

March 30, 2016

VIA E-MAIL

Ms. Susan L. Novosad

Levin & Perconti

Email: sln@levinperconti.com

RE: 16-FOIA-062 Police Report #15-34795; Any/All Info - [REDACTED]

Dear Ms. Novosad:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“FOIA”).

I. Background

On March 10, 2016, we received your request for the following:

1. Metra police report #15-34795, fire department report, police department log, fire department log, paramedic report and photos of the victim or the scene, and any other investigative documents as to [REDACTED] injury and death; and
2. All data, including but not limited to, dispatch cards and records, log books, audiotapes, or transcripts, computer printouts, or other written, typed or recorded information, pertaining to [REDACTED]

(“Request”). Your Request is granted in part and denied in part.

II. Responsive Documents

In response to your Request, Metra is providing you with Metra Police Report #15-034759 and attached photos and Worth Police Report #161513517 (“Responsive Document”).

After performing a diligent search of Metra’s records, we have been unable to locate any additional records responsive to the portion of your Request asking for “[a]ll data, including but not limited to, dispatch cards and records, . . . or transcripts, computer printouts, or other written types or recorded information, pertaining to [REDACTED].” Additionally, the MPD advised that they do not have records for the responding fire department, paramedic and any other investigative reports.

Metra’s Police Department is working on obtaining the audiotapes from the incident. As soon as they are able to do so, we will supplement this request.

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Thomas Stuebner has

determined that the following portions of the Responsive Document are exempt from disclosure under certain provisions of FOIA:

1. The employee identification numbers, personal telephone number, home address, and driver's license number of the parties mentioned in the Responsive Document are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts "private information." "Driver's license number," "employee identification numbers," "personal financial information," "passwords," "personal telephone numbers," and "home addresses" are specifically mentioned within the definition of "private information" found in Section 2(c-5) of FOIA.
2. The date of birth, graphic photos and depictions, and description of the parties mentioned in the Responsive Document are being redacted because it is exempt from disclosure under Section 7(1)(c) of FOIA, which exempts "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy..." Section 7(1)(c) goes on to say that, "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." It has been determined that the aforementioned data falls squarely within that definition and its redaction is appropriate under FOIA.
3. Section 7(1)(a) of FOIA exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 140/7(1)(a). Accordingly, the home address, date of birth, driver's license number, and physical description of the party mentioned in the Responsive Document is exempt from disclosure per the Driver's Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, which prohibits individuals from knowingly obtaining or disclosing "personal information" from a motor vehicle record.

IV. Denial

Certain graphic photographs mentioned in the Responsive Documents are denied in their entirety for the following reasons: The photographs contain information relating to the death of an individual. In the interest of protecting the personal privacy of the deceased, these documents are denied pursuant to the exemption found in Section 7(1)(c) of the FOIA, which exempts "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy..." Section 7(1)(c) goes on to say that, "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 Public Access Counselor ("PAC") has previously recognized the privacy rights of the deceased and their families, ruling that documents containing graphic images may be denied because such photographs "are records that are highly personal, the release of which would be objectionable to reasonable persons." 2010 PAC 8679.¹ This matter was further reiterated in Public Access Opinion No. 10-003, which stated that "...under Federal FOIA, the courts have recognized that a decedent's surviving family members do possess a separate personal privacy interest in 'their close relative's death-

¹ Available at: <http://foia.ilattorneygeneral.net/preauthapprovalanddenialletters.aspx>

scene images' and *similar records*." 2010 PAC 8890, 9217² (citing *National Archives & Records Administration v. Favish*, 541 U.S. 157, 123 S. Ct. 1570 (2004)) (quotations in original) (emphasis added).

V. Right of Review

You have the right to have the partial denial of your Request reviewed by the Public Access Counselor ("PAC") of the Illinois Attorney General's Office. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
FOIA@metrarr.com

Attachments

² Available at: <http://foia.ilattorneygeneral.net/pdf/opinions/2010/2010-003.pdf>