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Courtroom Number: 2410
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Cook County, IL

2020CH06403

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EXHIBIT

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 19, 2010

Paul A. Castiglione
Executive Assistant State's Attorney for Policy
Cook County State's Attorney's Office
69 W. Washington Street, Suite 3200
Chicago, Illinois 60602

Re: Pre-Authorization Request – 2010 PAC 8115

Dear Mr. Castiglione:

We have received and reviewed the written notice from the Cook County State's Attorney's Office (Office) of its intention to deny certain information as exempt from disclosure under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act. 5 ILCS 140/1 *et seq.*, as amended (FOIA).

Tracy Siska of the Chicago Justice Project submitted a FOIA request on April 12, 2010 seeking certain information for the years 2008 and 2009 with regard to criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault, criminal sexual abuse, and aggravated criminal sexual abuse cases that the Chicago Police Department, as the arresting agency, referred to the felony review process in the Cook County State's Attorney's Office including:

Crime specific date, such as address of occurrence; type of weapon used if any; offender relationship to victim; whether the charges were approved at the felony level for which the Chicago Police Department brought the case for review; If charges were declined, summary explanations detailing why charges were not approved.

All non-identifier demographic data pertaining to offenders and victims, such as zip code or community area of residence; race; ethnicity; gender; age; place of arrest.

The Office and Ms. Siska mutually agreed to extend the Office's timeframe to respond to this FOIA request to June 15, 2010.

In its written response, the Office denies Ms. Siska's FOIA request as unduly burdensome under Section 3(g) of FOIA. Alternatively, the Office asserts that the requested information is exempt from disclosure under Sections 7(1)(a), (c), and (f) of FOIA. Regarding the assertion of the

“personal privacy” exemption is Section 7(1)(c), the Office advises that “[t]he disclosure of such information would provide detailed information to the public regarding the circumstances surrounding the sex crime in each case. While [the Chicago Justice Project] may have an interest in studying the prosecution of sex crimes in Chicago, the victims of such crimes have suffered a highly traumatic experience and have a strong a legitimate interest in their privacy.”

Section 7(1)(c) of FOIA 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.*

In addition, Section 7(1)(f) of FOIA exempts from disclosure records that constitute “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record shall not be exempt when the record is publicly cited and identified by the head of the public body.” 5 ILCS 140/7(1)(f).

Determination

In its proposed response to Ms. Siska, the Office references the Public Access Counselor’s pre-authorization approval of the withholding of certain information, identified in Pre-Authorization Request 2010 PAC 6630, in support of its use of the “personal privacy” exemption to deny this FOIA request. In 2010 PAC 6630, the Office sought pre-authorization to deny disclosure of “Facebook e-mail messages between a minor and an individual alleged to have committed sexual assault.” In its pre-authorization request, the Office explained that the e-mail exchanges contained “very personal information” regarding the minor complaining witness. The Public Access Counselor granted the pre-authorization request, stating “...we have determined that those messages are highly personal and that their release would be objectionable to a reasonable person.”

We have determined that the pre-authorization granted in 2010 PAC 6630 is not applicable to Ms. Siska’s FOIA request and does not guide our determination regarding this specific request. The information Ms. Siska seeks is crime-specific data and non-identifier demographic data. Ms. Siska is not seeking information that would identify a victim, nor is she seeking highly personal information, except as noted below.

Address or Hundred Block of Occurrence

The Office’s use of the exemption found in Section 7(1)(c) of FOIA to deny disclosure of the address or block at which the offense or alleged offense occurred is denied. Disclosure of this information would not be objectionable to a reasonable person and a legitimate public interest in obtaining this information exists.

Please note, however, that if the alleged offense occurred at the victim’s residence or the residence of a third-party, the Office may deny disclosure of this information under Section 7(1)(b) of FOIA as “private information” as defined in Section 2(c-5) of FOIA. If the alleged

offense occurred at the offender's residence, then this information must be made available pursuant to

Section 2.15 of FOIA, which provides that the following information must be released when it is maintained by a local criminal justice agency:

...(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody. 5 ILCS 140/2.15.

