



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 23, 2011

Ms. Nicole Both  
FOIA Officer  
Metra  
547 W. Jackson Blvd.  
Chicago, IL 60661

RE: FOIA Pre-Authorization Request - 2011 PAC 16191

Dear Ms. Both:

We have received and reviewed the written notice from Metra 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), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011). Metra is seeking to redact dates of birth from the requested document.

On August 3, 2011, Mr. Jonathan Walner of Harvey L. Walner & Associates, Ltd. submitted a FOIA request for Metra Police Department report # 11-35494. In its written notice, Metra asserts that dates of birth are exempt from disclosure 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), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011.

**DETERMINATION**

Metra's use of the exemption in section 7(1)(c) for the dates of birth is **approved**. We have determined that Metra 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

Ms. Nicole Both  
August 22, 2011  
Page 2


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).

Accordingly, Metra may issue a partial denial letter and release the report with the dates of birth redacted, if it has not already done so.

Metra also indicates that it intends to redact additional information from the report pursuant to sections 7(1)(b), 7(1)(m) and 7(1)(s) (5 ILCS 140/7(1)(b), (m), (s) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011). Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than sections 7(1)(c) and 7(1)(f) (5 ILCS 140/7(1)(f) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011), we make no determination at this time regarding the applicability of any other exemptions.

If you have any questions, please contact me at (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,

  
DUSHYANTH REDDIVARI  
Assistant Attorney General  
Public Access Bureau

16191 Pre-auth al 71c dob reg auth

cc: Mr. Jonathan Walner  
Harvey L. Walner & Associates, Ltd.  
33 North LaSalle Street, Suite 2700  
Chicago, IL 60602