



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 24, 2011

Ms. Cindy Smiley
FOIA Officer
City of Woodstock
121 West Calhoun Street
Woodstock, Illinois 60098

RE: FOIA Pre-Authorization Request – 2011 PAC 16097

Dear Ms. Smiley:

We have received the written notice from the City of Woodstock of its intention to deny disclosure of certain information pursuant to 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).

On August 1, 2011, Ms. Chelsea McDougall of the *Northwest Herald* requested "a copy of any and all applications for disability benefits made by former Woodstock Police Sgt. [REDACTED]". The City seeks pre-authorization to withhold the application in its entirety under section 7(1)(c), or, in the alternative, to redact birth dates, the names of the sergeant's family members, the sergeant's basis for applying for disability benefits, and the sergeant's doctor's name and address.

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." The exemption further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

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DETERMINATION

The application in question contains some information that is highly personal and other information that is not. Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011) provides:

When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying.

Accordingly, the City may not withhold the application in its entirety. Its proposed redactions are addressed below.

The City's assertion of section 7(1)(c) to redact the dates of birth in this application is **approved**. We have determined that the City 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 obtaining 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 City's assertion of section 7(1)(c) to redact the names of the sergeant's family members is also **approved**. This information has no bearing on the public duties of any public employee or official. The family members' right to privacy outweighs any legitimate public interest in this information.

The City's assertion of section 7(1)(c) to redact the recitation of the sergeant's basis for applying for disability benefits is **denied**. The description of the alleged cause of the disability is generic, does not contain specific medical information and its disclosure would not be objectionable to a reasonable person. Therefore, we have determined that the City has failed

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to sustain its initial burden of demonstrating that this information is exempt under section 7(1)(c).

The City's assertion of section 7(1)(c) to redact the name and address of the sergeant's doctor is **approved**. The sergeant's choice of healthcare provider is highly personal and does not relate to his public duties. The sergeant's right to privacy in this information outweighs any legitimate public interest in its disclosure.

In conclusion, the City may redact the dates of birth, the names of the sergeant's family members, and the sergeant's doctor's name and address. The City must release the remainder of the application. If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

A solid black rectangular redaction box covering the signature of Sarah Kaplan.

SARAH KAPLAN
Assistant Attorney General
Public Access Bureau

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cc: Ms. Chelsea McDougall
Northwest Herald
7717 South Route 31
Crystal Lake, Illinois 60014