dates of birth is **approved**. We have determined that the BPD 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 BPD may issue a partial denial letter and release the reports with the decedent's family information, information about the removal of decedent's clothes, autopsy photos and dates of birth redacted, if it has not already done so.

The BPD also indicates that it intends to redact additional information from the records pursuant to sections 7(1)(b) and 7(1)(d)(iv) (5 ILCS 140/7(1)(b), (d)(iv) (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-FOIA. This correspondence shall serve to close this matter.

Very truly yours,

A large black rectangular redaction box covering the signature of the sender.

DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

cc: Ms. Karen Doyle
Tri-County Claims Service Inc.
2250 Point Blvd., Suite 310
Elgin, IL 60123