



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 13, 2011

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

RE: FOIA Preauthorization Request-- 2011 PAC 14023

Dear Officer Kelly:

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 related to RD# HP-703656, a homicide investigation. The Department seeks preauthorization to withhold eight post-mortem photographs depicting the victim. 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 post-mortem photographs of the victims are exempt from disclosure.

DETERMINATION

A public body seeking to rely on the exemption set forth in section 7(1)(c) of FOIA must show: 1) that the requested 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. 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.

Officer Patrick Kelly
May 13, 2011
Page 2

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 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 eight post-mortem photographs depicting the victim.

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:

