



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 27, 2010

Ms. Jan Weech
FOIA Officer
McHenry County Sheriff's Office
2200 North Seminary Avenue
Woodstock, Illinois 60098-2637

RE: Pre-Authorization Request – Consolidated Response
2010 PAC 7612, 7613, 7614, 7616, 7618, 7620, 7621, 7660, 8678

Dear Ms. Weech:

We have received and reviewed several identical written notices from the McHenry County Sheriff's Office (Office) of its intention to deny disclosure of certain records as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c). The Office's written notices relate to FOIA requests submitted by various requesters for records related to the suicide of former Metra Executive Director Philip Pagano.¹ The Office has asserted that copies of letters that Mr. Pagano wrote to family members are exempt from disclosure under Section 7(1)(c) of FOIA.

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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.*

¹ The FOIA requesters included Mr. Kevin Craver of the *Northwest Herald*, Mr. Charles Keeshan of the *Daily Herald*, Mr. Richard Wronski of the *Chicago Tribune*, Mr. Eric Siegel of WLS-TV, Mr. Bob Roberts of WBBM Newsradio 780, Ms. Madeleine Martino Fox of WTTW Chicago Tonight, Ms. Mary Wisniewski of the Chicago Sun-Times, Mr. Cal Skinner of the McHenry County Blog, and Mr. Bob Herguth of the Better Government Association.

Determination

The Office's use of the Section 7(1)(c) exemption with regard to the letters in question is **approved**. The Office has previously released to the requesters a letter that Mr. Pagano specifically addressed to Metra's Board of Directors. As a result, the only letters in question here are those that Mr. Pagano addressed to his wife and daughters.

These letters contain Mr. Pagano's last words to his family members and friends and are expressions of his feelings to these individuals. The letters also contain instructions to his wife for handling personal financial matters and other private family issues. Based on our review of these letters to Mr. Pagano's family, we find that they are highly personal records, the release of which would be objectionable to reasonable persons. *See National Archives & Records Administration v. Favish*, 541 U.S. 157, 166-69, 124 S. Ct. 1570 (2004), rehearing denied, 541 U.S. 1057, 124 S. Ct. 2198 (2004).² The very personal content of these letters establishes that Mr. Pagano's family's right to privacy with respect to these letters outweighs any legitimate public interest in obtaining them. None of the FOIA requesters has established that disclosure of these letters would advance any legitimate public interest. Thus, disclosure of these letters would constitute a clearly unwarranted invasion of the personal privacy of Mr. Pagano's surviving family members. It should be noted that some of the letters also contain copies of Mr. Pagano's bank statements, which are exempt from disclosure as personal financial information under Section 7(1)(b) of FOIA.

Should you have questions or concerns, please feel free to contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

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

cc: Mr. Kevin Craver
Northwest Herald
7717 South Route 31
Crystal Lake, Illinois 60014

² Section 7(1)(c) does not provide a means for determining whether this exemption applies to the family of the deceased, and Illinois courts generally have not weighed in on this specific issue. However, because the Illinois FOIA is patterned after the Federal Freedom of Information Act (Federal FOIA) (5 U.S.C.A. §552 (West 2007 and West Supp. 2009)), Illinois courts look to Federal case law for guidance in situations such as these. *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill.App.3d 188, 202 (2004). Under Federal FOIA, the courts have long recognized that a decedent's surviving family members possess their own separate personal privacy interest in "their close relative's death-scene images" and similar type records. *See National Archives*, 541 U.S. at 170.

Mr. Charles Keeshan
Daily Herald
385 Airport Road, Suite A
Elgin, Illinois 60123

Mr. Richard Wronski
Chicago Tribune
1717 North Penny Lane
Schaumburg, Illinois 60173-5602

Mr. Eric Siegel
WLS-TV, ABC 7 Chicago
190 North State Street
Chicago, Illinois 60601-3302

Mr. Bob Roberts
WBBM Newsradio 780
180 North Stetson Avenue, Suite 1178
Chicago, Illinois 60601

Ms. Madeleine Martino Fox
WTTW Chicago Tonight
5400 North St. Louis Avenue
Chicago, Illinois 60625-4698

Ms. Mary Wisniewski
Chicago Sun-Times
350 North Orleans Street, 10th Floor
Chicago, Illinois 60654

Mr. Cal Skinner
McHenry County Blog
275 Meridian Street
Crystal Lake, Illinois 60014-5411

Mr. Bob Herguth
Better Government Association
223 West Jackson, Suite 620
Chicago, Illinois 60606