



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 15, 2011

Mr. Russell Thomas
Freedom of Information Officer
McLean County Sheriff's Office
104 West Front St.
Bloomington, Illinois 61701

RE: FOIA Pre-Authorization Request – 2010 PAC 7218

Dear Mr. Thomas:

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] and [REDACTED]. [REDACTED] had requested crime scene photographs, crime investigation reports and other information relating to the tragic murder of their daughter, [REDACTED].

The Sheriff requests preauthorization to withhold the crime scene photographs 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 Sheriff's Office also plans to redact portions of the investigation reports as exempt under Section 7(1)(c) because they contain highly personal information. The Sheriff's Office also asserts that the crime scene photographs may be withheld and the information may be redacted from the investigation reports under other FOIA provisions (*see* 5 ILCS 140/7(1)(b), 7(1)(d)(iv), 7(1)(d)(v)), but we will not consider those exemption claims at this time because a public body does not need preauthorization from the Public Access Counselor to assert those exemptions. *See* 5 ILCS 140/9.5(b).

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.*

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 in the disclosure of personal information must be balanced against the legitimate public interest in obtaining the information. 5 ILCS 140/7(1)(c). Here, however, it is the closest surviving family members, the decedent’s parents, who have requested the crime scene photographs and the other information. In these circumstances, therefore, the request to assert the exemption under Section 7(1)(c) is denied with respect to the crime scene photographs because the requesters are the decedent’s closest surviving family members, and, by requesting the photographs, have essentially waived their privacy interests therein.

The privacy interests of others are at stake with regard to the documents that the Sheriff proposes to redact. According to the Sheriff, the investigation reports include accounts of highly personal matters concerning individuals who were interviewed in the course of the investigation. We conclude that the Sheriff may redact this information under Section 7(1)(c).

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 Public Access Counselor

cc:

