



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 31, 2010

Ms. Colleen Legge
Superintendent, Kankakee School District 111
240 Warren Avenue
Kankakee, Illinois 60901

RE: FOIA Pre-Authorization Request – 2010 PAC 5742

Dear Ms. Legge:

We have received and reviewed the documents that this Office requested on February 9, 2010 with respect to your notice of intention to deny disclosure of specific information pursuant to Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et-seq.*, as amended.

Specifically, on January 26, 2010, [REDACTED] submitted a FOIA request to the Kankakee School District 111 (District) for various records, including “[a]ll records’ – such as print documents, photographs, videos, maps, e-mails, and electronic records – that were created, obtained or authorized by Kankakee School District 111 pertaining to the investigation of Dr. Brian Ali (sic).”

On February 9, 2010, the District submitted a pre-authorization request to this Office, asserting that a portion of [REDACTED] request is exempt from disclosure pursuant to Section 7(1)(c) of FOIA which 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.*

On February 18, 2010, our Office sent a further inquiry letter requesting unredacted copies of the information it seeks to withhold pursuant to Section 7(1)(c). On March 2, 2010, the District supplied us with unredacted copies of the following documents it seeks to withhold pursuant to Section 7(1)(c):

1. A September 19, 2007 letter between Attorney Mark Metzger and Attorney Shelli Anderson regarding the District investigation's into Dr. Ali;
2. A September 20, 2007 memorandum from Dr. Ali to the Board of Education in response to the investigation report; and
3. A September 25, 2007 letter from the Board of Education to Dr. Ali regarding the District's investigation into Dr. Ali.

In addition to the supplying this Office with requested documents, the District also asserted that the information is exempt from disclosure pursuant to Section 7(1)(m) of FOIA, which exempts from inspection and copying "communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by and for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies," and Section 7(1)(n), which exempts from inspection and copying "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed" 5 ILCS 140/7(1)(m), 5 ILCS 140/7(1)(n).

Because Section 9.5(b) of FOIA requires only that public bodies seek pre-authorization from this Office when asserting that records are exempt from disclosure pursuant either to Section 7(1)(c) or Section 7(1)(f), we decline to make any findings as to the applicability of Section 7(1)(m) and Section 7(1)(n) to these records.

Determinations

The District's request for approval of its decision to withhold these three documents pursuant to Section 7(1)(c) is approved in part and denied in part.

In its letter, the District explains that the three documents should be withheld from disclosure pursuant to Section 7(1)(c) because they amount to an invasion of personal privacy of Dr. Ali and other District employees that were identified in the documents.

With respect to the documents the District seeks to withhold from disclosure pursuant to Section 7(1)(c), this Office finds the following:

1. The District's intention to withhold the September 19, 2007 letter between Attorney Mark Metzger and Attorney Shelli Anderson regarding the District investigation's into Dr. Ali is approved in part and denied in part.
2. The District's intention to withhold the September 20, 2007 memorandum from Dr. Ali in response to the District's investigation is approved in part and denied in part.
3. A September 25, 2007 letter from the Board of Education to Dr. Ali regarding the District's investigation into Dr. Ali is denied

With regard to Dr. Ali, the District explains that because Dr. Ali is no longer an employee of the District, the documents it seeks to withhold do not bear on the duties of a public employee and falls outside the scope of Section 7(1)(c). Language in Section 7(1)(c) states that the disclosure of information that bears on the public duties of public employees and officials shall not be

considered an invasion of privacy. This portion of Section 7(1)(c), however, remains applicable to records pertaining to the performance of duties by public employees after they have left their public employment. The documents the District seeks to withhold were generated as part of a 2007 investigation of Dr. Ali conducted by the District that related exclusively to his performance as Superintendent. In this instance, this privacy interest of Dr. Ali is outweighed by the legitimate public interest in disclosure of the documents.

With regard to the other individuals identified in the documents and the particular information they provided during the course of the investigation, the District explains that this information is highly personal to those individuals and should be withheld pursuant to Section 7(1)(c). Specifically, the September 19, 2007 letter memorializes 15 interviews that Attorney Metzger conducted with District employees who were familiar with the issues relevant to the District's investigation of Dr. Ali. Additionally, Dr. Ali's September 20, 2007 memorandum to the Board also references those same employees in his response to Attorney Metzger's investigation report.

Because the individuals in these documents were District employees at the time the documents were created and offered information that dealt exclusively with the issues that initiated the District's investigation into Dr. Ali, it is the conclusion of this Office that disclosure of this information would not constitute a highly unwarranted invasion of personal privacy pursuant to Section 7(1)(c).

However, both the September 19 letter and September 20 memorandum contain references to third party individuals not employed by the District. Accordingly, the District may redact information relating to the transportation issue of the investigation in both the September 19 letter and September 20 memorandum that identifies a student and certain personal circumstances regarding that student and his parents. It is the conclusion of this Office that no legitimate public interest exists to this matter and disclosure of such information could constitute a highly unwarranted invasion of personal privacy under Section 7(1)(c).

Finally, because the September 25, 2007 letter contains the Board's findings from the investigation of Dr. Ali, it is the conclusion of this Office that these findings bear directly on his public duties. As such, there exists a legitimate interest in the public disclosure of this information that outweighs Dr. Ali's right to privacy.

Based on this analysis, the District should disclose the documents, subject only to the redactions referenced above.

If you have any questions or concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor



Matthew C. Rogina
Assistant Public Access Counselor

cc:

