



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 27, 2011

Ms. Teresa Kubalanza  
Assistant State's Attorney  
Kankakee County State's Attorney's Office  
470 E. Merchant St.  
Kankakee, IL 60901

RE: FOIA Pre-Authorization Request - 2011 PAC 15062

Dear Ms. Kubalanza:

We have received and reviewed the written notice from the Kankakee County State's Attorney's Office 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 June 16, 2011, [REDACTED] submitted a FOIA request for all records pertaining to a particular individual and a list of all information withheld by virtue of asserted privilege, confidential information or information withheld of a personal nature. In its written notice, the State's Attorney's Office asserts that dates of birth contained in the Secretary of State Driver's Abstract are exempt from disclosure under section 7(1)(c) of FOIA. The State's Attorney's Office further asserts that unofficial Illinois crash reports, police department reports containing notations, and attorneys' minutes and notes are exempt from disclosure under section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2010)).

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).

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specified record or relevant portion of a record

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shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f) (West 2010).

#### DETERMINATION

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

The State's Attorney's Office's proposed use of section 7(1)(f) to withhold the unofficial Illinois crash reports, police department reports containing notations, and attorneys' minutes and notes is **approved**. The crash reports are preliminary drafts, and not official reports for distribution. Further, reports containing notations fall within the purview of the section 7(1)(f) exemption and attorneys' minutes and notes contain opinions and recommendations for actions. Additionally, there is no evidence that these unofficial reports have been publicly cited and identified by the Kankakee County State's Attorney.

Accordingly, the State's Attorney's Office may issue a partial denial letter and release the Secretary of State Driver's Abstract with the dates of birth redacted. Additionally, the State's Attorney's Office may deny the release of unofficial Illinois crash reports, police department reports containing notations, and attorneys' minutes and notes.

The State's Attorney's Office also indicates that it intends to redact additional information from the report pursuant to sections 7(1)(a), 7(1)(b) and 7(1)(d)(i) (5 ILCS 140/7(1)(a), (b), (d)(i) (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.

If you have any questions, please contact me at (312) 814-5793. This correspondence shall serve to close this matter.

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Very truly yours,



DUSHYANTH REDDIVARI  
Assistant Attorney General  
Public Access Bureau

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cc:

