



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 27, 2011

Ms. Donna Lobaito
Village Clerk
Village of Hawthorn Woods
2 Lagoon Drive
Hawthorn Woods, Illinois 60047

RE: FOIA Pre-Authorization Request – 2011 PAC 12947

Dear Ms. Lobaito:

We have received and reviewed the written notice from the Village of Hawthorn Woods (Village) of its intention to deny disclosure of certain information pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)).

On March 7, 2011, [REDACTED] submitted a FOIA request to the Village seeking copies of W-2 forms for all Village employees for fiscal years 2009 and 2010, as well as copies of Village W-3 forms for those fiscal years. According to its March 14, 2011, notice to this office, the Village is seeking to withhold the requested documents in their entirety pursuant to section 7(1)(c) of FOIA, which 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."

On March 25, 2011, this office sent a letter to the Village asking it to elaborate on its contention that the requested records are exempt in their entirety. On April 4, 2011, the Village responded to this office by letter stating that it released the W-3 forms to [REDACTED]. Furthermore, the Village reiterated its belief that the release of W-2 forms would constitute an unwarranted invasion of personal privacy. In order to support its position, the Village cited to 2010 PAC 9280, (Ill. Att'y Gen. PAC Pre-Auth.al 9280, issued September 2, 2010) in which this

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office stated that W-2 forms are not subject to public disclosure because they constitute private information under section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2010)).

DETERMINATION

On two previous occasions, this office has addressed the issue of whether W-2 forms may be disclosed under FOIA. In 2010 PAC 9280, a requester specifically asked the public body to provide him with W-2 forms of certain employees. *See* 2010 PAC 9280 (Ill. Att'y Gen. PAC Pre-Auth. al9280, issued September 2, 2010). This office concluded that W-2 forms constituted "financial information" under section 2(c-5) (5 ILCS 140/2(c-5) (West 2010)) of FOIA. Therefore, the public body was permitted to withhold the W-2 forms in their entirety.

In 2011 PAC 12652, the requester asked a library district to provide him with information concerning the "salary paid to each employee of the Mokena Community Public Library District for each year from the year 2005 to the present." *See* 2011 PAC 12652 (Ill. Att'y Gen. PAC Pre-Auth. al12652, issued March 8, 2011). The library district asserted that its W-2 forms were the only documents in its possession that contained the requested information, and because the W-2 forms contained personal information that is exempt under section 7(1)(c) of FOIA, the W-2s could be withheld in their entirety. This office determined that the library district was required to disclose the W-2 forms, but could redact private and personal information under sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (c) (West 2010)) prior to doing so.

Salary information relating to public employees is clearly public information which must be disclosed pursuant to FOIA. In 2011 PAC 12652, the reluctance or inability of the library district to provide the requested salary information in a document or documents other than the W-2s necessarily resulted in the conclusion that the W-2s must be produced, albeit with appropriate redactions. Had the district been amenable to furnishing the salary information in a different format, it is likely that this office would have allowed the district to withhold the W-2 forms themselves under the reasoning of 2010 PAC 9280.

With respect to [REDACTED] request, the Village's assertion of section 7(1)(c) to withhold the W-2 forms in their entirety is **approved**. These circumstances are similar in all respects to those addressed in 2010 PAC 9280. Further, the Village has not refused to provide [REDACTED] with such information contained in the W-2s as might be subject to disclosure. Accordingly, this office finds that the Village has met its initial burden of demonstrating that the W-2 forms are exempt from disclosure in their entirety under section 7(1)(c).

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This correspondence shall serve to close this matter. If you have any questions, please contact me at (312) 814-5383.

Very truly yours,

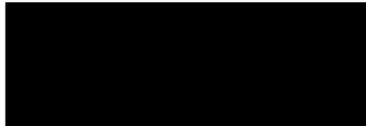
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MATTHEW C. ROGINA /
Assistant Attorney General
Public Access Bureau

MR:ah

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