



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

Lisa Madigan
ATTORNEY GENERAL

July 22, 2010

Mr. Matthew Sandoval
Freedom of Information Officer
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

RE: FOIA Pre-Authorization Request – 2010 PAC 8412

Dear Mr. Sandoval:

We have received and reviewed the written notice from Chicago Police Department (CPD) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et. seq.*, as amended.

Specifically, Bruce Rushton, on behalf of the State-Journal Register submitted a FOIA request to CPD on June 21, 2010 seeking the following information:

“all documents and records, including but not limited to, investigative reports, both field and supplemental, photographs, correspondence and other records, both written and electronic, concerning the death of Matthew Dennison in November 2009.”

In November 2009, Mr. Dennison, a resident of Grandview, Illinois, was found by CPD in Lake Michigan. On July 6, 2010, CPD submitted a pre-authorization request to our Office, asserting that the photographs of Mr. Dennison after he was retrieved from the water are exempt from disclosure under Section 7(1)(c) of FOIA which 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.*

Determinations

CPD’s request for approval of its decision to withhold the photographs pursuant to Section 7(1)(c) is hereby approved in part and denied in part.

With regard to the photographs of the victim, our Office relies on 2010 PAC 5068 and 2010 PAC 6143, a previously issued pre-authorization request where this Office found that that autopsy photographs are highly personal, the release of which would be objectionable to the reasonable person. This conclusion is supported by *Katz v. National Archives & Records Administration v. Favish*, 862 F.Supp. 476, 485-486 (D.D.C. 2004).

In applying Section 7(1)(c) and determining whether there exists any legitimate public interest in obtaining the information, it is our determination that disclosure of the photographs that contain images of the Mr. Dennison after being recovered from the water would constitute a highly unwarranted invasion of privacy into the Dennison family. Further, there is no indication that disclosure of any of these photographs would advance the public interest.

With regard to the photographs of the personal belongings found on Mr. Dennison and in his hotel room, it is the determination of this Office that CPD has not met its burden under Section 7(1)(c). In 2010 PAC 5068, we noted that the photographs of physical evidence did not constitute a clearly unwarranted invasion of personal privacy. In keeping with our analysis under 2010 PAC 5068, CPD has failed to meet its burden of demonstrating by clear and convincing evidence that disclosure of photographs of the personal possessions found on Mr. Dennison and in his hotel room would constitute a highly unwarranted invasion of personal privacy, the disclosure of which would be objectionable to the reasonable person.


In summary, CPD has sustained its burden under Section 7(1)(c) with regard any photographs that depict Mr. Dennison's body postmortem and may withhold such photographs. However, CPD should disclose the photographs of the personal items found on Mr. Dennison and in his hotel room.

If you have any questions concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Bruce Rushton
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