



September 14, 2016

VIA EMAIL

Ms. Cara Lincoln

Cigna Insurance Company

Email: cara.lincoln@cigna.com

RE: 16-FOIA-225 Police Report - [REDACTED]

Dear Ms. Lincoln:

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 September 7, 2016, we received your request for the police incident report and any available supplemental reports regarding the death of [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 the Police Report # MP-16-000-28793, the Supplemental Police Report and Illinois Traffic Crash Report (“Responsive Documents”).

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 Documents are exempt from disclosure under certain provisions of FOIA:

1. The social security number, driver’s license number, employee identification numbers, passwords, personal telephone numbers, passwords and home addresses of the parties mentioned in the Responsive Documents are being redacted because they are exempt from disclosure under Section 7(1)(b) of FOIA, which exempts “private information.” “Social security numbers,” “driver’s license numbers,” “employee identification numbers,” “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 dates of birth, name of the third-party, and the physical descriptions of the parties mentioned in the Responsive Documents are being redacted because they are 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 any physical description of the parties mentioned in the Responsive Document are 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.
4. Additionally, per the Identity Protection Act, “[N]o person or State or local government agency may . . . [p]rint an individual’s social security number on any materials . . . through . . . electronic mail[.]” Additionally, Section 10(b)(1) prohibits the disclosure of a social security number, unless:

“(i) required to do so under State or federal law, rules, or regulations, or the collection, use, or disclosure of the social security number is otherwise necessary for the performance of that agency's duties and responsibilities; (ii) the need and purpose for the social security number is documented before collection of the social security number; and (iii) the social security number collected is relevant to the documented need and purpose.” 5 ILCS 179/10(a)(4).

IV. Denial

The 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-scene images’ and *similar records*.” 2010 PAC 8890, 9217² (citing *National Archives & Records*

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

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

Administration v. Favish, 541 U.S. 157, 123 S. Ct. 1570 (2004)) (quotations in original) (emphasis added).

Additionally, the video referenced in the Responsive Documents is also exempt under 5 ILCS 140/7(1)(m), which authorizes exemption from disclosure of “[m]aterials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body...” Videos are maintained for several reasons, one of which is in anticipation of possible legal proceedings that may stem from the occurred incident.

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,



Sonserese Hatch
Freedom of Information Officer
foia@metrarr.com
FOIA Hotline #312-663-3642

Attachments