



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 6, 2011

Ms. Barbara Nafziger
Freedom of Information Officer
McLean County Coroner's Office
104 West Front St.
Bloomington, Illinois 61701

RE: FOIA Pre-Authorization Request – 2010 PAC 11553

Dear Ms. Nafziger:

We have received and reviewed the written notice from the McLean County Coroner's Office of its intention to deny in part disclosure of certain information requested by [REDACTED]. [REDACTED] had requested autopsy and coroner records regarding the death of a specified individual in McLean County. In 2010 PAC 5730, the Public Access Counselor denied the Coroner's request to withhold these documents in their entirety as exempt 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 Public Access Counselor stated, however, that the Coroner could seek pre-authorization from this office to redact portions of the requested records as exempt under Section 7(1)(c). The Coroner has now done so.

As discussed below, after considering the balancing test required under the Section 7(1)(c) exemption, we conclude that the Coroner has met her initial burden of demonstrating that the some, but not all, of the information that she proposes to redact is 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). 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). Because the coroner has a statutory duty to investigate the cause of a sudden or violent death (55 ILCS 5/3013), the public has a legitimate interest in accessing records resulting from the performance of this public duty, at least to the extent that this interest is not outweighed by personal privacy rights. *Id.* at 6-7.

After carefully reviewing the materials submitted by the Coroner, we have determined that the information that the Coroner proposes to redact, with the exception of the information under the heading "External Sharp Force Injuries" in the Report of Post-Mortem Examination, is highly personal, and that the privacy interests of the surviving family members would outweigh the public interest in obtaining the information. We therefore conclude that the Coroner has met her 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.

The Coroner has not, however, met her burden of showing that the information under the heading "External Sharp Force Injuries" in the Report of Post-Mortem Examination is exempt from disclosure under section 7(1)(c). Because this information relates to the cause of death, which it is the Coroner's statutory duty to determine, we conclude that the public interest in disclosure of this information outweighs the personal privacy interests of surviving family members. Therefore, the request to assert the exemption under Section 7(1)(c) is denied with respect to this information.


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

will serve to close the matter.

Sincerely,

Cára Smith
Public Access Counselor

By:


John Schmidt
Assistant Attorney General

cc:



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