

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

October 27, 2010

Mr. Paul A. Castiglione  
Executive Assistant State's Attorney for Policy  
69 West Washington St.  
Suite 3200  
Chicago, IL 60602

RE: FOIA Preauthorization Request 2010 PAC 10278

Dear Mr. Castiglione:

The Office of the Public Access Counselor has received and reviewed the written notice from the Cook County State's Attorney's Office of its intention to deny in part a request for documents submitted by Kaethe Morris Hoffer of the Chicago Alliance Against Sexual Exploitation based on Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA), 5 ILCS 140/7(1)(c),(f). Ms. Hoffer sought from the State's Attorney's Office any records generated after May 2009 regarding a named individual and allegations of sexual assault she had made against another individual. The complainant consented in writing to the release of these records to Ms. Hoffer.

Initially, the State's Attorney's Office seeks authorization to withhold under Section 7(1)(f) for a May 13, 2010 internal office memorandum discussing the sexual abuse allegations. Section 7(1)(f) exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies and actions are formulated." 5 ILCS 140/7(1)(f). The State's Attorney's Office asserts that this memorandum was part of the office's deliberative process regarding how it should proceed with respect to the allegations. We agree with the State's Attorney's contention that this type of intra-agency predecisional and deliberative document falls within the scope of Section 7(1)(f). *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247-48 (2003). The request to withhold the May 13, 2010 memorandum is therefore approved.

The State's Attorney's Office also seeks authorization to withhold, under Section 7(1)(c), a supplementary police report dated May 12, 2010 regarding the sexual assault allegations on the basis that disclosure of the report would constitute a clearly unwarranted invasion of personal

privacy of the individual who was the subject of the sexual assault allegations. This individual has not been charged with a crime.

For purposes of FOIA, an “[u]nwarranted invasion of personal privacy means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs the legitimate public interest in obtaining the information.” 5 ILCS 140/7(1)(c). We agree with the State’s Attorney’s Office that disclosure of a police report concerning sexual assault allegations against someone who ultimately was not charged with a crime would constitute a clearly unwarranted invasion of personal privacy and that the subject’s right to privacy would outweigh the legitimate public information in obtaining the information. The request to withhold the May 12, 2010 supplementary police report is therefore approved.


The State’s Attorney’s Office also contends that documents relating to the criminal history of the individual who was the subject of the sexual abuse allegations are exempt from production. We will not consider that exemption claim at this time because FOIA only requires a public body to obtain preauthorization from the Public Access Counselor of exemption claims under Sections 7(1)(c) and 7(1)(f). *See* 5 ILCS 140/9.5(b). This exemption claim was not asserted under either of those provisions.

If you have any questions, please feel free to contact me at 312-814-2770. This correspondence will serve to close the matter.

Sincerely,

Cara Smith  
Public Access Counselor

By:

  
John Schmidt  
Assistant Attorney General

cc: Ms. Kaethe Morris Hoffer  
Chicago Alliance Against Sexual Exploitation  
3304 N. Lincoln Ave.  
Second Floor  
Chicago, IL 60657