



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

Lisa Madigan
ATTORNEY GENERAL

December 22, 2010

Ms. Mary Baudino
Freedom of Information Act Officer
Will County Coroner's Office
57 North Ottawa Street
Suite 412
Joliet, IL 60432

RE: FOIA Pre-Authorization Request - 2010 PACM 1206

Dear Ms. Baudino:

We have received and reviewed the written notice from the Will County Coroner's Office (County) of its intention to deny disclosure of the autopsy and toxicology reports relating to [REDACTED], who was killed in a traffic accident in Interstate 80 on September 12, 2010 when a pickup truck collided with the vehicle he was driving. Ms. Debra Oleson of Oleson & Associates, Ltd., requested the autopsy and toxicology reports regarding [REDACTED]. The Coroner's Office asserts that these documents are exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA) because they contain "personal information, the disclosure of which would result in a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c). The Coroner's Office also asserts that these reports are exempt from disclosure under Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b)), but we will not address this assertion at this time because FOIA does not require the Public Access Counselor to preauthorize exemption claims under Section 7(1)(b).

As discussed below, after considering the balancing test required under the Section 7(1)(c) exemption, we conclude that the autopsy and toxicology reports are not exempt from disclosure under this provision.

The Illinois General Assembly amended FOIA by enacting Public Act 96-542 effective January 1, 2010. The legislative history shows that the General Assembly intended the amendments to improve transparency in government and increase access to public records. Remarks of Sen.

Raoul, May 28, 2009, Senate Debate on Senate Bill No. 189 at 41. With respect to Section 7(1)(c), the amendments set forth in Public Act 96-542 were intended to narrow and clarify the personal privacy exemption which "has been identified as the most abused" FOIA exemption. Remarks of Rep. Madigan, May 27, 2009, House Debate on Senate Bill No. 189, at 93.

Under the amended version of Section 7(1)(c), the following is exempt from disclosure by public bodies:

(c) 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. "Unwarranted invasion of personal privacy" means 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.

5 ILCS 140/7(c). Thus, a public body seeking to rely on this exemption must show: 1) that the 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. *Id.* Under Section 1.2 of FOIA, the public body has the burden of proving a claimed exemption by clear and convincing evidence. 5 ILCS 140/1.2.

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). Public Access Opinion 10-003 at 6 (October 22, 2010). Under Section 7(1)(c), the privacy interests of surviving family members must be balanced against the legitimate public interest in obtaining the information. 5 ILCS 140/7(1)(c).


We have examined the autopsy and toxicology reports carefully and have determined that the privacy interests of surviving family members do not justify withholding the reports. Although surviving family members may consider the release of the results of these tests to be objectionable, there is an overwhelming public interest in obtaining information about the cause of death in a case such as this, including information about the condition of a driver who was involved in a tragic accident on a public highway. We conclude that the Coroner's Office has not met its burden of showing by clear and convincing evidence that the autopsy and toxicology reports are exempt. Therefore, the request to assert the exemption under Section 7(1)(c) is denied.

If you have any questions, please feel free to contact me at 312-814-2770. This correspondence will serve to close the matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


John Schmidt
Assistant Attorney General

cc: Ms. Debra Oleson
Oleson & Associates, Ltd.
1749 W. Golf Rd. #342
Mt. Prospect, Illinois 60056