



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 25, 2011

Via Electronic Mail

Ms. Sandra Larek, FOIA Officer
Lemont-Bromberek Community School District
16100 127th Street
Lemont, IL 60439
[REDACTED]

RE: FOIA Pre-Authorization Request - 2011 PAC 14941

Dear Ms. Larek:

We have received and reviewed the written notice from the Lemont-Bromberek Community School District (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 2010)).

On June 3, 2011, Ms. Duaa Eldeib and Ms. Diane Rado of the *Chicago Tribune* submitted a FOIA request to the District. Ms. Eldeib and Ms. Rado's FOIA request sought several categories of information relating to the District's employment relationship with certain former superintendents. The District claims that the release of a responsive letter to [REDACTED] [REDACTED] dated September 15, 2005, would pose an unwarranted invasion of his personal privacy and the letter is, therefore, exempt under section 7(1)(c). The District also claims that this letter is exempt under section 7(1)(f), because it reflects deliberative discussions by District personnel and contains opinions or relates 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 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 letter at issue 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. The letter primarily provides a recitation of the facts on which the District based its decision to furnish ██████████ with a Notice of Proposed Termination. As such, this letter bears on the public duties of the members of the District's Board of Education, specifically their duty to make terminations as necessary, and, therefore, may not be withheld under section 7(1)(c).

The District's use of the exemption in section 7(1)(f) for the September 15, 2005, letter addressed to ██████████ is also **denied**. Based on our review of this letter and the balance of the District's submission, the letter proposed to be withheld does not appear to fall within the scope of the section 7(1)(f) exemption. This letter does not consist of internal discussions containing opinions or pertaining to the formulation of actions and policies advocated by the District. Rather, it reflects the determination made by the District's Board of Education to issue a Notice of Proposed Termination to ██████████. The mere fact that this letter reflects a proposed termination which was subject to a pre-termination hearing does not, without more, make this record exempt under section 7(1)(f). The proposed termination announced in this letter signifies the culmination of whatever deliberative discussion the District Board may have had concerning

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[REDACTED] employment relationship with the District, not the deliberative discussion itself. Accordingly, the District has not 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,

[REDACTED]
MATTHEW M. SEBEK
Assistant Attorney General
Public Access Bureau

14941 pa dl (c) (f) sd

cc: *Via Electronic Mail*
Ms. Duaa Eldeib
Chicago Tribune
[REDACTED]

Via Electronic Mail
Ms. Diane Rado
Chicago Tribune
[REDACTED]