



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 6, 2010

Mary Baudino
Chief Administrative Director
Will County Coroner's Office
57 North Ottawa Street, Suite 412
Joliet, IL 60432

RE: Pre-Authorization Request – 2010 PAC 10285
Requester: Emily Smayda Kelly, Tradesmen International

Dear Ms. Baudino:

We have reviewed the written notice from the Will County Coroner (Coroner) of its intention to deny disclosure of certain information as exempt under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c), 140/7(1)(f). On October 15, 2010, Ms. Emily Smayda Kelly requested the autopsy, toxicology and coroner's report on [REDACTED]. The Coroner asserts that the autopsy and toxicology reports are exempt from disclosure under Section 7(1)(c) and that the Coroner's investigative report is exempt from disclosure under Section 7(1)(f) of FOIA.

Section 7(1)(c) Determinations

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." *Id.*

We have determined that the Coroner's use of the exemption in Section 7(1)(c) to deny disclosure of the Report of the Coroner's Forensic Pathologist to the Coroner of Will County is denied. This report contains only the cause of death. We have determined that a reasonable person would not object to the disclosure of this information, and the surviving family members' right to privacy does not outweigh the public interest in disclosure of this information.

We have also determined that the Coroner's use of the exemption in Section 7(1)(c) to deny disclosure of the Toxicology Report and the Report of Postmortem Examination in their entirety is denied. When a public record contains both information that is exempt from disclosure and information that is not exempt, the public body may redact the exempt information but must disclose the non-exempt information. 5 ILCS 140/7(1). Much of the information in these reports is not highly personal and does not appear to be exempt from disclosure. The Coroner may submit a new request for pre-authorization to deny disclosure of information under Section 7(1)(c). In this request, the Coroner should specifically identify the information in these reports that the Coroner believes is highly personal, or the disclosure of which would be objectionable to a reasonable person.

Section 7(1)(f) determination

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions 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." 5 ILCS 140/7(1)(f).

We have determined that the Coroner's use of the exemption in Section 7(1)(f) with regard to the Coroner's investigative report is approved. This report contains preliminary notes and is subject to revision before being released. The Coroner asserts that this investigative report has not been publicly cited or identified by Coroner Patrick O'Neil. Therefore, the Coroner has met its initial burden of showing that this document is exempt from disclosure under Section 7(1)(f).

Should you have any questions or concerns, feel free to contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Sarah Kaplan
Assistant Public Access Counselor

cc: Emily Smayda Kelly
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