



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

November 16, 2010

Ms. Sunny Clark
Central Management Services
Sunny.clark@illinois.gov

RE: FOIA Pre-Authorization Request - 2010 PAC 10583

Dear Ms. Clark:

We have received and reviewed the written notice from Central Management Services (CMS) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq.*, as amended.

Specifically, on October 20, 2010, [REDACTED] submitted a FOIA request to CMS seeking copies of information relating to the Illinois Department of Correction's (IDOC) reinstatement of Neil Rossi.

On November 5, 2010, CMS sought our Office's approval to withhold a single document pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body."

Additionally, CMS sought our Office's approval to withhold the date of birth and race of an individual contained in the Personnel/Position Action Form pursuant to Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)), which 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 disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c). The exemption defines "[u]nwarranted 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.* CMS has indicated to this Office that they intend to release the Form subject to the redactions.

Determinations

CMS's request for approval of its decision to withhold information pursuant to Section 7(1)(c) and Section 7(1)(f) is approved.

Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987). Our Office has reviewed the document supplied to us by CMS and we have concluded that the document reflects the opinions of a public body and accordingly falls within the scope of Section 7(1)(f).

Additionally, there is no evidence that this information has been publicly cited and identified by the head of the public body. 5 ILCS 140/7(1)(f).

CMS may redact the date of birth contained in the Personnel/Position Action Form pursuant to Section 7(1)(c). Depending on the circumstance, a date of birth can be considered to be highly personal or objectionable to the reasonable person.

CMS may also redact the race of the employee contained in the Personnel/Position Action Form pursuant to Section 7(1)(c). *CBS v. Partee*, 198 Ill.App.3d 936 (1st Dist. 1990). In *CBS*, the Court considered whether disclosure of the race of each Assistant Cook County State's Attorney amounted to an invasion of privacy within the meaning of FOIA. The Court held that "[p]ublic employees...have no reasonable expectation that their racial identification will not be made the subject of a public debate. 198 Ill. App. 3d 936, 945. To the contrary, they have a reasonable expectation that they will have some say as to "when, how or to what extent [such] information about them is communicated to others." *Id.* As such, CMS may redact the race of the individual contained in the Personnel/Position Action Form.

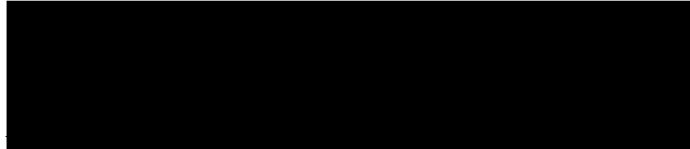
Based on this analysis, CMS has met its initial burden under Section 7(1)(c) and 7(1)(f).

Please be advised that the CMS's Pre-Authorization Request was submitted to this Office approximately two weeks after the deadline. CMS failed to comply with the requirements of FOIA by not submitting a timely Notice of Intent to Deny with respect to [REDACTED] October 20 request. Any subsequent failure by CMS to strictly comply with the pre-approval process set out in Section 9.5(b) may result in the Public Access Counselor's denial of asserted exemptions.

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

Sincerely,

Cara Smith
Public Access Counselor



Matthew C. Rogina
Assistant Public Access Counselor
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