



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

Lisa Madigan  
ATTORNEY GENERAL

July 22, 2010

Mr. Thomas Hernandez  
Director of Community Relations and FOIA Officer  
Plainfield Community Consolidated School District 202  
15732 Howard St.  
Plainfield, IL 60544

RE: Pre-Authorization Request — 2010 PAC 5361, 5521

Dear Mr. Hernandez:

We have received from the Plainfield Community Consolidated School District 202 (District 202) two written notices of its intention to assert the Section 7(1)(c) and Section 7(1)(f) exemptions in response to two separate Freedom of Information Act (FOIA) requests, the first dated January 4, 2010 submitted by Bob Susnjara, reporter for the Daily Herald (Susnjara Request), and the second dated January 11, 2010 submitted by Catherine Velasco, reporter for the Herald-News (Velasco Request). These two requests each sought documents relating to District 202's handling of certain sexual harassment allegations leveled against former District 202 employee (Employee 1) by another former District 202 employee (Employee 2).<sup>1</sup>

With respect to the Susnjara Request, District 202 has indicated that it intends to disclose an April 24, 2009 resignation letter tendered by Employee 1 to District 202, but that it intends to withhold all remaining responsive records, including: (1) a summary of the investigation conducted by District 202 concerning these allegations ("the Summary", a copy of which District 202 has provided to our office in connection with our review of this matter); and (2) documents

<sup>1</sup> The Susnjara Request sought "any and all documents issued in 2009 containing a summary of investigation into allegations of sexual harassment against [Employee 1] leveled by [Employee 2]" as well as "any and all documents showing [Employee 1] served a three-day suspension without pay from April 6 through April 8, 2009 [and] any and all documents showing [Employee 1's] contract would not be renewed for that job in the 2009-2010 academic year." The Velasco Request sought, among other records, "copies of the summary, findings and recommendations regarding the investigation of [Employee 1]" and "copies of any EEOC complaints filed in 2009 and in 2010 against [District 202]."

responsive to those portions of the first FOIA request which sought documents relating to Employee 1's three-day suspension and documents relating to the non-renewal of Employee 1's contract for the 2009-2010 academic year (a copy of which District 202 has not provided to our office), pursuant to Section 7(1)(c) and Section 7(1)(f), among other asserted exemptions.

With respect to the Velasco Request, District 202 has indicated that it intends to disclose certain documents responsive to 9 of the 11 categories of that request, but that it intends to withhold: (1) the Summary (a copy of which District 202 has provided to our office in connection with our review of this matter, as noted above); and (2) copies of EEOC complaints filed in 2009 and in 2010 against District 202 (a copy of which District 202 has provided to our office in connection with our review of this matter), pursuant to Section 7(1)(c) and Section 7(1)(f), among other asserted exemptions.

Section 7(1)(c) of FOIA permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "unwarranted 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." It also provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

Section 7(1)(f) of FOIA allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a 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).

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1<sup>st</sup> Dist. 2003), the Illinois Appellate Court ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248. The court noted that no previous Illinois cases interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

### **Determinations**

With respect to District 202's intention to withhold the Summary, pursuant to Section 7(1)(f), our review of the Summary indicates that it contains preliminary evaluations and recommendations by District 202 administrative staff regarding its internal investigation of the alleged misconduct at issue. It also contains pre-decisional opinions of the public body as to what remedial actions, if any, should be taken against Employee 1 in light of this investigation.

Such a record is clearly encompassed by the language of the Section 7(1)(f) exemption, because it constitutes part of District 202's deliberative process in determining how to proceed with regard to addressing the allegations. There is also no indication that the Summary has been publicly cited and identified by the head of the public body. Accordingly, **we have determined that District 202 has met its burden of demonstrating that the Summary is exempt from disclosure under Section 7(1)(f).** Because of this determination, it is not necessary to reach a conclusion as to whether this document may properly be withheld pursuant to Section 7(1)(c) of FOIA.

With respect to District 202's intention to withhold EEOC complaints that have been filed against the District in 2009 and 2010, pursuant to Section 7(1)(c), the local community has a legitimate interest in the existence of such complaints when filed against the very public bodies responsible for the education and training of that community's children. Although the person's identified in such complaints, either as complainants or alleged harassers, may have a privacy interest in preventing these complaints from being disclosed, that privacy interest does not outweigh the community's legitimate interest in being made aware of such allegations in these circumstances. Accordingly, **we have determined that District 202 has not met its burden of demonstrating that the EEOC complaints at issue are exempt from disclosure in their entirety under Section 7(1)(c).** With regard to particular information contained in these complaints, dates of birth referenced therein may properly be redacted, pursuant to Section 7(1)(c). Furthermore, as the District has alluded to, the names and addresses of the complainants referenced in these particular complaints are likely exempt from disclosure under Section 7(1)(d)(iv), which allows withholding of information revealing the identity of persons who file complaints with or provide information to investigative agencies. Please note that FOIA only requires public bodies to submit a Notice of Intent to Deny and request for pre-authorization with regard to assertion of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials).

Finally, with respect to District 202's intention to withhold any additional documents responsive to that portion of the Susnjara request which sought "any and all documents showing [Employee 1] served a three-day suspension without pay from April 6 through April 8, 2009 [and] any and all documents showing [Employee 1's] contract would not be renewed for that job in the 2009-2010 academic year", pursuant to Section 7(1)(c) and Section 7(1)(f), **we have determined that District 202 has not met its burden of demonstrating that these records are exempt from disclosure under either Section 7(1)(c) or Section 7(1)(f).** By letter dated January 26, 2010, Deputy Public Access Counselor Sara Gadola Gallagher requested that District 202 provide our office with copies of the documents responsive to this portion of the Susnjara request which it intended to withhold. Although District 202 has provided the Summary and the EEOC complaints at issue in this matter, it has not provided these documents, making an assessment as to the applicability of either Section 7(1)(c) or 7(1)(f) to such documents impossible. Furthermore, specifically with respect to this 7(1)(c) assertion, the description of these documents offered in the Susnjara request suggests that these documents may constitute personnel records. Because public employee personnel records relate to the public duties of public employees and disclosure of these documents does not represent an invasion of personal property, they would not be exempt under Section 7(1)(c) in any event.

As noted above, where information is specifically exempt under sections of FOIA other than Section 7(1)(c) and Section 7(1)(f), public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization. Our office takes no position with regard to whether any other FOIA exemption or other statutory bases District 202 has asserted in connection with its pre-authorization request provide additional bases for withholding any of these three categories of documents.

If you have any questions concerning this matter, please feel free to contact the undersigned at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith  
Public Access Counselor

By: 

Matthew M. Sebek  
Assistant Attorney General, Public Access Division

cc: Catherine Velasco  
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