



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 5, 2011

Via Electronic Mail
Ms. Suzanne Yokley-Bond
Interim Chief Legal Counsel
Illinois State Police
Suzanne_Yokley-Bond@isp.state.il.us

Re: FOIA Pre-Authorization Request – 2011 PAC 14329

Dear Ms. Yokley-Bond:

We have received and reviewed the written notice from the Illinois State Police (ISP) of its intention to withhold certain information from disclosure pursuant to sections 7(1)(c) and section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c), (f) (West 2010). Louise Jett, Managing Editor of the *Macoupin County Enquirer - Democrat*, submitted a FOIA request to the Illinois State Police (ISP) seeking all investigatory records relating to an incident that "occurred in Carlinville, Illinois, at the Anchor Inn or Blackburn College on March 16 and March 18 of 2011."

In its May 23, 2011, Pre-Authorization Request, ISP indicated that it seeks to withhold certain records pursuant to section 7(1)(c) of FOIA, which exempts from inspection or copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless disclosure is consented to in writing by the individual subjects of the information." The exemption defines "[u]nwarranted 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," but further provides that "*[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.*" (Emphasis added.)

ISP also seeks to withhold these records pursuant to section 7(1)(f) of FOIA, which exempts from inspection and copying "preliminary drafts, notes, recommendations,

memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]" ISP contends that the records are part of its "deliberative process."

On June 2, 2011, this office initiated further inquiry with regard to ISP's request for Pre-Approval.¹ ISP supplied us with an unredacted copy of the reports and an explanation of its use of the section 7(1)(c) and section 7(1)(f) exemption on July 18, 2011.²

DETERMINATIONS

ISP's request for approval to redact certain information pursuant to section 7(1)(c) is **denied**. The responsive records regard an incident involving an ISP employee and another individual at the Anchor Inn in Carlinville, Illinois. The records relate to ISP's investigation into the incident. The Illinois Appellate Court has previously concluded that records that concern a disciplinary matter involving a public employee clearly relate to the public duties of that employee and their disclosure cannot be said to constitute an invasion of privacy under section 7(1)(c). *Gekas v. Williamson*, 393 Ill.App.3d 573 (4th Dist. 2009). In *Gekas*, the Court considered the applicability of the privacy exemption with regard to a FOIA request seeking the disclosure of citizen complaints filed against a deputy sheriff. *Gekas v. Williamson*, 393 Ill.App.3d 573 (4th Dist. 2009). The Court analyzed the personal privacy exemption as it applied to the deputy's personnel files and decided that what a police officer did by the authority of his or her badge does not have the personal connotations of an employment application, tax form, or a request for medical leave. *Gekas v. Williamson*, 393 Ill.App.3d 573, 584 (4th Dist. 2009). As a result, records generated pursuant to this investigation would not be exempt from disclosure under section 7(1)(c).

ISP's request for approval to withhold the reports from disclosure pursuant to section 7(1)(f) is likewise **denied**. ISP contends that the records were generated as part of ISP's "deliberative process in determining the final outcome of this investigation, and whether or not discipline was merited against this employee." Section 7(1)(f) protects records that relate to a deliberative process. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

¹Letter from Matthew C. Rogina, Assistant Attorney General, Office of the Attorney General, to Trooper Kerry Sutton, Freedom of Information Officer, Illinois State Police (June 2, 2011).

²Letter from Ms. Suzanne Yokley-Bond, Interim Legal Counsel, Illinois State Police, to Matthew C. Rogina, Assistant Attorney General, Office of the Attorney General (July 18, 2011).

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Although section 7(1)(f) might properly apply, for example, to a document or a portion of an investigative record in which an investigator expresses an opinion regarding the validity of a complaint or proposes a course of action, the exemption does not extend to the underlying fact- or observation-based reports. The responsive records do not appear to be deliberative in the sense that they contain opinions or recommendations by ISP personnel about a course of action to take with the investigation or the employee. Rather, they appear to contain fact-based observations by ISP about interviews with individuals who witnessed the incident.

Accordingly, ISP has not met its burden of demonstrating by clear and convincing evidence that the records are exempt from disclosure under section 7(1)(c) or section 7(1)(f) of FOIA.

Because the pre-authorization process under section 9.5(b) of FOIA (5 ILCS 140/9.5(b) (West 2010)) is limited to reviewing assertions of section 7(1)(c) and section 7(1)(f) exemptions, we cannot consider the applicability of any other exemptions raised. This correspondence shall serve to close this matter. Should you have any questions, you may contact me at (312) 814-5383.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

14329 7(1)(c) 7(1)(f) pre-auth al dl sa

Via Electronic Mail

cc: Ms. Louise Jett
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