



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 18, 2011

Ms. Amanda Schmidgall
Deputy Freedom of Information Act Officer
Mackinaw Police Department
PO Box 500
Mackinaw, Illinois 61755

RE: FOIA Pre-Authorization Request - 2011 PAC 14093

Dear Ms. Schmidgall:

We have received and reviewed the written notice from the Mackinaw Police Department 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). The Department is seeking to redact dates of birth and the narrative portion of an incident report.

Linda Watson, on behalf of the law firm Watson Law, submitted a FOIA request for a copy of a November 16, 2010 incident report. In its written notice, the Department asserts that portions of the report 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

The Department's use of the exemption in section 7(1)(c) for the redactions in report is **approved**. With regard to the dates of birth, we have determined that the Department has met its initial burden of demonstrating that the disclosure of dates of birth would constitute a

Ms. Amanda Schmidgall
May 18, 2011
Page 2

clearly unwarranted invasion of personal privacy. This type of 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).

With regard to the narrative portion of the report, we have determined that the Department has met its initial burden to demonstrate that the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information.

If you have any questions, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

cc: Ms. Linda Watson
Watson Law
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333 Main Street, 2nd Floor
Peoria, Illinois 61602