



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 12, 2011

Trooper Kerry Sutton  
Freedom of Information Officer  
Illinois State Police  
801 S. Seventh Street, Suite 1000-S  
P.O. Box 19461  
Springfield, IL 62794

RE: FOIA Pre-Authorization Request – 2011 PAC 12504

Dear Trooper Sutton:

We have received and reviewed the written notice from the Illinois State Police (ISP) 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 2010)).

On January 28, 2011, [REDACTED] submitted a FOIA request to ISP for various police records. ISP seeks to deny the release of dates of birth from various responsive records, as well as "multiple pages of phone records" under section 7(1)(c) of FOIA. ISP explained that the phone records pertain to calls made by suspects from a cell phone taken from a deceased victim, and that the records include the name(s) and phone number(s) of subscribers that received calls from the stolen phone as well as the date of the call.

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 2010).

**DETERMINATION**

After review of the materials provided and an explanatory conversation with Trooper Sutton, ISP's use of the exemption in section 7(1)(c) to redact the phone records in their entirety is **denied**. However, ISP's use of the exemption in section 7(1)(c) with regard to the

Trooper Kerry Sutton  
July 12, 2011  
Page 2

names on those phone records is **approved**. We agree that releasing this information would constitute an 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.

With regard to the personal phone numbers listed in the responsive phone records ISP may wish to apply the exemption in section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2010)). "Private information" as defined in section 2(c-5) of FOIA includes "home or personal telephone numbers". 5 ILCS 140/2(c-5) (West 2010). Because advance approval by the Public Access Counselor is not required for use of section 7(1)(b), we make no determination at this time regarding the applicability of this exemption.

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

ISP may release the redacted incident reports to Mr. Gray in accordance with this letter, if it has not already done so. If you have any questions, please contact Andres Acosta at (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,

Rebecca Riddick by: AA

REBECCA RIDDICK  
Assistant Attorney General  
Public Access Bureau

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