



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 3, 2011

Via electronic mail and U.S. mail

Ms. Mary Baudino
Chief Administrative Director
Will County Coroner's Office
57 North Ottawa Street
Suite 412
Joliet, Illinois 60432

RE: FOIA Pre-Authorization Request – 2010 PAC 9299

Dear Ms. Baudino:

We have received the written notice from the Will County Coroner's Office (Coroner) of its intention to deny disclosure of certain information under sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c), (f) (West 2010)). Ms. Shelly M. Prange of Benderson Development Company, LLC requested copies of autopsy and toxicology reports relating to the death of [REDACTED] who died from injuries suffered in a motor vehicle accident. The Coroner seeks preauthorization to withhold the responsive documents in their entirety.

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)(f) exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda [or] other records in which opinions are expressed, or policies or actions are formulated."

DETERMINATION

A public body seeking to withhold information pursuant to section 7(1)(c) must show: 1) that the information is highly personal or that disclosure would be highly objectionable

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to a reasonable person; and 2) that the subject's right to privacy outweighs any legitimate public interest in obtaining the information. Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2010)), the public body has the burden of proving by clear and convincing evidence that a record is exempt.

Because the Coroner has a statutory duty to investigate the cause of a sudden or violent death (55 ILCS 5/3-3013 (West 2010)), the public has a legitimate interest in accessing records resulting from the performance of this public duty, at least to the extent that this interest is not outweighed by personal privacy rights. Ill. Att'y Gen. Pub. Acc. Op. No 10-003, issued October 22, 2010, at 7. Although 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), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information. Ill. Att'y Gen. Pub. Acc. Op. No 10-003, at 6.

We have examined the autopsy reports carefully and have determined that the privacy interests of any surviving family members do not justify withholding the reports. Although surviving family members might consider the release of these reports to be objectionable, there is a considerable public interest in obtaining information about the cause of death in a case such as this, where the decedent died suddenly because of injuries suffered in a motor vehicle accident. Furthermore, there is a substantial public interest in the Coroner's performance of his statutory duty to determine the cause of death in this matter. Therefore, the Coroner's assertion of section 7(1)(c) to withhold the requested records is **denied**.

The Coroner's assertion of section 7(1)(f) to withhold the autopsy report is also **denied**. Section 7(1)(f) "is the equivalent of the 'deliberative process' exemption found in section 552(b)(5) of the federal Freedom of Information Act." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247, 799 N.E. 2d 859, 864 (1st Dist. 2003). The purpose of this exemption is to encourage honest and open discussions among government employees before decisions are reached by exempting predecisional materials from disclosure. *Harwood*, 344 Ill. App. 3d at 248.

The Coroner has not asserted that the autopsy and toxicology reports in this matter were used in any decision making process. Accordingly, the Coroner has failed to meet his burden of showing that these reports are exempt under section 7(1)(f).

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

Very truly yours,

A solid black rectangular box used to redact the signature of John Schmidt.

JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

9299 pre-auth dl 71c med inf county

cc: Ms. Shelly M. Prange
Claims Adjuster
Benderson Development Company, LLC
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