



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 9, 2011

Officer Christopher Bove  
Assistant Freedom of Information Officer  
Chicago Police Department  
3510 S. Michigan Ave.  
Chicago, IL 60653

RE: FOIA Request for Review – 2011 PAC 13909

Dear Officer Bove:

We have received and reviewed the written notice from the Chicago Police Department of its intention to deny certain information requested by [REDACTED] 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. [REDACTED] requested all crime scene photographs taken in his case, which resulted in his conviction for murder and aggravated battery with a firearm. The Department seeks preauthorization to withhold nine post-mortem photographs depicting a victim of the shootings. As discussed below, after considering the balancing test required under the section 7(1)(c) exemption, we conclude that the Department has met its initial burden of demonstrating that photographs of the shooting victims are exempt from disclosure.

**DETERMINATION**

Under Section 7(1)(c) of FOIA, the following is exempt from disclosure by public bodies:

Personal 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. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in

Officer Christopher Bove  
May 9, 2011  
Page 2

which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

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.

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.

After carefully reviewing the materials submitted by the Department, 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. With respect to the post-mortem photographs, the privacy interests of the surviving family members would outweigh the public interest in obtaining the information. We therefore conclude that the Department 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 accordingly approved with respect to the nine post-mortem photographs depicting the victims.

Officer Christopher Bove  
May 9, 2011  
Page 3

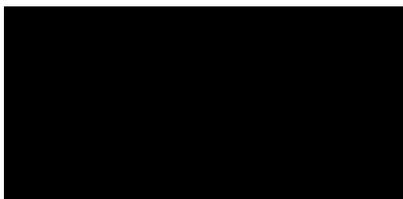
If you have any questions, please contact me at 312-814-2770. This correspondence will serve to close the matter.

Very truly yours,



JOHN SCHMIDT  
Senior Assistant Attorney General  
Public Access Bureau

cc:



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