



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 3, 2011

Ms. Clare Bourne
FOIA Officer
Community Consolidated School District No. 47
300 Commerce Drive
Crystal Lake, Illinois 60014

RE: FOIA Pre-Authorization Request – 2011 PAC 14415

Dear Ms. Bourne:

We have received and reviewed the written notice from the Community Consolidated School District No. 47 of its intention to deny disclosure of certain information under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). On May 17, 2011, [REDACTED] submitted a FOIA request to the District seeking "employee sick time balances by name for all employees, plus the total accrued balance." In its written notice, the District asserts that employees' sick time balances are exempt from disclosure under section 7(1)(c).

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." The exemption further provides, however, that the "disclosure of information that bears on the public duties of public employees shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

The District's request to withhold employee sick time balances under section 7(1)(c) is **denied**. We have determined that disclosure of employee sick time balances would not constitute an unwarranted invasion of personal privacy. Employees' earnings and use of sick time bears on their performance of their public duties because it reflects absences from work and eligibility for compensation for those absences. In addition, disclosure of employee sick time balances alone would not reveal any specific medical conditions.

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The District argues that the intent of the Illinois Legislature when it passed Public Act 96-542, effective January 1, 2010, was that any "personnel records" that would have been exempt before 2010 would remain exempt. However, the language of FOIA does not indicate that intent. Before January 1, 2010, section 7(1)(b) of FOIA exempted "personnel files and personal information maintained with respect to employees * * * of any public body[.]" 5 ILCS 140/7(1)(b) (West 2008), now codified at 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. Public Act 96-542 re-codified the exemption for personal information and removed the specific reference to "personnel files." The removal of the term "personnel files" from the exemption section of FOIA indicates that personnel files that were exempt from disclosure before January 1, 2010 are no longer exempt.

Even if the Legislature's intent were as stated by the District, sick day balances would not have been exempt from disclosure before January 1, 2010. In 2009, section 7(1)(b) of FOIA provided that the "disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(b) (West 2008), now codified at 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. The Illinois Supreme Court has recognized that information that bears on the public duties of public employees is not exempt from disclosure, even if it is contained in the personnel records of a public employee. *Stern v. Wheaton-Warrenville Community Unit School Dist. 200*, 233 Ill. 2d 396, 411-12 (2009) (holding that a superintendent's employment contract was not exempt under section 7(1)(b)). Because sick time balances of public employees bear on the public duties of those employees, sick time balances would not have been exempt under the personal privacy exemption in effect prior to 2010.

For the reasons explained above, we conclude that the District has not sustained its initial burden of demonstrating that employee sick time balances are exempt from disclosure under section 7(1)(c).

If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

Sarah Kaplan by: AA

SARAH KAPLAN
Assistant Attorney General
Public Access Bureau

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cc:

