



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

Lisa Madigan
ATTORNEY GENERAL

January 4, 2011

Officer Michael Kelly
Assistant Freedom of Information Officer
Chicago Police Department
3510 S. Michigan Ave.
Chicago, IL 60653

RE: FOIA Request for Review - 2010 PAC 11515

Dear Officer Kelly:

We have received and reviewed the written notice from the Chicago Police Department of its intention to deny in part disclosure of certain information requested by [REDACTED]. [REDACTED] had requested photographs related to RD# HK 515543, a homicide investigation. The Department indicates that it will provide 48 photographs to [REDACTED] but it intends to withhold 13 post-mortem photographs of the decedent on the basis that they 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(d)(c). 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 post-mortem photographs 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 may, in appropriate circumstances, extend to other investigatory 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 post-mortem photographs depicting the victim. By their nature, post-mortem photographs depicting a human being 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). With respect to the post-mortem photographs, 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:

