



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

Lisa Madigan  
ATTORNEY GENERAL

November 19, 2010

Ms. Pamela Cotten  
Assistant General Counsel  
Chicago Housing Authority  
[pcotten@thecha.org](mailto:pcotten@thecha.org)

RE: Pre-Authorization Request – 2010 PAC 9843  
Requester: Mr. Matthew Topic, Better Government Association

Dear Ms. Cotten:

We have received and reviewed the written notice from the Chicago Housing Authority (CHA) of its intention to deny disclosure of certain records as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c).

**Background**

Mr. Patrick Rehkamp of the Better Government Association (BGA) submitted an August 20, 2010, FOIA request to CHA for the following records:

Any and all accepted applications for [REDACTED] from the Section Eight (8) Program, Choose to Own Program, Housing Choice Voucher Program or any other program that subsidizes an individual's rent or mortgage in a non-CHA owned building.

In correspondence dated August 27, 2010, CHA denied Mr. Rehkamp's FOIA request in its entirety pursuant to the exemption in Section 7(1)(c) of FOIA, on the basis that "disclosure of the requested information would constitute a clear[ly] unwarranted invasion of personal privacy for [REDACTED]" In correspondence dated September 16, 2010, Mr. Matthew Topic, on behalf of Mr. Rehkamp and BGA, notified CHA that it had failed to seek approval from the Office of the Public Access Counselor (Office) to assert the Section 7(1)(c) exemption, as required by Section 9.5(b) of FOIA (5 ILCS 140/9.5(b) (Pre-Authorization Request). In correspondence dated September 22, 2010, CHA reasserted the Section 7(1)(c) exemption and directed BGA to this Office for appeal.

This Office received correspondence from BGA on September 27, 2010 seeking review of CHA's denial (September Correspondence). As an initial matter, BGA asserted that "because CHA has failed to comply with Section 9.5(b), BGA contends that CHA has waived its ability to assert the [Section 7(1)(c) exemption] belatedly." However, in a telephone conversation on October 8, 2010, Mr. Topic agreed to allow CHA to submit a Pre-Authorization Request to this Office with regard to the records involving [REDACTED] (Applications).

This Office received CHA's Pre-Authorization Request on October 29, 2010. In its Pre-Authorization Request, CHA initially asserted:

As Mr. Topic explained in his appeal on behalf of the BGA, the CHA denied this request pursuant to 140/7(1)(c). This section exempts from inspection and copying "private information" and "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." "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses.

Private information also includes home address and personal license plates ... ." 5 ILCS 140/2(c-5). Therefore, based upon [FOIA], the CHA is exempt from producing any documents, including an application, that contain private information or information that would cause an unwarranted invasion of privacy.

On November 5, 2010, we sought further inquiry on CHA's Pre-Authorization Request pursuant to Section 9.5(c) of FOIA and asked CHA to provide us with copies of the responsive Applications. CHA provided us with the requested copies later that day.

### **Determinations**

#### **Section 7(1)(b) – Private Information**

CHA has erroneously asserted that Section 7(1)(c) of FOIA exempts from inspection and copying "private information", the definition of which is found in Section 2(c-5) of FOIA. The information listed in Section 2(c-5) is exempt from disclosure under Section 7(1)(b) of FOIA. As such, this Office finds that CHA may withhold annual income and other personal financial information, current home addresses, personal telephone numbers and Social Security numbers under Section 7(1)(b) of FOIA.

#### **Section 7(1)(c) – Personal Privacy**

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 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” *Id.*

CHA’s use of the Section 7(1)(c) exemption with regard to dates of birth in the Applications is **approved**. A date of birth is highly personal information, and the subjects’ right to privacy with respect to that information outweighs any legitimate public interest in obtaining it. Therefore, disclosure of dates of birth would constitute a clearly unwarranted invasion of the personal privacy of the subjects.

Additionally, CHA’s use of the Section 7(1)(c) exemption with regard to the remaining information provided in the Applications is **approved**.<sup>1</sup> In most circumstances, disclosure of most of these remaining pieces of information by themselves – including the applicants’ names – would not constitute an unwarranted invasion of personal privacy under Section 7(1)(c). See *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill.2d 401 (1997). However, a cumulative disclosure of this information on applications for public assistance or public housing could be seen as highly personal or objectionable to a reasonable person under Section 7(1)(c).

