



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

Lisa Madigan
ATTORNEY GENERAL

June 29, 2010

Mr. Don Harris
Freedom of Information Act Officer
Granite City School District 9
1947 Adams
Granite City, Illinois 62040

RE: Pre-Approval Request - 2010 PAC 5674

Dear Mr. Harris:

We have received and reviewed the written notice from Granite City School District 9 (District) of its intent to deny disclosure of administrative evaluations as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c). This letter is to advise you that your request is denied.

Chris Coates of the Suburban Journals submitted a FOIA request dated January 26, 2010, seeking, personnel records and administrative evaluations for Brian Harshany, the investigative report regarding Brian Harshany provided to the District board, and transcripts or audio recordings of two executive sessions. In its written notice, the District asserted that administrative evaluations are exempt from disclosure under Section 7(1)(c) of FOIA. In support of its assertion, the district stated that the information contained within the evaluations was highly personal. The District further stated that release of the documents would result in discrete impacts upon the educational environment, possible embarrassment and distraction of district employees, and a chilling of the evaluation process.

The District denied the request as it related to disciplinary records under Sections 7(n), 7.5(q), and 7(1)(a) of FOIA, as well as Section 8 of the Personnel Records Review Act. 820 ILCS 40/8. The District also denied the request as it relates to teaching evaluations under Section 7(1)(a) of FOIA and Section 24A-7.1 of the Illinois School Code. 105 ILCS 5/24A-7.1. Finally, the District denied the request for closed session verbatim minutes or audio recordings under Section 7(1)(a) of FOIA and Section 2.06(e) of the Open Meetings Act. 5 ILCS 120/2.06(3). Only the use of Sections 7(1)(c) and 7(1)(f) of FOIA require preapproval from our office, and this determination only addresses the applicability of Section 7(1)(c).

Determinations

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

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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.* However, "[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." *Id.*

The District's use of the exemption in Section 7(1)(c) with regard to administrative evaluations is **denied**. The evaluations of public employees impact what duties that employee will have to the public in the near future. Public bodies use the evaluations to determine if employees should be retained, promoted, or terminated. This reading of Section 7(1)(c) with regards to personnel evaluations is further supported by a colloquy on the floor of the Illinois Senate. During the discussion of Senate Bill 315, which exempts the evaluations of teachers, principals, and superintendents from disclosure under FOIA, chief sponsor Sen. Karen Lightford stated that evaluations for all other school employees remained subject to FOIA disclosure. Ill. S., *Debate on S.B. 315 on the Floor of the Senate*, 96th Leg., Reg. Sess. At 17 (Jan. 13, 2010). Sen. Lightford stated that exemptions for other school employees "will have to be addressed and dealt with in a different piece of legislation." *Id.*

Please note that this determination addresses only the applicability of Section 7(1)(c) regarding administrative evaluations. Public bodies must seek preapproval from the Public Access Counselor for the use of the Section 7(1)(c) and Section 7(1)(f) only. Use of other exemptions requires no preapproval from our office, and we decline to independently determine whether use of other exemptions regarding other documents is appropriate in this case.

In accordance with this letter, the District may release the requested records to the requester. If you have any questions, please feel free to contact our office at 1-877-299-FOIA (1-877-299-3642). This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Amalia Rioja
Chief Deputy Public Access Counselor

cc: Chris Coates
Suburban Journals
2 Executive Drive
Collinsville, Illinois 62234-6120