



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 14, 2010

Ms. Melanie Manning
Assistant State's Attorney
Will County State's Attorney's Office
Will County Court Annex
57 North Ottawa Street, 6th Floor
Joliet, Illinois 60432

RE: Pre-Authorization Request – 2010 PAC 5257

Dear Ms. Manning:

We have received and reviewed your January 14, 2010, letter providing notice to the Public Access Counselor and to [REDACTED] of Will County's (County) intent to deny disclosure of a Will County Coroner (Coroner) autopsy report related to the death of [REDACTED] as a record exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2008), as amended by Public Act 96-542, effective January 1, 2010.

The autopsy report (Report) relating to the death of [REDACTED] totals 13 pages and includes summaries of internal and external examinations of [REDACTED] evidence of medical treatment, the Coroner's diagnoses and opinion, an official report of findings, and a seven-page toxicology report. No photographs are included with the Report. As discussed below, after considering the balancing test required under the unwarranted invasion of personal privacy exemption, we conclude that the Report is **not exempt** from disclosure under Section 7(1)(c) of FOIA.

Background

On January 5, 2010, Ms. Washetas submitted a FOIA request to the Coroner seeking "a complete copy of my sister, [REDACTED] autopsy." The Coroner received [REDACTED] request on January 7 and on January 14 submitted to the Public Access Counselor a Notice of Intent to Deny Portion of FOIA Request (Notice) pursuant to the exemption in Section 7(1)(c) of FOIA. The Notice asserted the following in support of the Section 7(1)(c) exemption:

The United States Supreme Court has held that surviving, close family members (i.e., in this case the decedent's husband) have a right to personal privacy that

exempts photos of death scenes from disclosure pursuant to the Freedom of Information Act citing close family members' personal privacy interests in the decedent's death. We believe this would extend to other postmortem documents in the Coroner's possession from disclosure, as it would disclose personal medical information of the deceased and details of her death. See *National Archives and Records Admin. v. Favish*, 51 U.S. 157 (2004). Releasing this personal information to the requester would be a clearly unwarranted invasion of the decedent's husband personal privacy and his right to privacy outweighs any legitimate public interest in the requester obtaining this information.

Analysis

Under Section 1.2 of FOIA, all records in the custody or possession of a public body are presumed to be open to inspection or copying. Section 1.2 further requires that any public body asserting that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2 (added by Public Act 96-542, effective January 1, 2010).

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." 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.*

With respect to the Report, the County's use of the Section 7(1)(c) exemption is **denied**. The County has failed to meet its burden of proving by clear and convincing evidence that disclosure of the Report would result in the release 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 County has made no attempt to review the specific information in the Report and explain why the disclosure of this specific information would constitute a clearly unwarranted invasion of personal privacy.

Additionally, we have reviewed the Report to determine whether it contains information that is "highly personal or objectionable to a reasonable person[.]" and whether the presence of such information would justify withholding the Report in its entirety. We have determined that the Report contains no information that would justify the withholding of the Report in its entirety.

In support of the County's use of the Section 7(1)(c) exemption with regard to the Report, it has directed us to *National Archives & Records Administration v. Favish*, 541 U.S. 157, 124 S. Ct. 1570 (2004), *rehearing denied*, 541 U.S. 1057, 124 S. Ct. 2198 (2004). The County asserted that "the United States Supreme Court has held that surviving, close family members (i.e., in this case the decedent's husband) have a right to personal privacy" with respect to close family members' death scene images.

Favish involved a Federal Freedom of Information Act request for photographs of former White House deputy counsel Vincent Foster's body and death scene following Foster's suicide. The *Favish* court held that a decedent's surviving family members possess a separate personal

privacy interest in "their close relative's death-scene images". The court, however, did not address the disclosure of any autopsy documents related to Foster's suicide. As a result, the holding of *Favish* does not control the application of Section 7(1)(c) to the Report in this case.

Should you have questions or concerns, please feel free to contact me.

Sincerely,

Cara Smith
Public Access Counselor

By: *Sara Gadola Gallagher*
Sara Gadola Gallagher
Deputy Public Access Counselor

cc:

