



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 6, 2011

Ms. Amanda Schmidgall
Deputy FOIA Officer
Village of Mackinaw
P.O. Box 500
Mackinaw, Illinois 61755

RE: FOIA Pre-Authorization Request — 2011 PAC 14732

Dear Ms. Schmidgall:

We have received and reviewed the written notice from the Village of Mackinaw (Village) 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 1, 2011, [REDACTED] submitted a FOIA request for "all police and arrest reports for the month of May 2011." The Village is seeking to redact dates of birth from the reports.

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 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

Ms. Schmidgall
July 6, 2011
Page 2

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 additional information from the reports pursuant to sections 7(1)(a), 7(1)(b), 7(1)(d)(i), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(a), (b), (d)(i), (d)(iv) (West 2010)). Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than those set forth in 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 reports in accordance with this letter, if it has not already done so.

If you have any questions, please contact me at (312) 814-2770. This correspondence shall serve to close this matter.

Very truly yours,



JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

JS:ah

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cc:

