



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 8, 2011

Ms. Suzy Choi-Lee
FOIA Officer
Metra
547 West Jackson Boulevard
Chicago, Illinois 60661

RE: FOIA Pre-Authorization Request – 2011 PAC 15864

Dear Ms. Choi-Lee:

We have received the written notice from Metra of its intention, pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)), to deny disclosure of video footage related to an accident in Oak Forest on July 21, 2011. On July 22, 2011, Mr. Phil Rogers of NBC Chicago submitted a FOIA request to Metra seeking copies of "any video images recorded by Metra cameras or other cameras accessed by Metra, available from the Metra accident, in Oak Forest, Ill, on Thursday, July 21, 2010 [sic]." Metra sought pre-authorization to deny Mr. Rogers' request in its entirety pursuant to 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." Section 7(1)(c) also 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."

DETERMINATION

Metra's assertion of the section 7(1)(c) exemption to deny Mr. Rogers' FOIA request in its entirety is **approved**. According to Metra, the video footage is "from inside the train" and "contains information relating to the death of two individuals." The release of footage documenting the violent deaths of two persons would be objectionable to reasonable persons.

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See National Archives & Records Administration v. Favish, 541 U.S. 157, 166-69, 124 S. Ct. 1570 (2004), *rehearing denied*, 541 U.S. 1057, 124 S. Ct. 2198 (2004). Moreover, the surviving families' right to privacy with respect to this footage outweighs any legitimate public interest in obtaining the information.¹ Accordingly, disclosure of the video footage would constitute a clearly unwarranted invasion of the personal privacy of the surviving family members.

We note that Metra also has asserted section 7(1)(m) of FOIA to deny Mr. Rogers' FOIA request. At this stage, we decline to determine the applicability of the section 7(1)(m) exemption to the video footage at issue in this request.

Should you have any questions, please contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Very truly yours,


SARA GAPOLA GALLAGHER
Assistant Attorney General
Public Access Bureau

15864 pre-auth al 7(1)(c) priv reg auth

cc: Mr. Phil Rogers
NBC Chicago
Phil.Rogers@nbcuni.com

¹When Illinois FOIA does not provide a standard by which to address an issue, Illinois courts have looked to Federal case law for guidance because the Illinois FOIA is patterned after the Federal Freedom of Information Act (Federal FOIA). *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 202 (2004); *Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007 (1994), *appeal denied*, 159 Ill. 2d 565 (1995). While Illinois courts have not addressed the issue of whether the personal privacy interests of surviving family members in records related to their relatives' death may be considered in conducting the balancing test required under section 7(1)(c)'s clearly unwarranted invasion of personal privacy exemption, Federal courts construing Federal FOIA have long recognized that a decedent's surviving family members possess their own separate personal privacy interest in "their close relative's death-scene images" and similar type records. *See Favish*, 541 U.S. at 170 (a decedent's surviving family members have a personal privacy interest under Federal FOIA in "their close relative's death-scene images"); *see also Katz v. National Archives & Records Administration*, 862 F. Supp. 476, 485-86 (D.D.C. 1994), *aff'd on other grounds*, 68 F. 3d 1438 (D.C. Cir. 1995) ("allowing access to the autopsy photographs [of President Kennedy] would constitute a clearly unwarranted invasion of the Kennedy family's privacy" under Federal FOIA); *New York Times Co. v. National Aeronautics & Space Administration*, 782 F. Supp. 628, 630 (D.D.C. 1991) (sustaining a privacy claim under Federal FOIA by the families of the deceased astronauts and recognizing the families' privacy interests in "all voice and data communications" recorded aboard the space shuttle Challenger before it disintegrated).