



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 18, 2011

Ms. Heather L. Allen
Freedom of Information Act Officer
City of Moline
619 16th Street
Moline, Illinois 61265

RE: FOIA Pre-Authorization Request - 2011 PAC 13139

Dear Ms. Allen:

We have received the written notice from the City of Moline (City) of its intention to withhold records pursuant to section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)).

On March 24, 2011, [REDACTED] submitted a FOIA request to the City seeking "information taken from [REDACTED] cell phone, text & calls & and anything else."¹ In its April 12, 2011, written notice to this office, the City asserts that it seeks to withhold cell phone records pursuant to section 7(1)(c) of FOIA, 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." In its written notice, the City identifies [REDACTED] as [REDACTED] mother. In her July 25, 2011 correspondence to our office, [REDACTED] states that [REDACTED] died on February 7, 2011.²

¹In the FOIA request, Ms. Creekmore indicates that the cell phone was registered in her name.

² Letter from Ms. Chris Creekmore to the Office of the Illinois Attorney General (July 25, 2011).

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This office initiated further review of this matter on April 4, 2011.³ The City responded to our further inquiry letter on April 12, 2011.⁴

DETERMINATION

The Public Access Bureau has previously concluded that the privacy interest of an individual *does not* survive death. See 2010 PAC 6137 (Ill. Att'y Gen. PAC Pre-Auth. dl6137, issued August 24, 2010, at 2) and 2011 PAC 12456 (Ill. Att'y Gen. PAC Pre-Auth. al dl12456, issued June 15, 2011, at 2). However, this office has also concluded that in certain limited circumstances, decedent's family members have a personal privacy interest with respect to the release of post-mortem photographs⁵ and any records that document the death of an individual.⁶

Given the fact that the requester is the decedent's mother, we conclude that disclosure of the text messages would not be objectionable to a reasonable person nor invade the privacy rights of the [REDACTED] family. Even if there were other family members who might object to the release of the cell phone records on the grounds that it would be an invasion of the family's privacy, the text messages do not contain highly personal information or images that would be analogous to post-mortem photographs or a record that documents an individual's death.⁷

Further, it is the contention of the City in its written response that the text messages reveal "narcotic prescription drug use and sales to and from various individuals," which, if disclosed, would be an invasion of those individuals' personal privacy. To the extent that these individuals have any expectation of privacy in the text messages in question, that right is outweighed by [REDACTED] interest in the text messages sent or received by the decedent in the days and weeks prior to his death.

³Letter from John Schmidt, Assistant Attorney General, Office of the Attorney General, to Heather L. Allen, FOIA Officer, City of Moline (April 1, 2011).

⁴Letter from Heather Allen, FOIA Officer, City of Moline, to John Schmidt, Assistant Attorney General, Office of the Attorney General (April 12, 2011).

⁵See Ill Att'y Gen. Pub. Acc. Op. No. 10-003, at 11.

⁶See 2011 PAC 15438 (Ill. Att'y Gen. PAC Pre-Auth. al dl6137, issued August 24, 2010, at 2) and 2011 PAC 15865 (Ill. Att'y Gen. PAC Pre-Auth. al 15865, issued August 24, 2010, at 2).

⁷Indeed, if the cell phone in question was registered to Ms. Creekmore at the time of Mr. Fitch's death, then Ms. Creekmore may arguably possess a right to the possession of the telephone and its contents.

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We conclude that the City has not met its initial burden of demonstrating that the records in question are exempt from disclosure under section 7(1)(c) and must furnish a copy of the cell phone records to [REDACTED]. The City may, however, redact any information that is exempt under section 7(1)(b) of FOIA. 5 ILCS 140/7(1)(b) (West 2010).⁸

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

Very truly yours,

[REDACTED]

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

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⁸Section 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).