



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

Lisa Madigan
ATTORNEY GENERAL

August 10, 2010

Lisa Weitekamp
Illinois Department of Corrections
1301 Concordia Court
Springfield, Illinois 62794-9277

RE: Pre-Authorization Request – 2010 PAC 7323

Dear Ms. Weitekamp:

Thank you for providing the additional information we requested on May 17, 2010 in response to a written notice from the Illinois Department of Corrections (IDOC) of its intention to deny certain records as exempt from disclosure under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act. 5 ILCS 140/1 *et seq.*, as amended (FOIA).

Pursuant to 5 ILCS 140/9.5(b), we asked that IDOC provide the specific statutory basis for withholding the responsive documents as well as for a detailed factual basis for asserting the personal privacy exemption in Section 7(1)(c) of FOIA to deny disclosure of certain records pertaining to [REDACTED] sought by Sara Fay in a FOIA request submitted to IDOC on April 27, 2010.

Determination

Group 1 Documents

IDOC asserts the exemption found in 7(1)(f) to withhold, in whole, “e-mails between employees of the Illinois Department of Corrections concerning [REDACTED]’s FMLA leave, disability leave, and disciplinary action” as “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.”

Section 7(1)(f) of FOIA exempts from disclosure records that constitute “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific 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).

IDOC’s proposed use of the Section 7(1)(f) exemption to withhold the provided emails in whole is denied. We have reviewed these documents and have determined that many of the emails

simply contain statements of whether [REDACTED] was present or not a particular day he was scheduled to work, particular action taken by [REDACTED] regarding taking days off, or the number of days of leave that had been used. This information is neither an opinion nor a recommendation and thus is not exempt from disclosure. Several emails contain statements in which recommendations are made or opinions are expressed which are exempt under Section 7(1)(f), as well as non-exempt information, such as whether [REDACTED] was present on a particular day. Section 7(1) of FOIA provides in part that “[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying.” 5 ILCS 140/(7)(1).

Accordingly, IDOC may issue a partial denial letter and release the responsive e-mails with only the appropriate information redacted.

Group 2 Documents

IDOC asserts that “Notification of Absence slips, timesheets, and sick time call-ins which reference FMLA and leaves of absence” are exempt from disclosure in whole under Section 7(1)(c) of FOIA as they are “...personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

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.* The exemption also provides, however, that “[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” *Id.*

IDOC’s proposed use of the Section 7(1)(c) exemption to withhold all “Notification of Absence slips, timesheets, and sick time call-ins which reference FMLA and leaves of absence” in whole is denied. These records clearly bear upon the employee’s public duties and specifically on the employee’s presence or absence from work and entitlement to salary payments. The disclosure of the fact that [REDACTED] was on FMLA status would not constitute a clearly unwarranted invasion of personal privacy. In addition, IDOC failed to provide a detail factual basis for asserting this exemption. To the extent that records contain information regarding an individual’s specific medical condition, however, the disclosure of that information would be objectionable to a reasonable person and thus is exempt under Section 7(1)(c) and may be redacted from the documents.

Accordingly, IDOC may issue a partial denial letter and release all Notification of Absence slips, timesheets, and sick time call-ins with information as to any specific medical condition redacted.

Group 3 Documents

IDOC asserts that "Personnel Action Forms, letters to and from [REDACTED] and an Incident Report which all refer to [REDACTED]'s use of FMLA time" are exempt from disclosure under Section 7(1)(c).

First, IDOC's proposed use of the Section 7(1)(c) exemption to fully withhold the Personnel Action Forms from disclosure is denied. We have reviewed these documents and have determined that they provide position and salary information, as well as dates of employment leaves. Disclosure of this information clearly bears on the public duties of a public employee and would not be objectionable to a reasonable person. Also, IDOC failed to provide a detail factual basis for asserting this exemption.

However, IDOC may redact dates of birth contained on these forms as the disclosure of this information 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. In addition, under Section 7(1)(b), IDOC may redact any "private information", as defined in Section 2(c-5) of FOIA, which is contained on these forms.

Accordingly, IDOC may issue a partial denial letter and release all Personnel Transaction Forms with dates of birth and "private information" redacted.

Second, IDOC's proposed use of the Section 7(1)(c) exemption to withhold correspondence to and from [REDACTED] regarding his use of FMLA time is denied. The disclosure of [REDACTED]'s use of FMLA leave does not constitute an unwarranted invasion of personal privacy as it relates to his presence or absence from work and entitlement to salary payments. As such, the correspondence to and from [REDACTED] regarding his use of leave time is not exempt from disclosure under Section 7(1)(c). However, information contained within the correspondence referencing any a specific medical condition may be withheld from disclosure under Section 7(1)(c) of FOIA and any "private information", as defined in Section 2(c-5), may be withheld under Section 7(1)(b) of FOIA.

Accordingly, IDOC may issue a partial denial letter and release the correspondence with the appropriate information redacted.

Third, IDOC's proposed use of Section 7(1)(c) as to disclosure of an incident report is denied. The incident report does not reference any specific medical condition and IDOC did not provide a detailed factual basis for withholding this document under Section 7(1)(c).

Accordingly, IDOC should fully disclose the incident report.

Group 4 Documents

IDOC asserts that "Personnel Action Forms and other documents related to leaves of absence taken by [REDACTED] relative to a family health matter" are exempt from disclosure under Section 7(1)(c) of FOIA.

For the reasons stated above, IDOC may not withhold the Personnel Action Forms and other documents in their entirety but may redact dates of birth and references to a specific medical condition under Section 7(1)(c) of FOIA and any "private information" under Section 7(1)(b) of FOIA.

Accordingly, IDOC may issue a partial denial letter and release these documents with the appropriate information redacted.

Group Five Document

IDOC asserts that "[REDACTED]'s CMS-100 which lists his education background" is exempt from disclosure under Section 7(1)(c) of FOIA.

IDOC's proposed use of the Section 7(1)(c) exemption to withhold [REDACTED]'s CMS-100 from disclosure is denied. We have reviewed this document and have determined that disclosure of this information clearly bears on the qualifications of a public employee to perform his public duties and would not be objectionable to a reasonable person. Also, IDOC failed to provide a detail factual basis for asserting this exemption.

Accordingly, IDOC should fully disclose this document.

If you have any questions regarding which specific sentences or phrases may appropriately be redacted, please feel free to contact me at (312) 814-1003. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:

[REDACTED]
Jessica O'Leary
Assistant Attorney General

cc: Sara K. Fay and Patrick Rehkamp
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