



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

July 15, 2011

Ms. Joanne Wessels  
FOIA Officer  
Batavia Police Department  
100 N. Island Ave.  
Batavia, IL 60510

Re: FOIA Pre-Authorization Request – 2011 PAC 15360

Dear Ms. Wessels:

We have received and reviewed the written notice from the Batavia Police Department of its intention to deny certain information as exempt from disclosure under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)). The Department is seeking to withhold dates of birth, autopsy photographs, information regarding the victim's family, and information regarding the deceased's clothing.

On June 30, 2011, Ms. Monica Banet of the Law Offices of Lawrence Cozzi submitted a FOIA request to the Department seeking a copy of report 10-22752, the "completed copy of the investigation report of the accident which occurred December 24, 2010, in which a driver from Black Horse Carriers was killed." In its written notice, the Department seeks this office's approval to withhold dates of birth, autopsy photographs, and information regarding the family of the deceased victim.

**DETERMINATION**

Section 7(1)(c) 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." The exemption defines "unwarranted invasion of personal

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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).

The Department's use of the exemption in section 7(1)(c) for the dates 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 "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).

Further, the Department's use of the section 7(1)(c) exemption with regard to the autopsy photographs is **approved**. The photographs in question are of a decedent's body. After reviewing the photos in question, we have determined that the highly personal nature of these photographs outweighs any legitimate public interest in the disclosure of this information. Therefore, the Department has met its initial burden to withhold the photographs under section 7(1)(c).

Finally, the Department's use of section 7(1)(c) to withhold information regarding the victim's family and the deceased's clothing is **approved**. We have reviewed the proposed redactions and have determined that release of this information would be an unwarranted invasion of personal privacy. Any legitimate public interest that exists in this information is outweighed by the family's right to privacy. Therefore, the Department has met its initial burden to withhold this information under section 7(1)(c).

Accordingly, the Department may issue a partial denial letter and release the documents with the information redacted, if it has not already done so.

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

Very truly yours

  
REBECCA RIDDICK

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Assistant Attorney General  
Public Access Bureau

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cc: Ms. Monica Banet  
Law Offices of Lawrence Cozzi  
27201 Bella Vista Pkwy, Suite 410  
Warrenville, IL 60555