



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2011

Via Electronic Mail

Community Consolidated School District No. 46
c/o Mr. Kevin B. Gordon
Legal Counsel
Scariano, Himes and Petrarca
kgordon@edlawyer.com

RE: FOIA Pre-Authorization Request - 2011 PAC 13476

Dear Mr. Gordon:

We have received and reviewed the written notice from the Community Consolidated School District No. 46 (District) of its intention to deny certain information as exempt from disclosure under sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c),(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010).

On April 8, 2011, [REDACTED] submitted a FOIA request seeking: (1) copies of email correspondence to and from specified District personnel between February 1 and April 7 2011; (2) copies of questions asked by District personnel to District attorneys; and (3) copies of all invoices from District attorneys. After the District asserted that portions of his request were unduly burdensome, [REDACTED] revised his FOIA request on April 13, 2011 to include particular keyword search terms for the correspondence he sought. The District claims: (1) that disclosing the names of students, parents, District personnel, and members of the community which appear in invoices responsive to this request would pose an unwarranted invasion of personal privacy and are, therefore, exempt under section 7(1)(c); and (2) that certain records responsive to the remainder of [REDACTED] request (detailed in an exemption log the District has submitted) are exempt under section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions.

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 personal privacy, unless the disclosure is consented to in writing by the

individual subjects of the information." The exemption defines "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." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

Section 7(1)(f) of the Freedom of Information Act 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.

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st 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." *Harwood*, 344 Ill. App. 3d 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.' *Harwood*, 344 Ill. App. 3d at 247-248. The court noted that no previous Illinois cases interpreted the use of the term '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." *Harwood*, 344 Ill. App. 3d at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998).

DETERMINATIONS

The District's use of the exemption in section 7(1)(c) to withhold the names of students, parents, District personnel, and members of the community which appear in responsive invoices is **denied**. We have concluded that the District has not met its initial burden of demonstrating that the disclosure of this information would be highly objectionable to a reasonable person. To the extent that the disclosure of these names would implicate any privacy interest whatsoever, the District has not established with clear and convincing evidence that it would be a privacy interest cognizable under section 7(1)(c) of FOIA. See *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 412 (1997)(concluding that information revealing prospective students' identities was not exempt under 5 ILCS 140(7)(1)(b)(i) (West 1994), a statutory predecessor to the current section 7(1)(c), because "basic identification" information was neither confidential nor private.)

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The District's use of the exemption in section 7(1)(f) for the records described in the exemption log is **approved**. Based on our review, the records proposed to be withheld appear to fall within the scope of the section 7(1)(f) exemption, because they consist of internal discussions which contain opinions and which pertain to the formulation of actions and policies advocated by the District. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, the District has met its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f).

If you have any questions, please contact me at (217) 782-9078. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW MUSEBEK
Assistant Attorney General
Public Access Bureau

cc:

