



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 7, 2010

Ms. Lisa Leonteos
FOIA Officer
Village of Wheeling
2 Community Boulevard
Wheeling, Illinois 60090

RE: Pre-Authorization Request – 2010 PAC 6548

Dear Ms. Leonteos:

We have received and reviewed the written notice from the Village of Wheeling (Village) of its intent to deny disclosure of an employee performance evaluation as exempt from disclosure under subsection 7(1)(c) of the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, as amended (FOIA).

Daily Herald reporter Sheila Ahern submitted a FOIA request dated March 22, 2010, seeking “[t]he most recent evaluation of Village Manager Mark Rooney” and the “[e]mployment contract and severance package for Mark Rooney, along with documents related to his resignation.” In its written notice, the Village asserted that “[t]he remainder of the request is being denied pursuant to Section 7(1)(c) of the Freedom of Information Act on the grounds that disclosure of such information would constitute an unwarranted invasion of the personal privacy of Mr. Rooney. Employees of the Village of Wheeling have a reasonable expectation of privacy in their performance evaluations, which are confidential in nature and personal.”

The Village’s use of the subsection 7(1)(c) exemption with regard to Mr. Rooney’s performance evaluation is **denied**. Subsection 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.” 5 ILCS 140/7(1)(c). 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.” *Id.*

However, subsection 7(1)(c) also provides that the “disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” *Id.* (Emphasis added.)¹ In *Gekas v. Williamson*, the Illinois Appellate Court emphasized this limiting language in considering a FOIA request for citizen complaints filed against a specific county sheriff’s deputy. 393 Ill.App.3d 573, 574, 912 N.E.2d 347 (4th Dist. 2009); see 5 ILCS 140/7(1)(c). The county sheriff denied the FOIA request based on the privacy exemption, relying specifically on an exemption then in FOIA for “personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions.” *Gekas*, 393 Ill.App. 3d at 576; see 5 ILCS 140/7(1)(b)(ii) (West 2006). The circuit court eventually ordered the release of four “internal-affairs files” that the court said contained “founded” allegations against the sheriff deputy. *Gekas*, 393 Ill.App.3d at 578-79. The court also ruled that “[i]nternal-affairs files which are ‘unfounded’ should be excluded ... in order to protect the deputy’s privacy.” *Id.* at 578.

On review, the *Gekas* court first discussed the implications of the personnel file exemption, noting that it could not be read to include everything that might be included within a personnel file. *Id.* at 583-84. The court then examined the question of whether the “unfounded” complaints should be exempt from disclosure under FOIA. *Id.* at 585. It analyzed the effect of the limiting language (“information that bears on the public duties of public employees and officials”) on the privacy exemption and concluded:

Whether information “bears on” (or is relevant to, relates to, or has reference to) the public duties of public employees depends on the subject matter of the information, not its ultimate accuracy. ... Complaints, founded or unfounded, that [the sheriff’s deputy] committed misconduct in his capacity as a deputy sheriff are “information that bears on [his] public duties,” and the disclosure of such information “shall not be considered an invasion of personal privacy.” 5 ILCS 140/7(1)(b) (West 2006).

The General Assembly has since amended FOIA and removed the personnel file exemption at 5 ILCS 140/7(1)(b)(ii), but has left intact the limiting language in the privacy exemption. See 5 ILCS 140/7(1)(c). In light of the *Gekas* court’s emphasis on the limiting language in the privacy exemption and its broad interpretation of that language, we have concluded that an employee evaluation is a public record that “bears on the public duties of public employees”. As such, disclosure of such evaluations does not constitute an unwarranted invasion of the personal privacy of the employees.

We recognize that Mr. Rooney’s performance evaluation may contain information that may be redacted under other exemptions in FOIA. As you know, the use of the exemption in subsection 7(1)(f) of FOIA requires pre-approval from our office. The use of other exemptions – such as the use of the subsection 7(1)(b) exemption to withhold

¹ This limiting language had been codified at 5 ILCS 140/7(1)(b) prior to the amendments to FOIA. Under the amended FOIA, which took effect January 1, 2010, the language is codified at 5 ILCS 140/7(1)(c).

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“private information” as narrowly defined in FOIA – does not require preapproval from our office. In this letter, we are responding only to the notice of intent to deny disclosure of information under subsection 7(1)(c) of FOIA.

Should you have questions or concerns, please feel free to contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Sara Gadola Gallagher
Deputy Public Access Counselor

cc: Reporter Sheila Ahern
Daily Herald
P.O. Box 280
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