



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

Lisa Madigan
ATTORNEY GENERAL

February 25, 2011

Trooper Kerry Sutton
Freedom of Information Act Officer
Illinois State Police
Kerry_Sutton@isp.state.il.us

RE: Pre-Authorization Request 2011 PAC 12399

Dear Trooper Sutton:

We have received and reviewed the written notice from the Illinois State Police (ISP) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA) 5 ILCS 140/1 *et seq.*, as amended.

On February 7, 2011, Ms. Elizabeth Balderas, on behalf of the Senate Democratic Victory Fund, submitted a FOIA request to ISP, seeking copies of the records for all individuals that have a FOID" card.

On February 14, 2011, ISP submitted its Pre-Authorization Request to this Office. In its written request, ISP explained that it was providing to Ms. Balderas the number of individuals who have been issued a FOID (Firearm Ownership Identification) card in each county, but withholding the names and dates of birth of the such individuals pursuant to Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)).

Section 7(1)(c) 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." 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.*

Determination

ISP's request for approval of its use of Section 7(1)(c) to withhold the information sought by Ms. Balderas is approved in part and denied in part.

ISP may withhold the dates of birth of the persons who have been issued a FOID card. We have determined that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c). 5 ILCS 140/7(1)(c). 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. Therefore, ISP has met its initial burden demonstrating that the withheld information is exempt under Section 7(1)(c).

With regard to the names of the individuals who have been issued a FOID card, however, ISP's request to assert the Section 7(1)(c) exemption is denied.

The General Assembly has determined that it is in the public interest to provide a system for identifying persons who are not qualified to acquire or possess firearms through the issuance of FOID cards. Specifically, Section 1 of the FOID Card Act (430 ILCS 65/1 *et seq*) provides:

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety and welfare of the public, it is necessary and in the public interest to provide a system of identifying persons who are not qualified to acquire or possess firearms, firearm ammunition, stun guns, and tasers within the State of Illinois by the establishment of a system of Firearm Owner's Identification Cards, thereby establishing a practical and workable system by which law enforcement authorities will be afforded an opportunity to identify those persons who are prohibited by Section 24-3.1 of the "Criminal Code of 1961," as amended, from acquiring or possessing firearms and firearm ammunition and who are prohibited by this Act from acquiring stun guns and tasers. 430 ILCS 65/1 (Emphasis added.)

Moreover, Section 4 of the FOID Card Act (430 ILCS 65/4) requires an applicant to submit information to ISP that it will rely upon in determining whether the applicant is eligible to own a firearm.¹

In general, in considering whether the release of the name of a FOID cardholder would constitute an unwarranted invasion of personal privacy, we must note that seeking a license or permit from a public body is a voluntary act, and any person who does not wish to disclose the required information may forego applying for the license or permit. By applying for a FOID card, the applicant is on notice that his or her name, address and other information will be maintained by a state agency. Based on these facts, and considering cases interpreting the similar provisions of the Federal FOIA (*e.g., City of Chicago v. United States Department of Treasury*, 287 F.3d 628 (7th Cir. 2002) *opinion amended on other grounds*, 297 F.3d 672 (7th Cir. 2002)), we do not find

¹ Under Section 4, an applicant must submit information concerning whether they are over 21; if they are under 21, whether they have parental consent; whether they have been convicted of a misdemeanor, adjudicated as a delinquent or convicted of a felony; whether they are addicted to narcotics; whether they are lawfully in the United States; whether they have been in a mental institution in the past 5 years; whether they are mentally retarded; and whether they have been convicted of battery, assault or domestic battery.

that the disclosure of the names of FOID cardholders would amount to an unwarranted invasion of personal privacy.

Even if disclosure of the names of persons who possess a FOID card did constitute an invasion of personal privacy, however, the public has an interest in evaluating how the ISP implements and enforces the FOID card laws. If, for example, a person who has been issued a FOID card becomes ineligible under Section 4 or if that individual falsified his or her application, there exists a legitimate public interest in knowing whether that individual continues to be eligible to possess a FOID card. Therefore, any right to right to privacy of the FOID cardholder is outweighed in this instance by the public interest in ensuring that the individual continues to be qualified to possess a FOID card.

In summary, ISP *has not* met its initial burden demonstrating that the names of persons issued a FOID card is exempt under Section 7(1)(c). Accordingly, ISP must disclose the names of those individuals to Ms. Balderas, but may withhold their dates of birth.

Should you have any questions or concerns, please feel free to contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Sgt. Kelly Walter
Kelly_Walter@isp.state.il.us

Ms. Elizabeth Balderas
Senate Democratic Victory Fund
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