



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

October 19, 2010

Khang P. Trinh
Legal Counsel
Cook County Assessor's Office
118 North Clark Street,
Chicago, Illinois 60602

Re: Pre-Authorization Request – 2010 PAC 10115

Dear Mr. Trinh:

We have received and reviewed the written notice from the Cook County Assessor's Office (Office) of its intention to deny disclosure of certain records as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

██████████ submitted a FOIA request to the Office on September 21, 2010 seeking the following information:

Any and all records of paid and unpaid leave taken by Assessor employee Bryan J. Doctor, hire date May 5, 2000, from January 1, 2010 through the date of this request.

Any and all records of notice of intent to take paid and/or unpaid leave by Doctor from the date of this request through November 2, 2010.

In its written notice, the Office asserts that the responsive records are exempt from disclosure under the personal privacy exemption found in Section 7(1)(c) of FOIA. Section 7(1)(c) 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." *Id.* This exemption has been expressly limited by the General Assembly as it relates to public employees. "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.*

In asserting this exemption, the Office references an exemption found in the federal Freedom of Information Act to help interpret the Section 7(1)(c) exemption. The federal exemption exempts from disclosure "...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(2). In addition, the Office cites *Berger v. IRS*, 2008 U.S.App.LEXIS 17256 (3rd Cir. 2002) in which the Court held that the privacy interests of an IRS employee outweighed any public interest in the disclosure of the employee's time records.

Determination

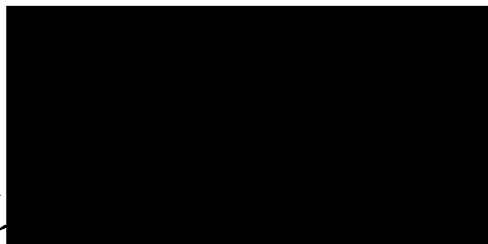
The Office's proposed application of the exemption found in Section 7(1)(c) to deny disclosure of records, in whole, pertaining the paid and unpaid leave of an Office employee is denied. We have determined that state and municipal employee personnel records relate to the public duties of public employees and officials, therefore, disclosure of these records is not an invasion of personal privacy. Records relating to leave taken by a public employee clearly bear upon the employee's public duties and specifically on the employee's presence or absence from work and entitlement to salary payments. Other provisions of FOIA, as well as other statutes, may exempt from disclosure discreet information contained within the responsive records, but they are not a basis for withholding these documents *in toto*. See e.g., Section 7(1)(b) of FOIA.

In addition, Section 7(1)(c) of FOIA is not co-extensive with the exemption found in Section 552(b)(6) of the federal FOIA, which specifically exempts personnel files from disclosure. A *per se* exemption for personnel files is not found in Illinois' FOIA and Section 7(1)(c) specifically states that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

If you have any questions, please feel free to contact me at (312) 814-1003 or joleary@atg.state.il.us. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor



cc:



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