



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 17, 2011

Ms. Sherry Holmes
Macomb Police Department
120 S. McArthur St.
Macomb, IL 61455

RE: FOIA Pre-Authorization Request – 2011 PAC 15991

Dear Ms. Holmes:

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

On July 28, 2011, Mr. Craig Pierce, attorney for [REDACTED], submitted a FOIA request to the Department for "[a]ny reports, documentation of calls/callouts, involving Sara Hobson, Sara Mason, or Sara McCord during the calendar years 2009, 2010, and 2011."

The Department seeks to withhold a number of the responsive documents in full under section 7(1)(c). The Department argues that release of these records would constitute an unwarranted invasion of personal privacy for the victim. The Department intends to release the remaining responsive documents and seeks approval to redact dates of birth and third-party names under section 7(1)(c).

DETERMINATION

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."

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Withheld Reports

We have carefully reviewed all of the documents that the Department provided to us in this matter. The Department's assertion of section 7(1)(c) to withhold reports concerning incidents not involving [REDACTED] and which resulted in no arrests or criminal charges, is **approved**. The information contained in these reports is of a highly personal nature and the subjects' right to privacy outweighs any legitimate public interest in disclosing this information. Further, [REDACTED] was not involved in these incidents. Therefore, the Department has met its initial burden to withhold this information under section 7(1)(c).

However, a number of the withheld police reports involve arrests, and, thus are subject to disclosure pursuant to section 2.15(a) of FOIA. *See* 5 ILCS 140/2.15(a)(West 2010). Pursuant to section 7(1)(c), the Department may redact from the report narrative details involving medical or injury information, information that identifies the victim, and information identifying the witnesses, if any.

Redacted Reports

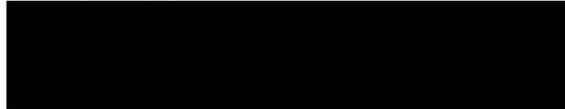
The Department may redact dates of birth contained in the responsive reports. We have consistently concluded that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy under section 7(1)(c). This type of information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing 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).

Additionally, the Department may redact names contained in the responsive reports of individuals who have not been arrested or charged in connection with the incidents in question. Being named in a police report where one has not been charged or arrested is highly personal to a reasonable person. Releasing this information would be an unwarranted invasion of personal privacy. Therefore, the Department has met its burden to withhold this information under section 7(1)(c).

The Department is therefore directed to release the reports to Mr. Pierce in accordance with this letter, if it has not already done so. If you have any questions, please contact our office at (877) 299-3642. This correspondence shall serve to close this matter.

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Very truly yours,



REBECCA RIDDICK
Assistant Attorney General
Public Access Bureau

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cc: Mr. Craig Pierce
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