

OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS

Lisa Madigan ATTORNEY GENERAL

July 5, 2011

Commander Kevin Finlon Lake Zurich Police Department 200 Mohawk Trail Lake Zurich, Illinois 60047

RE: FOIA Pre-Authorization Request - 2011 PAC 15039

Dear Commander Finlon:

We have received and reviewed the written notice from the Lake Zurich Police Department 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 10, 2011, the Department received a FOIA request from for all reports concerning a particular individual in which that individual was named as a suspect or a defendant. The Department seeks to withhold dates of birth, the name of and identifying information about a suspect, a statement allegedly made by the suspect, and the name of a business all pursuant tosection 7(1)(c).

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."

DETERMINATION

The Department's use of the exemption in section 7(1)(c) to redact the dates of birth in the responsive reports 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, 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[]

Commander Kevin Finlon July 5, 2011 Page 2

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 Department's use of the exemption in section 7(1)(c) to redact the suspect's name and identifying information and the statement allegedly made by the suspect is also approved. Disclosure of the identity of a person suspected of crimes for which that person was never arrested or charged would be highly objectionable to a reasonable person. We also agree that disclosure of the statement that the complainant attributed to the suspect would be objectionable to a reasonable person. In this instance, the subject's right to privacy outweighs any legitimate public interest in obtaining this information.

The Department's request to assert the exemption in section 7(1)(c) with respect to the name of a business that appears in report 2010-03524 is **denied**. Corporations and other business entities do not have a right to personal privacy for the purpose of section 7(1)(c). See FCC v. AT&T, Inc., 562 U.S. ___, No. 09-1279, slip op. at 11-12 (March 1, 2011) (holding that corporations do not have a privacy interest for the purpose of Exemption 7(C) of the Federal FOIA, which exempts law enforcement records where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy"). This conclusion is equally applicable to section 7(1)(c) of FOIA. Accordingly, the exemption in section 7(1)(c) does not exempt the name of the business from disclosure.

The Department may issue a partial denial letter directly to Mr. Dudzinsky and release the report with the appropriate information redacted. If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

Assistant Attorney General
Public Access Bureau

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cc: