



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

July 7, 2011

Ms. Cynthia DeCola
Hodges, Loizzi, Eisenhammer,
Rodick & Kohn, LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005

RE: FOIA Pre-Authorization Request – 2011 PAC 14795

Dear Ms. DeCola:

We have received and reviewed your written notice on behalf of Rock Falls Township High School District 301 of the District's intention to deny disclosure of certain information pursuant to section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2010).

On February 25, 2011, Mr. David Giuliani submitted a FOIA request for the following:

1. The February 24, 2011, resignation agreement between the District and special education teacher A.J. Buser;
2. The texts, letters, emails, or other written materials that Mr. Buser sent to the student that were deemed inappropriate by the school district; and
3. Any written investigatory reports or other factual documentation used in the case involving Mr. Buser that led to his resignation.

On February 25, 2011, the District provided Mr. Giuliani with the requested resignation agreement. On March 3, 2011, the District denied the other parts of Mr. Giuliani's request, asserting that the responsive records were exempt under section 7(1)(n) of FOIA. 5 ILCS 140/7(1)(n) (West 2010). Mr. Giuliani filed a Request for Review of this denial with our office, and during the course of our review, the District asserted other exemptions as well. On

May 10, 2011, we determined that none of the exemptions asserted by the District properly applied to all of the withheld documents in their entirety. Ill. Att'y Gen. PAC Req. Rev. Ltr. 12695, issued May 10, 2011. The District now seeks pre-authorization to withhold the documents under section 7(1)(f).

DETERMINATION

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions 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." 5 ILCS 140/7(1)(f) (West 2010).

The withheld documents consist of the following:

- notes taken by District officials at investigative interviews;
- drafts of statements made by District personnel and by Mr. Buser during Mr. Buser's pre-termination proceeding before the Board;
- a transcript of text messages sent by Mr. Buser to a student and the text messages from the student to Mr. Buser; and
- photographs of the text messages.

We **approve** the District's use of the exemption in section 7(1)(f) to withhold the notes of the investigative interviews and the draft statements made at the pre-termination proceeding. The notes taken at the investigative interviews are clearly preliminary and were created to aid the District in determining its course of action. The draft statements were relied on by the speaker for the purpose of making each statement, and the draft statements do not appear to reflect the final version of the statements. Additionally, these statements were presented to the Board in a closed session to aid the Board in making a decision. The District asserts that none of these documents has been publicly cited or identified by the Board. For these reasons, we conclude that the District has met its initial burden of demonstrating that the investigative notes and the draft statements are exempt under section 7(1)(f).

The District's use of the exemption in section 7(1)(f) to withhold the photographs of the text messages, however, is **denied**. The text messages themselves are not preliminary drafts and do not contain opinions, recommendations or any deliberations in which the District's actions were formulated. The fact that the District considered this evidence in its investigation of Mr. Buser does not cause these records to become exempt under section 7(1)(f).

The District's request to withhold the transcript under 7(1)(f) is **granted in part and denied in part**. The transcript was prepared by the District using the saved text messages sent by Mr. Buser and the student's recollection of her responses. The transcript also contains

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notes made by the District. For the reasons explained above, we find that the contents of the saved text messages are not exempt under section 7(1)(f). However, the other parts of the transcript, including the student's recollections and the notes made by the District, reflect the District's deliberative process. Therefore, the District may redact the student's recollections and the notes made by the District from the transcript.

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
Assistant Attorney General
Public Access Bureau

14795 preauth al dl 71f prelim draft sd

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