



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 29, 2011

Sgt. Shannon J. Swearingen
FOIA Officer
East Peoria Police Department
201 W. Washington St.
East Peoria, IL 61611

RE: FOIA Pre-Authorization Request - 2011 PAC 14891

Dear Sgt. Swearingen:

We have received and reviewed the written notice from the East Peoria 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 June 8, 2011, Ms. Linda J. Watson submitted a FOIA request for all Department records pertaining to a particular individual for the past 15 years. In its written notice, the Department asserts that dates of birth and other personal information contained in the responsive police reports are exempt from disclosure under section 7(1)(c) of FOIA. Accordingly, the Department is seeking approval to redact dates of birth from Department reports 08-14305, 09-1182 and 10-13239, and to withhold Department reports 10-5694, 10-8813, 10-8877 and 10-10002 in their entirety because these reports' narratives contain highly personal information about specific individuals the release of which would constitute an unwarranted invasion of their privacy.

Section 7(1)(c) 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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DETERMINATION

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 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).

The Department's determination to deny the release of reports 10-5694, 10-8813, 10-8877 and 10-10002 pursuant to section 7(1)(c) is also approved. The release of police reports whose narratives contain highly personal information about individuals suspected of crimes for which they were never arrested or charged would be highly objectionable to a reasonable person. Under these circumstances, the individuals' right to privacy outweighs any legitimate public interest in obtaining the reports.

The Department also indicates that it intends to redact additional information from Department reports 08-14305, 09-1182 and 10-13239 pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(i)(b) (West 2010)), and to deny the release of Department reports 05-14808, 06-16911, 07-6905 and 07-10415 pursuant to section 7(1)(a) (5 ILCS 140/7(1)(a) (West 2010)). 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)), we make no determination at this time regarding the applicability of any other exemptions.

Accordingly, the Department may issue a partial denial letter and release reports 08-14305, 09-1182 and 10-13239 with the dates of birth redacted, if it has not already done so.

If you have any questions, please contact me at (312) 814-5206. This correspondence shall serve to close this matter.

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Very truly yours,



DUSHYANTH REDDIVARI
Assistant Attorney General
Public Access Bureau

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cc: Ms. Linda J. Watson
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