



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 3, 2011

Ms. Karen Engh
Freedom of Information Officer
Kane County Coroner's Office
719 South Batavia Blvd.
Geneva, IL 60134

RE: FOIA Preauthorization Request-- 2011 PAC 12026

Dear Ms. Engh:

The Office of the Public Access Counselor has received and reviewed the written notice from the Kane County Coroner's Office of its intention to deny, in part, a request by Mr. William Vincent for information under the Illinois Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.* Mr. Vincent requested documents relating to the death of a specific individual including the coroner's investigation report, toxicology report, coroner photographs, autopsy protocol, inquest transcript and investigation-scene photographs.

The Coroner's Office has stated that it intends to provide much of the requested information to Mr. Vincent, but it seeks preauthorization from the Public Access Counselor to withhold the autopsy photographs on the basis that they are exempt from disclosure under Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)) because they contain "personal information, the disclosure of which would result in a clearly unwarranted invasion of personal privacy."

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).

We conclude that the privacy interests of surviving family members justify withholding the autopsy photographs of the decedent. 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 these photographs, the privacy interests of the surviving family members outweigh the public interest in obtaining the information, so the photographs may be withheld under Section 7(1)(c). Furthermore, we agree with the Coroner that Mr. Vincent has not shown that he is authorized to act on behalf of the decedent's family.

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

Sincerely,



John Schmidt
Assistant Attorney General

cc: Mr. William Vincent
VTS Investigations, LLC
P.O. Box 971
Elgin, Illinois 60121