



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 25, 2011

Paul Castiglione
Executive Assistant State's Attorney for Policy
Cook County State's Attorney
69 West Washington Street, Suite 3200
Chicago, IL 60602

RE: Pre-Authorization Request – 2011 PAC 12912
Requester: Martha Reggi

Dear Mr. Castiglione:

We have received and reviewed the notice from the Cook County State's Attorney's Office (the SAO) of its intention to deny disclosure of 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. On February 15, 2011, Ms. Martha Reggi requested a copy of the "arrest record and/or rap sheet" for a certain individual who was arrested after being accused of rape. In its written notice dated March 11, 2011, the SAO asserts that the responsive arrest report and rap sheet are exempt under Section 7(1)(c) 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 the 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 SAO's use of the exemption in Section 7(1)(c) to withhold the arrest report and the rap sheet in their entirety is denied. Section 2.15(a) of FOIA requires State and local criminal justice agencies to disclose certain information regarding arrests. Specifically, Section 2.15(a) requires the following information to be disclosed when it appears in chronologically maintained arrest and criminal history records:

(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. 5 ILCS 140/2.15(a).

The fact of an arrest and the circumstances surrounding an arrest may be highly personal to the individuals involved. Section 2.15(a) of FOIA, however, requires disclosure of the information listed in that section notwithstanding such concerns. This Section of FOIA clearly reflects the legislature's recognition of a public interest in disclosure of information regarding arrests. This strong public interest outweighs the individual's right to privacy in this information. The SAO has not sustained its burden to establish that the subject's right to privacy outweighs the public interest in disclosure, and therefore the types of information listed in Section 2.15(a) of FOIA are not exempt from disclosure under Section 7(1)(c) of FOIA and must be released. I have enclosed a copy of the binding opinion that this Office issued to the Chicago Police Department on February 18, 2011, which includes our determination that the arrest reports in that matter were not exempt under Section 7(1)(c) because Section 2.15(a) requires their disclosure.

The SAO directs our attention to our July 19, 2010 letter in Pre-Authorization 2010 PAC 8108. The SAO's notice states that this letter affirmed "the decision of the SAO to deny a FOIA request pursuant to Section 7(1)(c) for the names and internal case numbers for individuals who had been detained for a sex crime but not charged with that crime." However, the last sentence on the second page of that letter states: "Regarding individuals who have been arrested, the Office-[SAO]-should-provide-the-information, as appropriate, under Section 2.15 of FOIA." That letter approved use of 7(1)(c) to withhold individuals' names and internal case numbers only in matters where the individual had not been formally arrested.

Accordingly, the SAO may not withhold the arrest report and rap sheet in their entirety pursuant to Section 7(1)(c). If the SAO identifies specific information within the arrest report or rap sheet that it believes is exempt under Section 7(1)(c) and that is not required to be released by Section 2.15(a), the SAO may submit a new pre-authorization request as to that specific information. If you have any questions or concerns, feel free to contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Sincerely,



Sarah Kaplan
Assistant Public Access Counselor

cc: Martha Reggi
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