



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 6, 2011

Mr. Jay Groves
Assistant to the President
Illinois State University
Campus Box 1000
Normal, Illinois 61790

RE: FOIA Pre-Authorization Request – 2011 PAC 13949

Dear Mr. Groves:

We have received and reviewed the written notice from Illinois State University 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 April 28, 2011, [REDACTED] verbally submitted a FOIA request to the University for University Police Report No. 201125685. The University acknowledged and is responding to [REDACTED] verbal request, but seeks to withhold the dates of birth and the race, height, weight, and eye color of two individuals listed as victims.

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 suspects 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 University's use of the exemption in section 7(1)(c) for dates of birth is **approved**. We have concluded that the University has met its initial burden of demonstrating

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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. 150, 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. Att'y 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 Texas Public Information Act (*see* Tex. Gov't Code §§ 552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

The University's use of the exemption in section 7(1)(c) to redact information that identifies the race of the victims also is **approved**. Such information is highly personal, and the subjects' privacy rights outweigh any legitimate public interest in obtaining this information. Accordingly, we conclude that the University has sustained its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

The University's use of the exemption in section 7(1)(c) to withhold the height, weight, and eye color of the victims' is **denied**. The University has not redacted the names of the victims. Therefore, it is not necessary to keep general physical characteristics confidential to avoid revealing the identities of the victims. A person's height, weight, and eye color are easily observable and not highly personal. Therefore, disclosure of such information would not be objectionable to a reasonable person.

The University indicates that it intends to redact additional information from the report pursuant to section 7(1)(b) of FOIA (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 University may release the redacted police records to Mr. Martin in accordance with this letter, 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
Assistant Attorney General

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Public Access Bureau

SS: nr

13949 preauth al dl 71c sus priv univ

cc: *Via Facsimile:*

