



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 30, 2010

Ms. Mimi Bryan
FOIA Officer
Kendall County Board
111 West Fox Street
Yorkville, Illinois 60560-1498

RE: Pre-Authorization Request – 2010.PAC 8934, 8935
Requester: [REDACTED]

Dear Ms. Bryan:

We have received and reviewed the written notices from the Kendall County Board (Board) of its intent to deny disclosure of certain information as exempt from disclosure under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c), (f). The Board's written notices relate to two FOIA requests submitted by [REDACTED] for copies of certain EEOC complaints. The Board has asserted that dates of birth in the complaints are exempt from disclosure under Section 7(1)(c) of FOIA and that a single statement in each complaint in which the complainant asserts an opinion is exempt from disclosure under Section 7(1)(f) 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.*

Section 7(1)(f) of FOIA exempts from disclosure and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f).

Determinations

The Board's use of the Section 7(1)(f) exemption with regard to dates of birth is **approved**. A date of birth is highly personal information, and the subject's right to privacy with respect to this information outweighs any legitimate public interest in obtaining it. Thus, disclosure of dates of birth would constitute a clearly unwarranted invasion of the personal privacy of the subjects.

However, the Board's use of the Section 7(1)(f) exemption with respect to the statements in the EEOC complaints is **denied**. The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987). A statement of opinion by an individual complainant in an EEOC complaint is not intra-governmental policy discussion that is exempt from disclosure under Section 7(1)(f).

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

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

cc:

