



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

— August 2, 2011

Ms. Joanne Wessels
FOIA Officer
City of Batavia Police Department
100 North Island Avenue
Batavia, Illinois 60510
jwessels@cityofbatavia.net

RE: FOIA Pre-Authorization Request – 2011 PAC 15492

Dear Ms. Wessels:

We have received and reviewed the written notice from the City of Batavia 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 2, 2011, [REDACTED] submitted a FOIA request for Police Report #11-11350. The Department seeks to redact a suspect's date of birth, a suspect's name, and portions of the police officer's narrative from the report.

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 section 7(1)(c) to redact the date of birth is **approved**. 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

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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's assertion of section 7(1)(c) to redact the suspect's name and portions of the police officer's narrative is **approved**. We have concluded that the Department has met its initial burden of demonstrating that the disclosure of the names of individuals who were suspected of crimes for which they were never arrested or charged would be highly objectionable to a reasonable person. Furthermore, we have reviewed unredacted copies of the police officer's narrative, and we have determined that it contains highly personal information. Under these circumstances, the suspect's right to privacy outweighs any legitimate public interest in the information that the Department intends to redact from the report.

The Department also indicates that it intends to redact certain information under sections 7(1)(b) and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (d)(iv) (West 2010)). Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than those set forth in 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.

If you have any questions, please contact me at (312) 814-2770. This correspondence shall serve to close this matter.

Very truly yours,



JOHN SCHMIDT
Senior Assistant Attorney General
Public Access Bureau

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JS:ah

cc:

