



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

Lisa Madigan
ATTORNEY GENERAL

July 19, 2010

Randall E. Roberts
Executive Assistant State's Attorney &
Director of Continuing Legal Education
Cook County State's Attorney's Office
69 W. Washington Street, Suite 3200
Chicago, Illinois 60602

Re: Pre-Authorization Request – 2010 PAC 7997

Dear Mr. Roberts:

We have received and reviewed the written notice from the Cook County State's Attorney's Office (Office) of its intention to deny certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act. 5 ILCS 140/1 *et seq.*, as amended (FOIA).

Tracy Siska of the Chicago Justice Project submitted a FOIA request on April 12, 2010 seeking, in part, a list of the criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault, criminal sexual abuse, and aggravated criminal sexual abuse cases that were submitted by the Chicago Police Department to the Cook County State's Attorney's Office's felony review process that were approved for prosecution for the years 2008 and 2009.

The Office and Mr. Siska mutually agreed to extend the Office's timeframe to respond to this FOIA request to June 15, 2010.

In its written response the Office responded to Mr. Siska's request, in part, by providing a list of the requested cases that were submitted to the felony review process for 2008 and 2009. Within this list, the Office redacted the names and internal case numbers on all cases in which the Office has not approved charges against the individual detained by the Chicago Police Department and in which the Office has requested additional investigation.

The Office asserts that these names and internal case numbers are exempt from disclosure under the personal privacy exemption found in Section 7(1)(c) of FOIA. In addition, the Office asserts that this information is also exempt from disclosure under Sections 7(1)(a) and 7(1)(d) 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.” *Id.*

Determination

The Office asserts that “[a] reasonable person would find it highly objectionable to reveal to the public a list of detainees who are presumed innocent where no felony charge was approved and no felony arrest was made...there is a significant social stigma as well as economic and other personal consequences to an individual who is accused of a felony sex offense.” We have determined that in cases involving an individual who has been detained but not formally arrested, the individual’s right to privacy outweighs any legitimate public interest in obtaining this information.

However, if the individual has been formally arrested, the following information must be released pursuant to Section 2.15(a) of FOIA when maintained by a local criminal justice agency:

...(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

In addition, Section 2.15(c) of FOIA provides that:

Information described in items (iii) through (vi) of subsection (a) may [only] be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

Accordingly, the Office’s use of the exemption found in Section 7(1)(c) of FOIA to deny disclosure of the names and corresponding internal case numbers for individuals who have been detained by the Chicago Police Department but whose case was not approved for felony charges by the Office, and for individuals who are the subject of an ongoing criminal investigation, is approved, to the extent that these detained individuals have not been arrested for an offense. Therefore, the Office may issue a partial denial letter and release the requested information to Mr. Siska with the names and corresponding case numbers redacted for individuals who have not been formally arrested. Regarding individuals who have been arrested, the Office should provide the information, as appropriate, under Section 2.15 of FOIA.

Please note that because the Public Access Counselor's approval is not required to withhold information under Sections 7(1)(a) and 7(1)(d) of FOIA, we offer no advice or opinion as to whether the Office's use of those exemptions is proper.

If you have any questions, 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: 

Jessica O'Leary
Assistant Attorney General

cc: Tracy Siska
Chicago Justice Project
35 E. Wacker Drive, 9th Floor
Chicago, Illinois 60601