#### BGA Arguments

We considered the arguments that BGA raised in its September Correspondence with regard to CHA’s use of the Section 7(1)(c) exemption for the Applications. First, BGA asserted that an applicant for the receipt of public funds or public assistance can have no expectation of privacy. In support of this assertion, BGA noted that the Illinois Appellate Court, in *Cooper v. Dept. of the Lottery*, stated that the legislative history of FOIA “should not be read broadly to prevent access to the public of information about the management of the Housing Development Agency, the recipient of grants or bond authorizations from that Agency.” 266 Ill.App.3d 1007, 1019, 640 N.E.2d 1299 (1st Dist. 1994). However, this statement arose from a discussion of the application of the “trade secrets” exemption in Section 7(1)(g) of FOIA, which does not apply here. See *Cooper*, 266 Ill.App. 3d at 1019.

BGA also cited *Family Life League v. Dept. of Public Aid*, 112 Ill.2d 449, 493 N.E.2d 1054 (1986), and *Schessler v. Dept. of Conservation*, 256 Ill.App.3d 198, 627 N.E.2d 1250 (4th Dist. 1994), in support of its assertion that the information in the Applications is subject to disclosure. However, *Family Life* dealt with a request for information about publicly-funded abortion providers, not information about the recipients of those services. *Family Life*, 112 Ill.2d at 454. (Emphasis added.) As a result, the Illinois Supreme Court reached the logical conclusion that release of provider information would not directly invade the privacy rights of the recipients. *Id.* Moreover, *Schessler* dealt with the privacy rights of individuals applying for permits for live pigeon shoots. 256 Ill.App.3d at 198. The *Schessler* court held that the Department of Conservation had failed to sustain its burden of establishing that disclosure of the permit information would constitute a clearly unwarranted invasion of the personal privacy of the applicants. *Id.* at 202. We do not find this case instructive, as any privacy interest in such permit information does not compare to the individual privacy interest associated with applications for public housing or public assistance.

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<sup>1</sup> The remaining information at issue includes the applicants’ names; the names of those residing with the applicants; identifying information, including sex, race, relationship to head of household, employer names, and emergency references; and answers to questions about the applicants’ previous history with CHA.

Next, BGA asserted that “there is a tremendous public interest” in the information from the Applications. It stated, in part: “While BGA makes no accusations of any specific wrongdoing by CHA, the public should be able to determine, for example, whether preference in granting applications is given to politically connected applicants and whether CHA is properly applying eligibility rules in ruling on applications.” We might agree with BGA’s assertion if it had provided some evidence that CHA had been giving preference to ineligible applicants or improperly applying eligibility rules in the course of handling applications. In this case, however, we do not agree that the public’s legitimate interest in obtaining the information in the Applications outweighs [REDACTED] individual right to privacy with respect to the information under Section 7(1)(c) of FOIA.

Finally, we do not find persuasive BGA’s argument that because [REDACTED] is an employee of a public body, the information he supplied in the Applications – including his income level – is automatically subject to disclosure under Section 7(1)(c).<sup>2</sup> The exemption provides that “[t]he disclosure of information that bears on the public duties of public employees shall not be considered an invasion of personal privacy.” 5 ILCS 140/7(1)(c). BGA asserted that “[i]f, in fact, [REDACTED] has applied for a public program for which he is not eligible by virtue of his taxpayer-funded salary, this would clearly bear on his public duties.” However, [REDACTED] has submitted the Applications in his capacity as a private citizen. The information in these Applications has no bearing on [REDACTED] public duties as a public employee.

Should you have questions or concerns, please feel free to contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith  
Public Access Counselor

By [REDACTED]

Sara Gadola Gallagher  
Deputy Public Access Counselor

cc: Mr. Matthew Topic  
Kirkland & Ellis  
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<sup>2</sup> Both CHA and BGA have asserted that Mr. Frazier is an employee of the City of Chicago.