



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 8, 2011

Village of Bannockburn
Maria Lasday, FOIA Officer
2275 Telegraph Road
Bannockburn, IL 60015

Re: Pre-authorization request – 2011 PAC 12964

Dear Ms. Lasday:

We have received from the Village of Bannockburn a notice of intention to deny disclosure of information in response to a request for information under the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended. [REDACTED] requested copies of Village employees' W-2 tax forms for fiscal year 2009 and fiscal year 2010 as well as the Village's W-3 tax forms for the same period. The Village requested pre-authorization to withhold the employees' W-2 tax forms under Section 7(1)(c) (5 ILCS 140/7(1)(c)) of FOIA.

We determined that further inquiry was warranted and requested that the Village provide a detailed summary of its basis for the application of the Section 7(1)(c) exemption. The Village responded that "[t]o be in compliance with federal tax laws, W-2 tax forms are exempt from disclosure." We construe that statement as an assertion that the W-2 tax forms are exempt from disclosure under Section 7(1)(a) (5 ILCS 140/7(1)(a)) of FOIA. The Village also cited our determination in 2010 PAC 9280 that W-2 tax forms are exempt from disclosure under Section 7(1)(b) (5 ILCS 140/7(1)(b)).

Information in public records is exempt if disclosure 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). An "[u]nwarranted invasion of personal privacy" is 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 Village's request for pre-authorization to withhold information in the W-2 tax forms under Section 7(1)(c) is **approved in part and denied in part**. We determined in 2011 PAC 12652 that the disclosure of information in box 2 (Federal income tax withheld), box 10 (Dependent care benefits), box 11 (Nonqualified plans), and boxes 12 through 14 of each W-2 form would constitute a clearly unwarranted invasion of personal privacy. The information in these boxes depends upon circumstances in each employee's life which are highly personal, and the disclosure of this information would be objectionable to a reasonable person. The employees' right to privacy outweighs any legitimate public interest in obtaining this information. With respect to the remaining information, the Village's response to our further inquiry indicated that W-2 tax forms are exempt from disclosure under Section 7(1)(a) and Section 7(1)(b). However, the Village did not provide any basis for the applicability of the Section 7(1)(c) exemption. Accordingly, we conclude that the Village has not sustained its initial burden of demonstrating that information other than that contained in box 2 and boxes 12-14 of the W-2 tax forms is exempt from disclosure under Section 7(1)(c).

Because prior approval by the Public Access Counselor is not required for the assertion of exemptions other than Section 7(1)(c) and Section 7(1)(f) (5 ILCS 140/7(1)(f)), we make no determination at this time regarding the applicability of any other exemptions.

This letter shall serve to close this matter. If you have any questions, please feel free to contact me at 312-814-6756 or ssilverman@atg.state.il.us.

Sincerely,


Steve Silverman
Assistant Public Access Counselor

cc:

