



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 16, 2011

Via Electronic Mail

Ms. Suzanne Yokley-Bond
Interim Chief Legal Counsel
Illinois State Police
Suzanne_Yokley-Bond@isp.state.il.us

RE: FOIA Pre-Authorization Request - 2011 PAC 13186

Dear Ms. Yokley-Bond:

We have received the written notice from the Illinois State Police (ISP) of its intention to withhold records from disclosure under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)).

On February 26, 2011, [REDACTED] submitted a FOIA request to ISP seeking "photos taken at the scene of Deputy [REDACTED] death." In the request, [REDACTED] identifies herself as [REDACTED] mother. In its March 25, 2011, written notice to this office, ISP asserts that it seeks to withhold autopsy photos 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."

This office initiated further review of this matter on April 1, 2011.¹ ISP responded to our further inquiry letter on April 18, 2011.²

¹Letter from John Schmidt, Assistant Attorney General, Office of the Attorney General to Sgt. Kelly Walter, Illinois State Police (April 1, 2011).

²Letter from Suzanne Yokley-Bond, Interim Chief Legal Counsel, Illinois State Police, to John Schmidt, Assistant Attorney General, Office of the Attorney General (April 18, 2011).

Ms. Suzanne Yokley-Bond
August 16, 2011
• Page 2

DETERMINATION

ISP's request to withhold post-mortem photographs of [REDACTED] is approved.

The Public Access Counselor has previously concluded that decedents' family members have a personal privacy interest with respect to the release of post-mortem photographs. *See* 2010 PAC 8890 and 9217 (Ill Att'y Gen. Pub. Acc. Op. No. 10-003, issued October 22, 2010, at 5). In 2010 PAC 8890 and 9217, the Public Access Bureau reviewed the Cook County Medical Examiner's denial of two FOIA requests seeking records relating to the deaths of Christopher Kelly, a businessman and fundraiser for former Governor Rod Blagojevich, and Michael W. Scott, the president of the Chicago Board of Education. In that opinion, we concluded that post-mortem photographs depicting the bodies of Mr. Kelly and Mr. Scott are highly personal and that surviving family members have a legally-recognized privacy right in the depiction of their family members' remains. *See* Ill Att'y Gen. Pub. Acc. Op. No. 10-003, at 11.

In its April 18, 2011, response letter, ISP informed us that [REDACTED] is [REDACTED] widow and the executor of his estate. Ordinarily, the surviving spouse of a decedent has the right to the control and disposition of the decedent's remains, to the exclusion of more distant relatives. *See e.g., Rekosh v. Parks*, 316 Ill.App.3d 58, 67-8 (2nd Dist., 2000). The same principle applies with respect to photographs of this nature. Accordingly, notwithstanding the familial relationship between [REDACTED] and the requester, we conclude that the privacy rights of the surviving spouse control in this matter and, therefore, preclude the release of the autopsy photographs of [REDACTED] without his wife's consent.

The Public Access Counselor's office finds that ISP has met its initial burden and may withhold the autopsy photographs of [REDACTED]. 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