



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 28, 2011

Ms. Sherry Holmes
FOIA Officer
Macomb Police Department
120 S. McArthur St.
Macomb, IL 61455

RE: FOIA Pre-Authorization Request - 2011 PAC 14649

Dear Ms. Holmes:

We have received and reviewed the written notice from the Macomb Police Department 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 Department is seeking to redact suspects' names from the requested documents.

On May 31, 2011, [REDACTED] submitted a FOIA request for the report pertaining to Department Case Number 2010-009666. In its written notice, the Department asserts that suspects' names 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 Department's use of the exemption in section 7(1)(c) to redact suspects' names is **approved**. We have concluded that the Department has met its initial burden to demonstrate that the disclosure of the names of people suspected of crimes for which they were never arrested or charged would be highly objectionable to a reasonable person. Under these

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circumstances, the suspects' right to privacy outweighs any legitimate public interest in the information that the Department intends to redact from the report.

The Department may also use of the exemption in section 7(1)(c) to redact dates of birth from the requested documents. 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 Department may issue a partial denial letter and release the reports with the names of suspects and dates of birth redacted, if it has not already done so.

The Department 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.

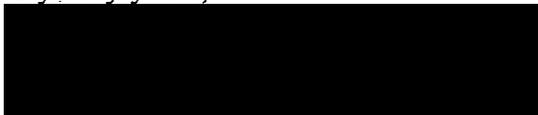
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If you have any questions about FOIA, please contact us at (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,



DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

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cc:

