



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 11, 2011

Mr. Kevin Finlon
Commander-Administrator/FOI Officer
Lake Zurich Police Department
200 Mohawk Trail
Lake Zurich, Illinois 60047

RE: FOIA Pre-Authorization Request – 2011 PAC 15105

Dear Mr. Finlon:

We have received and reviewed the written notice from the Lake Zurich 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 2010)). Specifically, on June 21, 2011, [REDACTED] submitted a FOIA request for Incident Report No. 2011-03746. The Department seeks to redact a date of birth and the alleged victim's statement.

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."

DETERMINATION

The Department's assertion of the exemption in section 7(1)(c) for the 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

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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).

The Department's assertion of the exemption in section 7(1)(c) to withhold the alleged victim's statement is also **approved**. We have reviewed a copy of the alleged victim's statement, which concerns incidents of a highly personal nature which did not result in arrests or criminal charges. The alleged victim's right to privacy outweighs any legitimate public interest in disclosing this information. Therefore, we conclude that the Department has met its initial burden of demonstrating that the alleged victim's statement is exempt from disclosure under section 7(1)(c).

The Department 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 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 2010)), we make no determination at this time regarding the applicability of any other exemptions.

Accordingly, the Department may issue a partial denial letter and release the report with the date of birth and alleged victim's statement redacted, if it has not already done so.

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

STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

by EK

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