



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

August 13, 2010

Mr. Mark Sterk  
Odelson & Sterk  
3318 W. 95<sup>th</sup> St.  
Evergreen Park, Illinois 60805

RE: FOIA Pre-Authorization Request - 2010 PAC 7837

Dear Mr. Sterk:

We have reviewed the Village of Oak Brook's notice of intent to deny disclosure of certain disciplinary records pursuant to Section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c)), together with associated documents, in the above-referenced case.

On May 21, 2010, [REDACTED] submitted a FOIA request to the Village requesting "copies of the complete discipline file for village employee Martin Zelisko. This is the discipline file held in the police department containing all discipline and the documentation of the discipline for this officer." The Village has claimed that Mr. Zelisko's entire disciplinary file is exempt from disclosure under section 7(1)(c), which exempts from inspection and copying the following: "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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." 5 ILCS 140/7(1)(c).

On June 16, 2010, we determined that further inquiry was warranted, and requested that the Village provide us with a copy of Mr. Zelisko's disciplinary file. Based upon our review of the documents, we conclude that the disclosure of the disciplinary file will not result in a clearly unwarranted invasion of personal privacy and, therefore, we deny the Village's request for authorization to withhold the records pursuant to Section 7(1)(c) of FOIA.

In *Gekas v. Williamson*, 393 Ill.App.3d 573 (2009), the plaintiff sought copies of citizens' complaints lodged against a deputy sheriff whom he accused of wrongdoing. The sheriff denied the request on the basis, *inter alia*, that the disclosure of the complaints would violate the

deputy's personal privacy. The court noted, however, that: "[i]nasmuch as the [complaint] files document investigations of alleged wrongdoing by [the deputy sheriff] in the course of his public duties, they are not his personal information, and the disclosure of those files would not invade his personal privacy." *Gekas v. Williamson*, 393 Ill.App.3d at 575.

The reasoning of *Gekas v. Williamson* is equally applicable to this request. Disciplinary actions taken against public employees and the discipline imposed, if any, directly relate to how a public employee performs his or her public duties. Disciplinary files are not personal information the disclosure of which may constitute an unwarranted invasion of personal privacy, for purposes of Section 7(1)(c) of FOIA. That Officer Zelisko has been the subject of disciplinary actions reflects on the performance of his public duties, and the public has a right to obtain the facts and determinations relating to these instances.

Accordingly, the Village has not satisfied its burden of demonstrating that Section 7(1)(c) exempts the requested information from disclosure, and, therefore, it may not assert that exemption to withhold the records in question. To the extent that the Village also has cited Section 7(1)(n) of FOIA as a basis for withholding some or all of the documents, the Public Access Counselor is not required to pre-approve the use of that exemption, and we decline to address that issue at this time.

If you have any questions or concerns, please feel free to contact me at (312) 814-5044. This correspondence shall serve to close this matter.


Sincerely,

Cara Smith  
Public Access Counselor

By:

  
Sunil Bhawe  
Assistant Attorney General

cc:

  
Blaine Wing  
FOIA Officer  
Village of Oak Brook  
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