



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 3, 2011

Officer Patrick Kelly
Assistant Freedom of Information Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Preauthorization Request- 2011 PAC 15744

Dear Officer Kelly:

We have received 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 records related to RD# B-607224, including crime scene photographs related to the murder of an individual. The Department seeks preauthorization to withhold 15 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."

DETERMINATION

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

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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 15 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 these post-mortem photographs, the privacy interests of the surviving family members outweigh the public interest in obtaining the information. We conclude, therefore, 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 15 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

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cc:

