



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 5, 2011

Officer Rory O'Brien
Assistant Freedom of Information Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Preauthorization Request- 2011 PAC 15234

Dear Officer O'Brien:

We have received and reviewed the written notice from the Chicago Police Department of its intention to deny disclosure of certain information requested by [REDACTED] pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c) (West 2010). [REDACTED] requested all crime scene photographs related to the murder of a certain individual. The Department seeks preauthorization to withhold post-mortem photographs depicting the victim.

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). As discussed below, after considering the balancing test required under the section 7(1)(c) exemption, we conclude that the Department has met its initial burden of demonstrating that post-mortem photographs of the victim are exempt from disclosure.

DETERMINATION

A public body seeking to withhold information under section 7(1)(c) of FOIA must show: 1) that the requested information is highly personal or that disclosure would be highly objectionable to a reasonable person; and 2) that the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The Public Access Counselor has

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recognized that surviving family members "have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which interest must be considered" in determining whether such records are exempt from disclosure under section 7(1)(c). Ill. Att'y Gen. Pub. Acc. Op. No. 10-003 issued October 22, 2010, at 6. That interest may, in appropriate circumstances, extend to other investigatory records concerning the death of a close relative. Under section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information.

After carefully reviewing the materials submitted by the Department, we have determined that the privacy interests of surviving family members justify withholding the post-mortem photographs depicting the victim. By their nature, post-mortem photographs depicting a human being are "gruesome and graphic" and their disclosure would be highly objectionable to a reasonable person. See Ill. Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 7-10. With respect to the post-mortem photographs, the privacy interests of the surviving family members outweigh the public interest in obtaining the information. We, therefore, conclude that the Department has met its burden of showing by clear and convincing evidence that this information is exempt from disclosure, and the request to withhold the post-mortem photographs depicting the victim pursuant to section 7(1)(c) is **approved**.

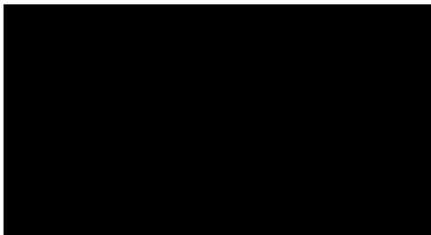
If you have any questions, please contact me at 312-814-2770. This correspondence shall serve to close the matter.

Very truly yours,



JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

cc:



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