



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 27, 2011

Ms. Joanne Wessels, FOIA Officer
City of Batavia Police Department
100 North Island Avenue
Batavia, IL 60510

RE: Pre-Authorization Request – 2011 PAC 15012

Dear Ms. Wessels:

We have received and reviewed the written notice from the City of Batavia Police Department (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). On June 14, 2011, [REDACTED] submitted a FOIA request for Report No. 11-10202. The Department seeks to redact a subject's name, date of birth and medical condition.

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 section 7(1)(c) 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 Department's use of the exemption in section 7(1)(c) for the subject's date of birth is **approved**. We have determined that the Department 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

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"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).

The Department's use of the exemption in section 7(1)(c) to redact the subject's name and medical condition is also **approved**. No arrests were made in connection with this report, which documents a highly personal matter pertaining to the subject's specific medical condition. Under these circumstances, the subject's right to privacy outweighs any legitimate interest in disclosure of this information. Therefore, the Department has sustained its initial burden of demonstrating that the subject's name and medical condition are exempt under section 7(1)(c).

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

If you have any questions, please contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,


STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

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cc: 