



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

April 26, 2010

Eric Weis
State's Attorney
Kendall County
Kendall County Courthouse
807 W. John Street
Yorkville, Illinois 60560

RE: Pre-Authorization Request – 2010 PAC 6896

Dear Mr. Weis:

We have received and reviewed the written notice from the Kendall County State's Attorney's Office of its intention to deny certain information as exempt from disclosure under sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

██████████ submitted a FOIA request on January 26, 2010, seeking all e-mails sent and received by the Kendall County State's Attorney's Office from January 1, 2010 to January 26, 2010. On February 1, 2010, ██████████ narrowed his request to all e-mails sent and received by two individuals, First Assistant State's Attorney Michael Reidy and Assistant State's Attorney Robert Dore from January 1, 2010 to January 31, 2010.

The Kendall County State's Attorney's Office made some records available for inspection to ██████████ and asserted that the remainder of the responsive records are exempt under Section 7(1)(c) and (f). In its notice, the Kendall County State's Attorney's Office provided a table and detailed descriptions of documents that it seeks to withhold.

Section 7(1)(c) Exemption

The Kendall County State's Attorney's Office asserts the Section 7(1)(c) exemption with respect to personal e-mails, victims' personal statements and medical information, and dates of birth. 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 disclosure is consented to in writing by the individual subjects of the

information.” 5 ILCS 140/7(1)(c). The exemption defines “[u]nwarranted 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.*

Personal E-mails

The Kendall County State’s Attorney’s Office seeks to withhold personal e-mails on the grounds that they are personal, do not pertain to the transaction of public business and are, therefore, not subject to FOIA. In the alternative, the Kendall County State’s Attorney’s Office asserts that these records are exempt under 7(1)(c) because they are personal e-mails that contain personal information, do not pertain to the transaction of public business and do not bear on the public duties of public employees. The Kendall County State’s Attorney’s Office also states that these records contain personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Kendall County State’s Attorney’s Office’s use of the Section 7(1)(c) exemption with regard to personal e-mails is approved. Based on the information provided by the Kendall County State’s Attorney’s Office, the disclosure of the personal e-mails at issue here – e-mails that contain personal information, do not relate to the transaction of public business and do not bear on the public duties of public employees -- would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal and the subject’s right to privacy outweighs any legitimate public interest in disclosing this information. Please note that we have not considered or made any determination with respect to whether such personal e-mails are “public records” as defined in FOIA.

Victims’ Statements and Medical Information

The Kendall County State’s Attorney’s Office seeks to withhold victims’ personal statements and medical information pursuant to Section 7(1)(c).

The Kendall County State’s Attorney’s Office’s use of the Section 7(1)(c) exemption in this matter with regard to victims’ personal statements and victims’ medical information is approved. The disclosure of victims’ personal statements and medical information would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal and the subject’s right to privacy outweighs any legitimate public interest in disclosing this information.

Dates of Birth

The Kendall County State’s Attorney’s Office seeks to withhold dates of birth contained in redacted records. The use in this matter of the Section 7(1)(c) exemption with regard to dates of birth is approved. 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.

Section 7(1)(f) Exemption

The Kendall County State's Attorney's Office seeks to withhold certain records under Section 7(1)(f) of FOIA. The Kendall County State's Attorney's Office contends that these records are preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated and which have not been publicly cited by the Kendall County State's Attorney. The Kendall County State's Attorney's Office also has explained that most of the identified e-mails relate to the investigation and prosecution of criminal matters. The Kendall County State's Attorney's Office also asserts that the remaining e-mails and their attachments contain preliminary drafts of pleadings and correspondence related to the prosecution of criminal actions.

Section 7(1)(f) allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.

5 ILCS 140/7(1)(f). The Kendall County State's Attorney's Office's use of the Section 7(1)(f) exemption with regard to preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated is approved. Based on the Kendall County State's Attorney's Office's detailed description and explanation of the basis for its assertion of Section 7(1)(f), its use herein is appropriate. The e-mails at issue express opinions and/or formulate policies or actions regarding the investigation and prosecution of criminal matters and, therefore, fall within the scope of Section 7(1)(f). In addition, any e-mail attachments that contain drafts of pleadings or correspondence related to the prosecution of criminal actions likewise fall within the scope of Section 7(1)(f).

If you have any questions, please call me at 312-814-5206. This letter shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By: 
Amaria Kioja
Chief Deputy Public Access Counselor

cc:

