



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2010

Captain Dave Wojcik
Administrative Commander
Calumet City Police
1200 Pulaski Road
Calumet City, Illinois 60409

Mr. Jason Pohren
Hausmann-McNally, S.C.
633 West Wisconsin Avenue, Suite 2000
Milwaukee, Wisconsin 53203

RE: FOIA Pre-Authorization Request – 2010 PAC 6288

Dear Captain Wojcik and Mr. Pohren:

We have received and reviewed the written notice from the City of Calumet City (City) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on March 5, 2010, Jason Pohren, on behalf of Hausmann-McNally S.C., submitted a FOIA request to the City seeking all traffic accident reports prepared by the City from February 25, 2010 to March 5, 2010.

On March 17, 2010, the City sought our Office's approval to withhold the names and birthdates of individuals contained in the accident reports pursuant Section 7(1)(c) (5 ILCS 140/7(1)(c)), which exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless disclosure is consented to in writing by the individual subjects of the information." The exemption defines "[u]nwarranted 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." *Id.*

This Office initiated further review of this matter on March 24, 2010. In that letter we determined that the dates of birth contained in the reports are exempt from disclosure pursuant to

Section 7(1)(c). The letter also requested that the City provide this Office with a *detailed summary* of the Department's basis for asserting Section 7(1)(c) as to the names contained in the reports. As of November 1, 2010, this Office has yet to receive a response from the City.

Determinations

The City's request for approval of its decision to withhold the names contained in the traffic accident reports pursuant to Section 7(1)(c) is denied.

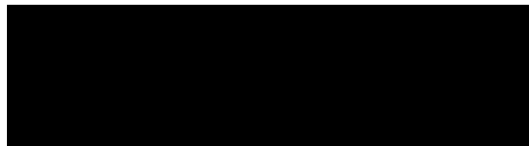
Section 3(a) of FOIA (5 ILCS 140/3(a)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." Under Section 1.2 of FOIA (5 ILCS 140/1.2), "[a]ll records in the custody of a public body are presumed to be open to inspection and copying." The Section further states that "[a]ny public body that asserts that a record is exempt from disclosure has the burden of proving by *clear and convincing evidence* that it is exempt." (Emphasis added.)

Due to the City's failure to respond to our March 24 letter, this Office finds that the City has not met its burden in demonstrating how the disclosure of names contained in an accident report constitutes a highly unwarranted invasion of personal privacy under Section 7(1)(c).

Based on this analysis, the City is obligated to disclose the traffic accident reports requested by Mr. Pohren subject to the redaction of the dates of birth. Should you have any questions, please feel free to contact me at 312-814-5383. This correspondence shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor



Matthew C. Rogina
Assistant Public Access Counselor
6288 pre-auth dl Section 7(1)(f) dob third party pd