



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

Lisa Madigan
ATTORNEY GENERAL

March 15, 2011

Ms. Mary Baudino
Freedom of Information Officer
Will County Coroner's Office
57 N. Ottawa Street
Suite 412
Joliet, IL 60432

RE: FOIA Pre-Authorization Request -- 2011 PAC 12641.

Dear Ms. Baudino:

We have received and reviewed the written notice from the Will County Coroner's Office of its intention to deny disclosure of certain information requested by Mr. James Chapman. Mr. Chapman had requested autopsy reports, toxicology reports and photographs regarding the death of a specified individual who was allegedly strangled in his cell at the Stateville Correctional Center. The Coroner requests preauthorization from the Public Access Counselor to withhold the reports and photographs in their entirety as exempt under Section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c)) on the basis that they contain "personal information, the disclosure of which would result in a clearly unwarranted invasion of personal privacy."

The Coroner's Office also requests preauthorization to withhold the above records under Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b)) because they contain private information, but we will not consider this exemption claim at this time because the Coroner does not need preauthorization from this Office to assert it. *See* 5 ILCS 140/9.5(b). For the same reason, we will not consider at this time the Coroner's assertions that the records are exempt under Sections 7(1)(d)(iii) and 7(1)(i)(iv) of FOIA (5 ILCS 140/7(1)(d)(iii), 7(1)(d)(iv)). Section 7(1)(d)(iii) exempts records when there is a substantial likelihood that disclosure would deprive someone of a fair trial, and Section 7(1)(d)(iv) exempts certain records when disclosure would interfere with an active criminal investigation.

As discussed below, after considering the balancing test required under the Section 7(1)(c) exemption, we conclude that the autopsy and toxicology reports are not exempt from disclosure under this provision, but postmortem photographs depicting the decedent are exempt.

Under Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)), the following is exempt from disclosure by public bodies:

(c) Personal 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. "Unwarranted invasion of personal privacy" means 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 disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

Thus, a public body seeking to rely on this exemption must show: 1) that the information is highly personal or that disclosure would be highly objectionable to a reasonable person; and 2) that the subject's right to privacy outweighs any legitimate public interest in obtaining the information. *Id.* Under Section 1.2 of FOIA (5 ILCS 140/1.2), the public body has the burden of proving a claimed exemption by clear and convincing evidence.

The Attorney General has recognized that surviving family members "have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which interest must be considered" in determining whether such records are exempt from disclosure under Section 7(1)(c). Public Access Opinion 10-003 at 6 (October 22, 2010). Under Section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information. Because the Coroner has a statutory duty to investigate the cause of a sudden or violent death (55 ILCS 5/3-3013), the public has a legitimate interest in accessing records resulting from the performance of this public duty, at least to the extent that this interest is not outweighed by personal privacy rights. *Id.* at 6-7.

We have examined the autopsy and toxicology reports carefully and have determined that the privacy interests of surviving family members do not justify withholding the reports. Although surviving family members may consider the release of these reports to be objectionable, there is a considerable public interest in obtaining information about the cause of death in a case such as this, which involves a violent death at a State prison. Furthermore, there is a substantial public interest in the Coroner's performance of his statutory duty to determine the cause of death in this matter. We further note that the autopsy and toxicology reports do not contain any highly personal medical information about the decedent that is unrelated to the cause of death. Accordingly, the Coroner's request to assert the exemption under Section 7(1)(c) is denied with respect to the autopsy and toxicology reports report.

We reach a different result with respect to the photographs. By their nature, post-mortem photographs depicting a human being are "gruesome and graphic" and their disclosure would be highly objectionable to a reasonable person. *See* Public Access Opinion 10-003 at 7-10 (October

22, 2010). With respect to the post-mortem photographs, the privacy interests of the surviving family members outweigh the public interest in obtaining the information. We therefore conclude that the Coroner has met its burden of showing by clear and convincing evidence that post-mortem photographs depicting the decedent are exempt, and the request to assert the exemption under Section 7(1)(c) for those photographs is accordingly approved.

If you have any questions, please feel free to contact me at 312-814-2770. This correspondence will serve to close the matter.

Sincerely,



John Schmidt
Assistant Attorney General

cc: Mr. James Chapman
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Chicago, Illinois 60653

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