

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).

After carefully reviewing the materials submitted by the Department, we have determined that the privacy interests of surviving family members justify withholding the autopsy 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 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,

  
John Schmidt  
Assistant Public Access Counselor

cc: Mr. Adam Kreutzer  
Esp, Kreutzer, Cores & McLaughlin  
400 South County Farm Rd.  
Wheaton, IL 60187

8227 pre-auth al 71c priv pd