



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 2, 2011

Ms. Janet K. Myers, MMC
City Clerk/FOIA Officer
City of Danville
17 W. Main
Danville, IL 61832-5758

RE: Pre-Authorization Request – 2011 PAC 15771

Dear Ms. Myers:

We have received the written notice from the City of Danville 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)). Specifically, on July 10, 2011, [REDACTED] submitted a FOIA request to the City for various records concerning employees of the police and fire departments. The City is seeking to withhold records documenting employees' pension contributions and overtime wages.

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."

DETERMINATION

The City's assertion of the exemption in section 7(1)(c) to withhold records of employees' pension contributions is **approved in part and denied in part**. With the exception of police officers and firefighters, employees of the police and fire departments contribute to the Illinois Municipal Retirement Fund (IMRF). Section 7-173(a)2 of the Illinois Pension Code (40 ILCS 5/7-173(a)2 (West 2010)) permits employees to make discretionary contributions to IMRF in excess of the statutorily required 3.75 percent annual salary contribution. Because the amount

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of additional IMRF contributions, if any, is discretionary, we have previously determined that this information reflects employees' personal investment decisions that are exempt from disclosure under section 7(1)(c). Ill. Att'y Gen. Pre-Auth. al14690, issued June 23, 2011. An employee's right to privacy outweighs the public interest in disclosure of his or her discretionary pension contributions. Accordingly, we conclude that the City has sustained its initial burden of demonstrating that employees' pension contributions are exempt from disclosure pursuant to section 7(1)(c).

In contrast, police officers' annual pension contributions are fixed under section 3-125.1 of the Pension Code (40 ILCS 5/3-125.1 (West 2010)). Likewise, firefighters' annual pension contributions are fixed under section 4-118.1 of the Pension Code (40 ILCS 5/4-118.1 (West 2010)). Such contributions are not discretionary and do not reflect personal investment decisions. Accordingly, we conclude that the City has not sustained its initial burden of demonstrating that the pension contributions of police officers and firefighters are exempt from disclosure under section 7(1)(c).

The City's assertion of section 7(1)(c) to withhold records of employees' overtime hours and overtime pay is **denied**. Records of public employees' overtime hours and overtime wages relate to the use of public funds and therefore are subject to disclosure pursuant to section 2.5 of FOIA (5 ILCS 140/2.5 West 2010)). Accordingly, we conclude that the City has not sustained its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(c).

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
Assistant Attorney General
Public Access Bureau

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cc: *Via Electronic Mail*

