



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 16, 2011

Ms. Denise E. Wills
FOIA Officer
Huntley Police Department
10911 Main Street
Huntley, Illinois 60142-7394

RE: FOIA Pre-Authorization Request - 2011 PAC 15878

Dear Ms. Wills:

We have received and reviewed the written notice from the Huntley Police Department of its intention to deny disclosure of certain information under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)). On July 27, 2011, [REDACTED] submitted a FOIA request to the Department for all records relating to an incident on July 18, 2011, involving a certain individual. In its written notice, the Department asserted that the responsive report is exempt in its entirety under 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." 5 ILCS 140/7(1)(c) (West 2010).

DETERMINATION

The Department's assertion of the section 7(1)(c) exemption to deny [REDACTED] FOIA request in its entirety is **denied**. Section 7(1) of FOIA provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying[.]" 5 ILCS 140/7(1) (West 2010).

Ms. Denise Wills
August 16, 2011
Page 2

In light of this provision, this office concludes that the Department may not properly withhold the responsive report in its entirety.

However, the Department's use of the exemption in section 7(1)(c) to redact the name of the subject of the report and the narrative is **approved**. Based on our review, we conclude that the Department has met its initial burden of demonstrating that disclosure of the name of the subject and the narrative would be highly objectionable to a reasonable person. The report pertains to a highly personal matter, and the subject's right to privacy outweighs any legitimate public interest in obtaining this information.

The Department's assertion of the exemption in section 7(1)(c) to redact the name of a third party who provided information to police is also **approved**. We agree that disclosure of the identity of this individual would be highly objectionable to a reasonable person. The privacy rights of such individuals outweigh the public interest in obtaining this information.

Additionally, the Department's use of the exemption in section 7(1)(c) for dates of birth is **approved**. We have determined that the Department has met its initial burden of demonstrating that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal by its very nature, and the subject's right to privacy outweighs any legitimate public interest in obtaining this information. *See, e.g., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. §552(b)(6)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and "would constitute a clearly unwarranted invasion of personal privacy"); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, ___ S.W.3d ___, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

The Department may wish to redact personal phone numbers and home addresses pursuant to section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2010)), which exempts "private information." "Private information" as defined in section 2(c-5) of FOIA includes "home or personal telephone numbers" as well as "home address * * * except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2(c-5) (West 2010). Because advance approval by the Public Access Counselor is not required for use of section 7(1)(b), we make no determination at this time regarding the applicability of this exemption.

Ms. Denise Wills
August 16, 2011
Page 3

Accordingly, the Department may issue a partial denial letter and release the report with the appropriate information redacted. If you have any questions, please contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,

STEVE SILVERMAN by EK
STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

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