



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

April 22, 2011

Joshua A. Faucette, Legal Fellow
Office of Governor Pat Quinn
100 W. Randolph St., Ste. 16-100
Chicago, IL 60601

Re: Pre-authorization request – 2011 PAC 11297

Dear Mr. Faucette:

We have received from the Office of Governor Pat Quinn a notice of intention to deny certain information requested by Joseph Ryan under the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended. Mr. Ryan requested various records regarding applicants who were appointed to the Illinois State Medical Disciplinary Board. The Governor's Office requested pre-authorization to redact birth dates and information regarding the race, ethnicity, national origin, marital status and children of those individuals under Section 7(1)(c) (5 ILCS 140/7(1)(c)). The Governor's office also requested pre-authorization to redact various records under Section 7(1)(f) (5 ILCS 140/7(1)(f)).

Determination – Section 7(1)(c)

Information in public records is exempt personal information 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.*

The request to redact dates of birth under Section 7(1)(c) of FOIA is approved. Birth dates are a highly personal form of information. A subject's right to privacy outweighs any legitimate public interest in the disclosure of his or her date of birth. Accordingly, we conclude that the Governor's Office has sustained its initial burden of demonstrating that the birth dates are exempt from disclosure under Section 7(1)(c).

The request for pre-authorization to redact information identifying race, ethnicity and national origin under Section 7(1)(c) also is approved. Information identifying an individual's race, ethnicity and national origin is highly personal by its very nature. The privacy rights of such subjects outweigh any legitimate public interest in disclosure of this information. Accordingly, the Governor's Office has sustained its initial burden of demonstrating that information identifying the race, ethnicity and national origin of applicants who were appointed to the Medical Disciplinary Board is exempt from disclosure under Section 7(1)(c).

The request for pre-authorization to redact information regarding the marital status and children of applicants who were appointed to the Medical Disciplinary Board also is approved. We determined in 2010 PAC 7731 that disclosure of information regarding an individual's marital status and spousal relationships would constitute an unwarranted invasion of privacy. Likewise, information regarding an individual's children is highly personal by its very nature. The privacy rights of such subjects outweigh any legitimate public interest in disclosure of this information. Accordingly, we conclude that the Governor's Office has sustained its initial burden of demonstrating that information regarding the marital status and children of applicants who were appointed to the Medical Disciplinary Board is exempt from disclosure under Section 7(1)(c).

Determination – Section 7(1)(f)

Section 7(1)(f) exempts from inspection and copying “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.” 5 ILCS 140/7(1)(f). The Section 7(1)(f) exemption applies to “predecisional materials used by a public body in its deliberative process.” *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247, 799 N.E.2d 859, 864 (1st Dist. 2003). The exemption is “intended to protect the communications process and encourage frank and open discussion among agency employees before a decision is made.” *Id.* at 248, 799 N.E.2d at 864.

The request for pre-authorization to redact information pursuant to Section 7(1)(f) is approved in part and denied in part. We have reviewed un-redacted copies of the proposed redactions, which include opinions and recommendations, comments on the status of background investigations, and factual information regarding applicants. The records that express opinions and recommendations and comment on the status of background investigations are pre-decisional in nature and appear to have been used in the deliberative process for selecting appointees to the Medical Disciplinary Board. In addition, there is no indication that those records were cited by the Governor. Accordingly, we conclude that Governor's Office has sustained its initial burden of demonstrating that records which express opinions and recommendations and comment on the status of background investigations are exempt from disclosure under Section 7(1)(f).

The request to redact factual information from the records under Section 7(1)(f) is denied. Specifically, we are referring to most of the proposed redactions in the documents titled “Applicant Background Review” for Tariq Butt, Homero Tristan, Mehul Shah, Maria LaPorta and Robert Fernandez. Portions of these records do contain opinions as to whether the applicants meet the requirements for appointment. Such statements are pre-decisional in nature and appear to have been used in the deliberative process for selecting appointees for the Medical

Disciplinary Board. In addition, there is no indication that those records were cited by the Governor. Accordingly, we conclude that Governor's Office has sustained its initial burden of demonstrating that the portions of these records that express opinions as to whether applicants meet the requirements for appointment are exempt from disclosure under Section 7(1)(f). However, the remaining proposed redactions contained in the Applicant Background Reviews consist of information regarding the applicants' education, work history, professional and political affiliations, prior public service, awards, personal references and various other matters. Such factual information is not pre-decisional in nature and does not constitute a record in which opinions or recommendations are discussed or policies are formulated. Accordingly, we conclude that the Governor's Office has not sustained its initial burden of demonstrating that such information is exempt from disclosure under Section 7(1)(f).

In addition, the request to redact the comments in the document dated September 4, 2003 and titled "State Medical Disciplinary Board" pursuant to Section 7(1)(f) is denied. No detailed summary of the public body's basis for the Section 7(1)(f) exemption has been provided and it is not apparent that this document, which is a list of appointed Board members, is pre-decisional in nature or that it constitutes a preliminary version of a record in which opinions or recommendations are discussed or policies are formulated. Accordingly, we conclude that the Governor's Office has not sustained its initial burden of demonstrating that the comments in this record are exempt from disclosure under Section 7(1)(f).

The Governor's Office has asserted that additional information in the records is exempt from disclosure under Section 7(1)(b) (5 ILCS 140/7(1)(b)) and Section 7(1)(m) (5 ILCS 140/7(1)(m)). Because prior approval by the Public Access Counselor is not required for the assertion of exemptions other than Section 7(1)(c) (5 ILCS 140/7(1)(c)) and Section 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

This letter shall serve to close this file. If you have any questions, please feel free to contact me at 312-814-6756.

Sincerely


Steve Silverman
Assistant Public Access Counselor

cc: Joseph Ryan, Reporter
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