



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 19, 2011

Mr. Kevin Finlon
FOIA Officer
Village of Lake Zurich
70 East Main Street
Lake Zurich, IL 60047

RE: FOIA Pre-Authorization Request - 2011 PAC 14892

Dear Mr. Finlon:

We have received and reviewed the written notice from the Village of Lake Zurich 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)). The Village is seeking to redact dates of birth and specified statements made by the complainant from the requested document.

On June 13, 2011, [REDACTED] submitted a FOIA request for all Department records pertaining to the complaint made against Mr. Maurer by third parties on June 10, 2011. In its written notice, the Village asserts that dates of birth and specified statements made by the complainant 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 2010).

DETERMINATION

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

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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).

The Village also indicates that it intends to redact specified statements made by the complainant from the report under section 7(1)(c). We find that these statements do not constitute "personal information" under section 7(1)(c). The Village, nonetheless, may be able to deny disclosure of these statements under section 7(1)(d)(vi) which provides "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would *** endanger the life or physical safety of law enforcement personnel or any other person." 5 ILCS 140/7(1)(d)(vi) (West 2010).

Moreover, the Village indicates that it intends to redact additional information from the report 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 Village may issue a partial denial letter and release the report with the dates of birth redacted, if it has not already done so.

If you have any questions, please contact me 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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