



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 23, 2010

Officer Rory O'Brien
Assistant FOIA Officer
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

RE: Pre-Authorization Request – 2010 PAC 9022

Dear Officer O'Brien:

We have received and reviewed the written notice from the Chicago Police Department (Department) of its intent to deny disclosure of graphic homicide photographs as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c). The Department's written notice relates to a FOIA request submitted by [REDACTED] for records related to the murder of [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

The Department's use of the Section 7(1)(c) exemption with regard to the photographs in question is **approved**. These photographs 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 family's right to privacy with respect to these photographs outweighs any legitimate public interest in obtaining the

information.¹ Accordingly, disclosure of the photographs would constitute a clearly unwarranted invasion of personal privacy to the family of [REDACTED]

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*
Sara Gadola Gallagher
Deputy Public Access Counselor

cc:



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).