



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 27, 2010

Ms. Beth Janicki Clark
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

RE: FOIA Preauthorization Request 2010 PAC 9388

Dear Ms. Clark:

The Office of the Public Access Counselor has received and reviewed the written notice from the Village of Downers Grove of its intention to deny, in part, a request made by Daniel W. Sheppard of Morgan & Morgan pursuant to the Freedom of Information Act for photographs and other records, including a police department incident report, relating to a tragic accident on February 13, 2010 in which a Metra train struck a pedestrian named of [REDACTED] resulting in his death. The Village intends to disclose some of the requested records, including some photographs, but it intends to withhold photographs taken at the scene pursuant to Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)), on the basis that disclosure of these photographs would constitute a clearly unwarranted invasion of personal privacy. 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). The Village also intends to redact the names, addresses, phone numbers and birth dates of witnesses pursuant to Section 7(1)(c).

In this case, the requester is a law firm that has been retained to represent the estate of [REDACTED] in potential litigation. Section 7(1)(c) provides for disclosure of documents that might otherwise constitute a clearly unwarranted invasion of personal privacy if the individual subjects of the information consent in writing. Here, an attorney representing the estate of the individual subject has consented in writing. The estate and its representatives generally stand in the shoes of the decedent. *See Estate of Wallen*, 262 Ill. App. 3d 61, 72 (1994)

(administrator of estate stands in decedent's shoes). Therefore, we deny the Village's request for preauthorization of the section 7(1)(c) exemption for the photographs.

We have determined, however, that the Village may redact from the police department incident report all of the information that it proposes to redact, which consists of names, home addresses, home telephone numbers and birthdates of witnesses. Some of this information, such as home addresses and home telephone numbers of the witnesses may be redacted from the report under Section 7(1)(b) without preauthorization from this Office. *See* 5 ILCS 140/2(c-5) and 7(1)(b). The Village may redact the other information that it seeks to redact from the incident report under Section 7(1)(c) because the privacy interests of the witnesses outweigh the legitimate public interest in obtaining information about the incident. *See* 5 ILCS 140/7(1)(c).

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: Daniel W. Sheppard
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