



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 6, 2011

Nicole Both
Freedom of Information Officer
Metra
547 West Jackson Blvd.
Chicago, Illinois 60661

RE: Pre-Authorization Request – 2011 PAC 12381

Dear Ms. Both:

We have received and reviewed the written notice from Metra of its intention to deny certain information as exempt from disclosure under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). Metra is seeking to redact dates of birth from the requested document.

Attorney Gary Friedman submitted a FOIA request for Metra police report #11-005055 on February 8, 2011. In its written notice, Metra asserts that dates of birth are exempt from disclosure under section 7(1)(c) of FOIA.

Section 7(1)(c) of FOIA 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 the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

Metra's use of the exemption in section 7(1)(c) for the date of birth is **approved**. We have determined that Metra has met its initial burden to demonstrate that the disclosure of dates of birth would constitute a clearly unwarranted invasion of personal privacy. This type of

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information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information. *See, e.g., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. §552(b)(6)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and "would constitute a clearly unwarranted invasion of personal privacy"); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, ___ S.W.3d ___, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

Accordingly, Metra may issue a partial denial letter and release the report with the dates of birth redacted, if it has not already done so.

If you have any questions, please contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,

Steve Silverman

STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

by EK

cc: Gary B. Friedman
Law Offices of Friedman and Solmor, Ltd.
200 North LaSalle Street, Suite 2750
Chicago, Illinois 60601

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