



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 6, 2010

Ms. Susan Anders
FOIA Officer
Illinois Department of Insurance
320 W. Washington Street
Springfield, Illinois 62767

RE: FOIA Pre-Authorization Request – 2010 PAC 8589

Dear Ms. Anders:

We have received and reviewed the written notice from Illinois Department of Insurance (IDI) of its intent to withhold certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA) 5 ILCS 140/1 *et. seq.*, as amended.

Specifically, on July 15, 2010, Joseph Ryan, on behalf of the Chicago Tribune, submitted a FOIA request to the IDI seeking copies of the latest available audits and all advisory opinions for the police and fire pension funds from the State of Illinois.

On July 22, 2010, the IDI submitted a pre-authorization request to this Office, asserting that dates of birth contained in the documents and information identifying the beneficiaries of pension fund participants may be withheld pursuant to Section 7(1)(c), which exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c). The exemption defines "[u]nwarranted invasion of personal privacy" as "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." *Id.* Further, the IDI also explains that information identifying the pension fund participants is exempt under Section 7(1)(a) which precludes the disclosure by Federal or State law or rules and regulations implementing Federal or State law. 5 ILCS 140/7(1)(a).

IDI cited Section 1A-107 of the Illinois Pension Code (40 ILCS 5/1A-107) (IPC) as the statutory basis for asserting the 7(1)(a) exemption. Section 1A-107 provides:

Automation of services. The [Public Pension] Division shall automate its operations, services, and communications to the fullest practical extent. This automation shall include, but need not be limited to, the acquisition, use, and maintenance of electronic data processing technology to (i) automate Division operations as necessary to carry out its duties and responsibilities under this Code, (ii) provide by FY 2000 electronic exchange of information between the Division and pension funds subject to this Code, (iii) provide to pension funds and the general public and receive from pension funds and the general public data on computer processible media, and (iv) control access to information when necessary to protect the confidentiality of persons identified in the information.

The Division shall ensure that this automation is designed so as to protect any confidential data it may receive from a pension fund. *This Section does not authorize the Division of the Department of Insurance to disclose any information identifying specific pension fund participants or relating to an identifiable pension fund participants [sic].* (Emphasis added.)

Determinations

The IDI's request for approval of its decision to withhold information pursuant to Section 7(1)(c) that would identify beneficiaries of pension fund participants, including their dates of birth, is approved. Unlike a public pension fund participant, beneficiaries of a participant have a reasonable expectation of privacy that their names will not be disclosed to the public. In many instances, these individuals are not public employees and are often designated as beneficiaries based on their personal relationship to the pension fund participant. This information has no relation to the employee's public duties and there is nothing that suggests a legitimate interest in the public obtaining the names of the beneficiaries.

With regard to the names of the pension fund participants themselves, however, this Office finds that 7(1)(a) is inapplicable as to the disclosure of names and the year of birth. Section 2.5 of FOIA provides that "[a]ll records relating to the obligation, receipt and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." 5 ILCS 140/2.5. On this basis, the Supreme Court has determined that records reflecting the cumulative pensions and lengths of service of retirees, for example, are not exempt from disclosure under FOIA. *Hamer v. Lentz*, 132 Ill.2d 49, 56 (1989). We conclude that the names and year of birth of participants in public pension funds are necessarily included within the scope of Section 2.5 of FOIA.

The language of Section 5/1A-107 of the Illinois Pension Code indicates that this provision was intended to ensure that the automated operations system implemented by the IDI would protect confidential information that the Public Pension System receives from public pension funds. It does not appear that the section was intended to insulate the Division from the application of other laws, such as FOIA, that require the disclosure of specific information. Therefore, Section 5/1A-107 does not preclude the disclosure of information pursuant to the provisions of FOIA.

Based on this analysis, IDI has met its burden under Section 7(1)(c) with respect to withholding the names of the pension fund beneficiaries. IDI, however, must disclose the names of the pension fund participants together with their year of birth pursuant to Section 2.5 of FOIA.¹

If you have any questions or concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:



Matthew C. Rogina
Assistant Public Access Counselor

cc: Joseph Ryan
Chicago Tribune
18450 Crossing Drive, Suite A
Tinley Park, Illinois 60487

¹ We note that only the year of birth has been requested. This Office has determined in other matters that disclosure of the day, month and year of birth may constitute an unwarranted invasion of personal privacy, but the disclosure of only the year of birth would not ordinarily be precluded.