Ms. Siska's FOIA request seeks information regarding specific cases in which the Chicago Police Department was the arresting agency. Therefore, information found in the arrest reports for the offenders or alleged offenders in each of the cases requested should be made available, as appropriate, pursuant to Section 2.15 of FOIA.

Type of Weapon Used

The Office's use of the exemption found in Section 7(1)(c) of FOIA to deny disclosure of the type of weapon used, if any, to commit the offense or alleged offense is denied. This information is not highly personal and does not identify the victim. There is a legitimate public interest in obtaining this information.

Offender's Relationship to Victim

The Office's use of the "personal privacy" exemption found in Section 7(1)(c) of FOIA to deny disclosure the relationship of the offender to the victim, *when a relationship exists*, is approved. The existence of a relationship between two individuals is a highly personal matter, and the subjects' right to privacy outweighs any legitimate public interest in obtaining this information.

However, the Office's use of the 7(1)(c) exemption to deny disclosure of the fact that no relationship exists between the victim and the offender or alleged offender is denied. The fact that no relationship exists between two individuals is not personal and the public has a legitimate interest in obtaining this information.

Information Relating to Charging Decisions

The Office's use of the "deliberative process" exemption found in Section 7(1)(f) of FOIA to deny disclosure of information relating to charging decisions is approved. Disclosing whether the Office approved charges at the felony level for which the Chicago Police Department brought the case to review for would disclose the opinions and recommendations of the arresting officer. Information that includes opinions and recommendations is exempt from disclosure under 7(1)(f). In addition, summary explanations detailing why the Office did not approve charges would disclose the thought process and recommendations of Assistant State's Attorneys. This information is also exempt from disclosure under 7(1)(f).

Zip Code or Community Area of Residence

The Office's use of the "personal privacy" exemption to deny disclosure of the zip code or community area of residence pertaining to victims and offenders or alleged offenders is denied. This information is not highly personal and does not identify a victim. Disclosure of this information would not be highly objectionable to a reasonable person. In addition, the address of offenders and alleged offenders, including zip codes, must be released pursuant to Section 2.15 of FOIA as discussed above. Ms. Siska's FOIA request is seeking information for cases in which an arrest has been made.

Race, Ethnicity, Gender, and Age

The Office's use of the "personal privacy" exemption to deny disclosure of the race, ethnicity, gender, and age of the victims and offenders or alleged offenders is denied. This information is not highly personal and does not identify a victim. Disclosure of this information would not be highly objectionable to a reasonable person. In addition, the age of offenders and alleged offenders must be released pursuant to Section 2.15 of FOIA as discussed above.

Place of Arrest

The Office's use of the "personal privacy" exemption to deny disclosure of the place of arrest is denied. Section 2.15 of FOIA requires that the place of arrest be disclosed. However, this information "may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility." 5 ILCS 140/2.5(c).

Accordingly, unless the Office properly asserts an exemption other than 7(1)(c), it should issue a partial denial letter to Ms. Siska and release the requested information with the appropriate information redacted, as identified above.

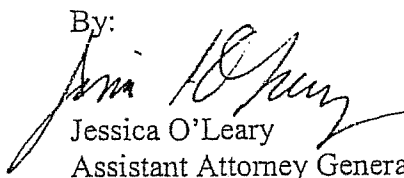
The use of the exemption found in 7(1)(a) and the decision that a FOIA request is unduly burdensome under Section 3(g) does not require pre-authorization by the Public Access Counselor and we offer no opinion or advice as to whether the Office's use of these exemptions is proper.

If you have any questions, please feel free to contact me at (312) 814-1003. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Jessica O'Leary
Assistant Attorney General

cc: Tracy Siska
Chicago Justice Project
35 E. Wacker Drive, 9th Floor
Chicago, Illinois 60601

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