



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 29, 2010

Ms. Karen Lucas
FOIA Officer
Metra
547 West Jackson Boulevard
Chicago, Illinois 60661

RE: Pre-Authorization Request – 2010 PAC 7791

Dear Ms. Lucas:

We have received and reviewed the written notice from Metra of its intent 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). Metra's written notice relates to a FOIA request submitted by [REDACTED] seeking copies of the train videotapes of the suicides of [REDACTED] and [REDACTED].

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.*

Determination

Metra's use of the Section 7(1)(c) exemption with regard to this information is **approved**. The videotapes depicting these suicides are records that are highly personal, 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). Moreover, the surviving families' right to privacy with respect to these videotapes outweighs any legitimate public interest in obtaining the information.¹ [REDACTED] was a private citizen, and [REDACTED] has failed to show that disclosure of the videotape of [REDACTED] suicide would advance any matter of legitimate public interest. *See generally Favish*, 541 U.S. at 172-73. On balance, the privacy interests of [REDACTED] family in the videotape of [REDACTED] suicide outweigh any legitimate public interest in obtaining access to this graphic videotape depicting his suicide. Accordingly, disclosure of the videotape would constitute a clearly unwarranted invasion of personal privacy to the family of [REDACTED]

While [REDACTED] was a public figure, [REDACTED] also has failed to show that disclosure of the graphic videotape of [REDACTED] suicide would advance any matter of legitimate public interest. Upon receiving written notice from Metra that it intended to deny disclosure of this videotape, [REDACTED] submitted correspondence to our office in which [REDACTED] stated: "It is fine with me if the impact part of the videos is redacted, assuming that is even visible. The police report in the [REDACTED] case says that he was looking directly at the Engineer. I would like to see if that part of the report is accurate and the video is the best evidence." It is unclear, however, how verifying that [REDACTED] was looking directly at the train's engineer before he died would shed light on any matter of legitimate public interest. Thus, [REDACTED] statement fails to establish that disclosure of the videotape would advance any legitimate public interest that would outweigh the family's privacy interest in the videotape.

¹ When Illinois FOIA does not provide a standard by which to address an issue, Illinois courts have looked to Federal case law for guidance because the Illinois FOIA is patterned after the Federal Freedom of Information Act (Federal FOIA). *Chicago Alliance for neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 202 (2004); *Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007 (1994), *appeal denied*, 159 Ill. 2d 565 (1995). While Illinois courts have not addressed the issue of whether the personal privacy interests of surviving family members in the documents related to their relative's death may be considered in conducting the balancing test required under Section 7(1)(c)'s clearly unwarranted invasion of personal privacy exemption, Federal courts construing Federal FOIA 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 Favish*, 541 U.S. at 170 (a decedent's surviving family members have a personal privacy interest under Federal FOIA in "their close relative's death-scene images"); *see also Katz v. National Archives & Records Administration*, 862 F. Supp. 476, 485-86 (D.D.C. 1994), *aff'd on other grounds*, 68 F.3d 1438 (D.C. Cir. 1995) ("allowing access to the autopsy photographs [of President Kennedy] would constitute a clearly unwarranted invasion of the Kennedy family's privacy" under Federal FOIA); *New York Times Co. v. National Aeronautics & Space Administration*, 782 F. Supp. 628, 630 (D.D.C. 1991) (sustaining a privacy claim under Federal FOIA by the families of the deceased astronauts and recognizing the families' privacy interests in "all voice and data communications" recorded aboard the space shuttle Challenger before it disintegrated).

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* At ■
Sara Gadola Gallagher
Deputy Public Access Counselor

cc:

