



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 5, 2011

Ms. Madeline Palenica
Lake Forest Police Department
255 West Deerpath
Lake Forest, Illinois 60045

RE: FOIA Pre-Authorization Request – 2011 PAC 15754

Dear Ms. Palenica:

We have received and reviewed the written notice from the Lake Forest 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)). Specifically, on July 19, 2011, Ms. Eva Kripitos submitted a FOIA request for a copy of a police report concerning the death of an individual. The Department is seeking to withhold the report, in its entirety, under section 7(1)(c) of FOIA.

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 assertion of the exemption in section 7(1)(c) to withhold the report in its entirety is **denied**. The Public Access Counselor has recognized that surviving family members "have a cognizable personal privacy interest in . . . records relating to the death of a close relative" which 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 at 6, issued

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October 22, 2010. Under section 7(1)(c), the privacy interests of surviving family members in the disclosure of personal information must be balanced against the legitimate public interest in obtaining the information. This report contains information that documents the Department's response to the incident as well as certain information concerning the decedent. Disclosure of this information would not constitute an unwarranted invasion of the surviving family members' right to privacy. Accordingly, we conclude that the Department has not sustained its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

However, there are portions of the report that concern the decedents' family members that may properly be redacted pursuant to section 7(1)(c). These portions, which are highlighted in yellow in the attached document, are highly personal, and the release of this information would be objectionable to a reasonable person. The surviving family members' right to privacy outweighs any legitimate public interest in obtaining this particular information. Therefore, we conclude that the Department has met its initial burden of demonstrating that this information is exempt under section 7(1)(c).

We also note that this report contains the dates of birth of the decedent's parents. The Department's use of the exemption in section 7(1)(c) to redact these dates of birth 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 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 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).

Finally, the report contains home addresses and personal telephone numbers. Section 7(1)(b) exempts from disclosure "private information," which is defined as "unique identifiers, including a person's * * * home address[.]" 5 ILCS 140/2(c-5) (West 2010). You may consider the use of this exemption but because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than 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.

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Accordingly, the Department may issue a partial denial letter and release the report in accordance with this determination letter.

If you have any questions, please contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,

STEVE SILVERMAN b4EK

STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

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enclosure

cc: Ms. Eva Kripos (will receive letter only)
Turning Point Behavioral Health Care Center
8324 Skokie Boulevard
Skokie, Illinois 60077