



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 30, 2010

Officer Michael Kelly
Assistant Freedom of Information Officer
Chicago Police Department
Record Services Division
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Preauthorization Request 2010 PAC 9570

Dear Officer Kelly:

The Office of the Public Access Counselor has received and reviewed the written notice from the Chicago Police Department of its intention to deny, in part, a request by [REDACTED] for photographs relating to the March 5, 1964 murder of [REDACTED]. The Department intends to disclose nineteen photographs to [REDACTED], but withhold fourteen post-mortem photographs pursuant to Section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c)), on the basis that disclosure of the photographs would constitute a clearly unwarranted invasion of personal privacy. For purposes of FOIA, an "[u]nwarranted invasion of personal privacy means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs the legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c).

Although Illinois reviewing courts have not yet addressed this issue, cases decided under the Federal FOIA and freedom of information laws from other states recognize that family members have a privacy interest in records relating to a close relative's death, including death-scene images. *See National Archives & Records Administration v. Favish*, 541 U.S. 157 (2004) (a decedent's surviving family members have a personal privacy interest under Federal FOIA in death-scene images of close relatives); *Katz v. National Archives & Records Administration*, 862 F. Supp. 476 (D.D.C. 1994) *aff'd* 68 F.3d 1438 (D.C. Cir. 1995) (recognizing Kennedy family's privacy interests under the Federal FOIA in autopsy photographs of President Kennedy); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (recognizing the privacy interest of a murder victim's mother in crime scene photographs).

The language of section 7(1)(c) and the legislative debates regarding Public Act 96-542, which amended FOIA effective January 1, 2010, contain no indication that the General Assembly

intended to reject the established case law recognizing the privacy interests of surviving close relatives of a decedent. Accordingly, those interests should be considered in determining whether the release of the photographs in question constitutes a clearly unwarranted invasion of personal privacy.

We have examined the photographs that the Department intends to withhold. These photographs contain morbid images of [REDACTED] corpse. We have determined that the privacy interests of surviving family members outweigh the public interest in obtaining disclosure of them. Therefore, the Department's request to assert the exemption under Section 7(1)(c) with respect to the post-mortem photographs is approved and further inquiry into this matter is not warranted.

If you have any questions, please feel free to contact me at 312-814-2770. This correspondence will serve to close the matter.

Sincerely,

Cara Smith
Public Access Counselor

By:

[REDACTED]
John Schmidt
Assistant Attorney General

cc:

[REDACTED]