



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

Lisa Madigan
ATTORNEY GENERAL

October 18, 2010

Ms. Sherry Holmes
FOIA Officer
Macomb Police Department
120 S. McArthur St.
Macomb, IL 61455

RE: Pre-Authorization Request – 2010 PAC 8726
FOIA Requester: Michelle L. Blackburn – Sorling, Northrup, Hanna, Cullen & Cochran

Dear Ms. Holmes:

We have received and reviewed the written notice from the Macomb Police Department (Department) of its intent to deny disclosure of reports and/or documents relating to [REDACTED] as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.*, as amended.

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.” The exemption defines “unwarranted 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.”

The Department argues that the police reports should not be released to the requestor because [REDACTED] was never arrested. Therefore, it contends that his right to privacy outweighs any interest the public may have in obtaining the information contained in the documents.

The Department’s use of the Section 7(1)(c) exemption with regard to all reports and/or documents relating to [REDACTED] is **granted in part and denied in part**. There is a presumption that “[a]ll records in the custody or possession of a public body are ... to be open to inspection or copying.” 5 ILCS 140/1.2. This Office has reviewed the reports forwarded to us by the Department. Thus, it needs to be determined whether the information contained within meets the balancing test outlined in Section 7(1)(c):

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.

5 ILCS 140/7(1)(c).

Here, the police reports contain information regarding multiple encounters [REDACTED] had with the Department. Those interactions include traffic stops, incidents where [REDACTED] was the complainant, and minor incidents where no action was taken by the Department. [REDACTED] was never arrested in connection with any of the encounters detailed in the police reports. The Department argues that "[t]hese reports are an 'unwarranted invasion' of [REDACTED] personal privacy" and that because [REDACTED] was never arrested, "[i]t is not in the public[sic] interest to obtain this information." However, there is still a legitimate public interest in knowing about police actions and response in the community.

Further, none of the police reports, in their entirety, qualify as "highly personal or objectionable to a reasonable person." Traffic stops happen daily and millions of people have been subjected to one. Additionally, the mere fact that [REDACTED] was a complainant and not an arrestee does not, in and of itself, exclude the record from disclosure. Moreover, police records cannot be withheld in their entirety solely because the Department did not take action. Therefore, the Department may not shield the records as entirely exempt under Section 7(1)(c).

The Department may use Section 7(1)(c) to redact from the records the names of any victims, third-parties, and non-arrested suspects, as well as dates of birth which appear in responsive records. This information is highly personal by its very nature, and the subjects' right to privacy with respect to this information outweighs any legitimate public interest in obtaining it. Thus, the information is exempt from disclosure under Section 7(1)(c) of FOIA, as disclosure would constitute a clearly unwarranted invasion of personal privacy to the subjects of the information.

The Department is also free to use the other exemptions provided by Section 7, such as the Section 7(1)(b) exemption for "private information," to redact portions of the police records. Private information includes "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses." 5 ILCS 140/2(c-5). Private information can also include home addresses and license plate numbers. *Id.* These exemptions do not require pre-approval from our office. 5 ILCS 140/9.5(b) (only exemptions made under subsections 7(1)(c) and 7(1)(f) require public bodies to seek prior approval from the Public Access Counselor).

As such, the Department should issue a partial denial letter directly to the FOIA requester in accordance with this letter. Should you have questions or concerns, please feel free to contact me at (217) 782-9078. This correspondence shall serve to close this matter.

Sincerely,

cc: Ms. Michelle L. Blackburn
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Cara Smith
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