



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

April 15, 2011

Ms. Bridgett R. Pawlak  
Freedom of Information Act Officer  
Chicago Transportation Authority  
567 W. Lake Street  
Chicago, Illinois 60661

RE: Pre-Authorization Request - 2010 PAC 7314

Dear Ms. Pawlak:

We have received and reviewed the written notice from the Chicago Transportation Authority (CTA) of its intention to withhold 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 April 26, 2010, Mr. Taylor Nuzzy, on behalf of the law firm, Jacobs, Burns, Orlove, Stanton and Hernandez, submitted a FOIA request to the CTA seeking copies of the following:

"[a] list of all CTA employees for whom the CTA is not deducting contributions for the Retirement Plan for CTA employees "Retirement Plan" and/or the CTA Retiree Health Care Trust ("RHCT"). Please include such employees' names, badge employee numbers, job titles, work locations and dates of hire and indicate whether CTA is no longer deducting contributions for the Retirement Plan and/or RHCT.

On May 10, 2010, the CTA submitted a Pre-Authorization Request with the Office of the Public Access Counselor and asserted that this information is exempt from disclosure under Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)) which 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." 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.*

This Office requested a further basis for CTA's 7(1)(c) exemption on May 24, 2010. The CTA responded to our letter on June 4, 2010. In its letter, CTA states that the documents they have

that are responsive to Mr. Muzzy's request is a list of employees "who are not having contribution deductions taken from their paychecks for the Retirement Plan and RHCT."<sup>1</sup> CTA argues that the decision of an employee not to contribute to their retirement is a personal one and that disclosure of the name would constitute an unwarranted invasion of personal privacy for that employee.

### Determination

The CTA's request for approval of its decision to withhold the names of employees who are not contributing to the Retirement Plan or RHCT pursuant to Section 7(1)(c) is denied.

Reference to an identity alone does not constitute 'personal information' under FOIA. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill.2d 401, 412. While this Office has concluded that the disclosure of the specific financial contributions of public employees to such programs as deferred compensation plans are considered an unwarranted invasion of personal privacy, there exists nothing highly personal or objectionable about the disclosure of the names of those employees who have decided to participate in these programs. This Office concluded in No. 2010 PAC 8796 and 9791 that a public employee's participation in a health insurance plan is not exempt under Section 7(1)(c).

Further, the decision of a public employee *not to participate* in these programs can also be said to relate to the obligation and use of public funds. Section 2.5 of FOIA (5 ILCS 140/2.5) which provides that "[a]ll records *relating* to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." (Emphasis added.)

More specifically, the fact that these employees are not contributing to a retirement plan can be said to relate to the obligation and use of public funds as the financial amount that they would otherwise be contributing is instead being assumed by the public body.

Accordingly, the CTA has not met its initial burden pursuant to Section 7(1)(c) with regard to names and other additional information of CTA employees who are not deducting contributions for the retirement plan and must disclose this information to Mr. Muzzy. Should you have any questions or concerns, please feel free to contact me at (312) 814-5383. This correspondence shall serve to close this matter.

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<sup>1</sup> In both its May 20, 2010 Pre-Authorization Request and June 4, 2010 response letter, CTA states that it does not have lists of those employees who "have opted out" of the Retirement Program and the RHCT. It is indicated, however, in both letters that CTA does maintain a list of those employees who "do not contribute" to the Retirement Program and the RHCT.

Sincerely,



Matthew C. Rogina  
Assistant Public Access Counselor

cc: Mr. Taylor Muzzy  
Jacobs, Burns, Orlove, Stanton & Hernandez  
tmuzzy@jbosh.com

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