



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 10, 2011

Ms. Debra J. Ford
Freedom of Information Officer
Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062

RE: FOIA Request for Review – 2011 PAC 13904

Dear Ms. Ford:

We have received and reviewed the written notice from the Village of Northbrook of its intention to deny certain information requested by Ms. Colleen Hawkinson of Prudential Insurance 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. Ms. Hawkinson requested records relating to the death of a specified individual. The Village seeks preauthorization to withhold a suicide note, a draft suicide note, and post-mortem photographs depicting the decedent. As discussed below, after considering the balancing test required under the section 7(1)(c) exemption, we conclude that the Village has met its initial burden of demonstrating that these records are exempt from disclosure.

DETERMINATION

Section 7(1)(c) of FOIA exempts from disclosure, “[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 provisions define “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.” *Id.* Thus, a public body seeking to rely on this exemption must show: 1) that the information is highly personal or that disclosure would be highly objectionable to a reasonable person; and 2) that the subject’s right to privacy outweighs any legitimate public interest in obtaining the information. *Id.* Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010), the public body has the burden of proving a claimed exemption by clear and convincing evidence.

Ms. Debra Ford
May 10, 2011
Page 2

The Attorney General has recognized that surviving family members "have a cognizable personal privacy interest in autopsy records relating to the death of a close relative, which interest must be considered" in determining whether such records are exempt from disclosure under section 7(1)(c). Ill. Att'y Gen. Pub. Acc. Op. No. 10-003 at 6, issued October 22, 2010. That interest may, in appropriate circumstances, extend to other investigatory records concerning the death of a close relative. Under section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information. We note that the decedent's brother has signed a document authorizing the release of the decedent's "entire medical and employment record" to Prudential, but the records at issue here are not medical records or employment records, so they are not within the scope of the release.

After carefully reviewing the materials submitted by the Village, we have determined that the privacy interests of surviving family members justify withholding the post-mortem photographs depicting the victim. By their nature, post-mortem photographs depicting a human being are "gruesome and graphic" and their disclosure would be highly objectionable to a reasonable person. See Ill. Att'y Gen. Pub. Acc. Op. No. 10-003 at 7-10, issued October 22, 2010. The privacy interests of the surviving family members outweigh the public interest in obtaining the post-mortem photographs. The same is true of the suicide notes, which are highly personal in nature. We therefore conclude that the Village has met its burden of showing by clear and convincing evidence that this information is exempt, and the request to assert the exemption under section 7(1)(c) is approved for the post-mortem photographs and the suicide notes.

If you have any questions, please contact me at 312-814-2770. This correspondence will serve to close the matter.

Very truly yours,



John Schmidt
Senior Assistant Attorney General
Public Access Bureau

cc: Ms. Colleen Hawkinson
Prudential Insurance
P.O. Box 347
Gilberts, Illinois 60136