



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 18, 2011

Via Electronic Mail

Ms. Chrissie L. Peterson
City Attorney
City of Canton
CPeterson@cantoncityhall.org



RE: FOIA Request for Review – 2010 PAC 11752

Dear Ms. Peterson and [REDACTED]:

[REDACTED] The Public Access Counselor has received a Request for Review submitted by [REDACTED] and the responsive correspondence and documents furnished to this office by the City of Canton (City).

On December 21, 2010, [REDACTED] submitted a FOIA request to the City seeking copies of "contracts, job descriptions, paid holidays, sick leave days, work schedules, salaries, benefits, insurance, severance agreements and W-2 forms" for certain City employees. On December 27, 2010, the City supplied [REDACTED] with records responsive to his request but withheld W-2 forms pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2010)) which exempts from inspection and copying "private information," and section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2010)), which 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."

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On January 20, 2011, this office sent a letter asking the City to elaborate on its contention that the W-2 forms are exempt from disclosure.¹ On January 25, 2011, the City responded to this office by stating that the release of W-2 forms would constitute an unwarranted invasion of personal privacy under section 7(1)(c).²

DETERMINATION

On two previous occasions, this office has addressed the issue of whether W-2 forms are exempt from disclosure under FOIA. In 2011 PAC 12652, the requester asked a library district to provide him with information concerning the "salary paid to each employee of the Mokena Community Public Library District for each year from the year 2005 to the present." See 2011 PAC 12652 (Ill. Att'y Gen. PAC Pre-Auth. al12652, issued March 8, 2011). The library district asserted that the only responsive documents in its possession were W-2 forms, and that the W-2 forms contained personal information that is exempt under section 7(1)(c) of FOIA. Based upon its assertion that the W-2 forms were the only records containing this information, and recognizing that public bodies are not required to create records to satisfy a FOIA request, this office concluded that the library district was required to disclose the W-2 forms, but could redact private and personal information from the forms under sections 7(1)(b) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(b), (c) (West 2010)).

On another occasion, however, the Public Access Bureau determined that a public body could withhold W-2 forms in their entirety. In 2010 PAC 9280, a requester specifically asked the public body to provide him with W-2 forms of certain employees. See 2010 PAC 9280 (Ill. Att'y Gen. PAC Pre-Auth. al9280, issued September 2, 2010). This office concluded that the W-2 forms constituted "financial information" under section 2(c-5) (5 ILCS 140/2(c-5) (West 2010)) of FOIA.³ Therefore, the public body could withhold the W-2 forms in their entirety under section 7(1)(b).

[REDACTED] FOIA request is similar in all respects to the request addressed in 2010 PAC 9280. [REDACTED] specifically asked the City to provide him with copies of W-2

¹Letter from Matthew Sebek, Assistant Public Access Counselor, Office of the Attorney General, to Ms. Chrissie Peterson City Attorney, City of Canton (January 20, 2011).

²Letter from Ms. Chrissie Peterson City Attorney, City of Canton, to Matthew Sebek, Assistant Public Access Counselor, Office of the Attorney General (January 25, 2011).

³Section 2(c-5) defines "private information" to include unique identifiers such as "a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2(c-5) (West 2010).

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forms for certain City employees, not for discrete information, such as salary amounts, that might be contained in the forms. Therefore, based upon 2010 PAC 9280, we conclude that the City has met its burden of demonstrating that, in these circumstances, W-2 forms are exempt from disclosure in their entirety under section 7(1)(b) of FOIA, which the City cited in its partial denial. Because this determination resolves this matter, it is not necessary to address the issue of whether W-2 forms are also exempt from disclosure in their entirety under section 7(1)(c).

This correspondence shall serve to close this matter. If you have any questions, please contact me at (312) 814-5383.

Very truly yours,

[REDACTED]
MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

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