



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 29, 2011

Mr. Jim Kuizan
Human Resource Manager
City of Springfield
300 S. Seventh St.
Room 309
Springfield, IL 62701

RE: FOIA Pre-approval Request – 2011 PAC 12675

Dear Mr. Kuizan:

The Office of the Public Access Counselor has received written notice from the City of Springfield of its intention to assert the Section 7(1)(c) (5 ILCS 140/7(1)(c)) and Section 7(1)(f) (5 ILCS 140/7(1)(f)) exemptions in response to a Freedom of Information Act (FOIA) request dated January 26, 2011 from Ms. Deana Poole of The State Journal-Register. The FOIA request sought “copies of all documents related to discovery, investigation and discipline of employees who were allegedly looking at pornography using city computers, including the names of those accused and the departments they work in.” The City asserts that all records responsive to this request are exempt from disclosure. Specifically, the City claims that the names and departments of the individuals implicated in these incidents are exempt under Section 7(1)(c), and that the documents identifying “the steps the City took to investigate the computer misuse” are exempt under Section 7(1)(f). Pursuant to our March 9, 2011, request, the City has provided this Office with a further explanation of its position and copies of specific records that we requested.

Section 7(1)(c) permits a public body to withhold “[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” That provision further defines an “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.” It also provides, however, 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.”

Section 7(1)(f) of the Freedom of Information Act exempts from disclosure:

[p]reliminary drafts, notes, recommendations, memoranda or other documents 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).

Determinations

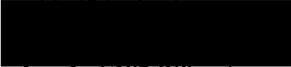
With regard to the City’s assertion that information identifying the names and departments of the individuals implicated in these incidents contained within responsive records is exempt under Section 7(1)(c), we have determined that this information bears directly on the public duties of these employees and the departments to which they are assigned. As noted above, Section 7(1)(c) expressly provides 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.” Thus, the City has not met its initial burden of demonstrating that this information is exempt under Section 7(1)(c).

We have likewise determined that the City has not met its initial burden of demonstrating that the records it seeks to withhold under Section 7(1)(f) are properly exempt, with the exception of the two-page undated draft memorandum entitled “written reprimand.” The City indicates, without elaboration, that the 29 pages of records it seeks to withhold under Section 7(1)(f) are “preliminary lists, drafts, and/or notes no reflecting final discipline that was ultimately imposed on employees.” The City fails to provide an explanation of how these records, which consist of lists of individuals implicated in this investigation and emails discussing logistical and technical issues, either express opinions concerning the City’s response to this misconduct or relate to the City’s formulation of policy or action with regard thereto.

Nonetheless, it is clear on the face of the two-page memorandum entitled “written reprimand” that this document is a draft. Given that the City has indicated that none of the records it seeks to exempt under Section 7(1)(f) have been cited by the head of the public body, the City has met its initial burden of establishing that only this two-page draft memorandum is exempt.

This letter shall serve to close this file. If you have any questions, please contact me at (217) 782-9078.

Sincerely,



Matthew M. Sebek
Assistant Public Access Counselor

cc: Ms. Deana Poole
State Journal-Register
Via e-mail to:
deana.poole@sj-r.com

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