



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

Lisa Madigan
ATTORNEY GENERAL

November 3, 2010

[REDACTED]
Via e-mail to:
[REDACTED]

RE: FOIA Pre-approval Request – 2010 PAC 10347

Dear Mr. Adams:

We have received from the Westchester Park District (District) a written notice of its intention to assert the Section 7(1)(c) exemption in response to a Freedom of Information Act (FOIA) request dated October 8, 2010 submitted by [REDACTED]. [REDACTED] request sought a videotape of an incident at the District's summer day camp involving the near-drowning incident of [REDACTED] [REDACTED] the Community Pool located at 10201 Bond Street in Westchester. The District has indicated that it intends to deny [REDACTED] request for the video, based on the District's contention that disclosure of this videotape would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c) of FOIA. 5 ILCS 140/7(1)(c).

Section 7(1)(c) 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 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."

In support of its assertion, the District argues:

The videotape is of the Park District's day camp children swimming in the Park District pool and includes the visual images of scores of minor children who are participants of a Westchester Park District program. As argued in the Park District's prior correspondence to your office in response to a request for the same record . . . , the release of this videotape of minor children swimming at the Park District's day camp clearly constitutes an unwarranted invasion of personal privacy and is therefore exempt under 5 ILCS

140/7(1)(c). The Park District again argues that the unrestricted access to the identity of children in Park District programs creates an unreasonable risk to program participants and will discourage public participation in [these] programs. The parents who enroll their children in Park District programs, and the children participants themselves, should have a reasonable expectation of privacy and should not have to be concerned regarding their children's safety while participating in these programs due to the public release of their children's identity.

Determination

Based on the District's description of the contents of the videotape in question and a review of the District's website, we have determined that it contains footage of an open-air Community Pool located at 10201 Bond Street in Westchester. This appears to be a pool that is accessible to the public (consistent with District membership restrictions) and there is no evidence to suggest that this pool was not fully visible to the public at all times captured by the June 14, 2010 videotape at issue. The legitimate public interest in the disclosure of this videotape relates to obtaining a fair assessment of the safety procedures employed by the District at this day camp and of District pool personnel more generally, ensuring that such procedures are adequate, and making an assessment as to whether the day camp, and the pool, are sufficiently safe that members of the public would wish to use them the future. We believe that any reasonable privacy interest implicated by the disclosure of this videotape is outweighed by the public interest in the disclosure of this information and, thus, we conclude that the District has not met its burden under Section 7(1)(c) to justify withholding the videotape responsive to this request.

The District also asserts the Section 7(1)(v) exemption as an additional basis for withholding this videotape. Section 7(1)(v) exempts from disclosure certain records that relate to security measures, emergency response policies and the like. This letter takes no position with respect to the District's assertion of Section 7(1)(v). Please note that the FOIA only requires public bodies to submit a Notice of Intent to Deny and request for pre-authorization with regard to assertion of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials). Where information is specifically exempt under other sections of the Act, public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization.

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

Sincerely,

Cara Smith
Public Access Counselor

By 

Matthew M. Sebek
Assistant Public Access Counselor

Cc:



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