



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 23, 2010

Ms. Joanne Wessels
Freedom of Information Officer
City of Batavia
100 North Island Avenue
Batavia, Illinois 60510

RE: FOIA Pre-Authorization Request - 2010.PAC 11387

Dear Ms. Wessels:

We have received and reviewed the written notice from the Batavia Police Department of its intention to deny in part disclosure of certain information requested by Ms. Angie Leventis of the Chicago Tribune. Ms. Leventis had requested reports or documents that the Batavia Police Department has regarding the death of a specified Batavia resident including the police report, witness reports, interviews, and print-outs or scanned images of social networking sites.

The Department asserts that certain post-mortem photographs of the decedent and certain statements of the decedent's mother 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 Department further asserts that any information received from social networking sites is exempt from disclosure under Section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a)), because disclosure would violate federal law. We will not address this assertion at this time, however, because FOIA does not require the Public Access Counselor to approve exemption claims under Section 7(1)(a) in advance. As discussed below, after considering the balancing test required under the Section 7(1)(c) exemption, we conclude that the Department has met its initial burden of demonstrating that the photographs and statements of the victim's mother in question are exempt from disclosure.

Under Section 7(1)(c) of FOIA (5 ILCS 140/7(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.

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 (5 ILCS 140/1.2), the public body has the burden of proving a claimed exemption by clear and convincing evidence.

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). That interest extends to police records concerning the death of a close relative. 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).


After carefully reviewing the materials submitted by the Department, we have determined that the privacy interests of surviving family members justify withholding the photographs and the relevant statements of the decedent's mother. By their nature, post-mortem photographs are "gruesome and graphic" and their disclosure would be highly objectionable to a reasonable person. *See* Public Access Opinion 10-003 at 7-10 (October 22, 2010). Further, the interview statements from the victim's mother that the Department seeks to withhold reference highly personal information the disclosure of which would be highly objectionable to a reasonable person. With respect to both the photographs and the statements, the privacy interests of the surviving family members would outweigh the public interest in obtaining the information. We therefore conclude that the Department has met its burden of showing by clear and convincing evidence that this information is exempt, and the request to assert the exemption under Section 7(1)(c) is accordingly approved.

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. Angie Leventis
Chicago Tribune
435 North Michigan Ave.
Chicago, Illinois 60611

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