



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 3, 2011

Via Electronic Mail

Ms. Nanci N. Rogers
Robbins, Schwartz, Nicholas, Lifton & Taylor
nrogers@rsnlt.com

RE: FOIA Pre-Authorization Request - 2011 PAC 15333

Dear Ms. Rogers:

We have received and reviewed the written notice from the College of DuPage (CoD) of its intention to deny disclosure of certain information pursuant to 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 16, 2011, Mr. Seth Zweifler submitted a FOIA request to CoD seeking correspondence between CoD personnel regarding the *Courier*, CoD's student newspaper. On July 20, 2011, Nanci N. Rogers, attorney for the law firm Robbins, Schwartz, Nicholas, Lifton & Taylor, submitted written notice to this office on behalf of CoD seeking to withhold certain internal correspondence. On July 21, 2011, CoD supplied us with a copy of the email records that it seeks to withhold pursuant to sections 7(1)(c) and 7(1)(f).

Section 7(1)(c) of FOIA exempts from inspection or 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" 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," but further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records 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

Ms. Nanci N. Rogers
August 3, 2011
Page 2

body." The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

DETERMINATION

CoD's use of the exemption in section 7(1)(c) to withhold information contained in the emails is **approved** in part and **denied** in part.

CoD seeks to redact the name of an adjunct professor in a June 1, 2011, email. The Illinois Supreme Court has concluded that disclosure of a name by itself does not amount to an invasion of privacy under FOIA. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill.2d 401, 412 (1997). The email sent by the professor was written in his capacity as an adjunct professor and relates to his public duties. Therefore, his name cannot be withheld pursuant to section 7(1)(c). CoD may withhold, however, a portion of information contained in a June 18, 2011, email that details a personal matter involving a CoD employee.

CoD's assertion of section 7(1)(f) to redact specified deliberative communications in the emails is **approved**. Based on our review of the emails, we conclude that they contain opinions and recommendations by CoD personnel concerning a course of action with regard to the *Courier* and therefore properly fall within the provisions of section 7(1)(f).

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

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

15333 preauth al dl 71c 71f prelim priv univ

Ms. Nanci N. Rogers
August 3, 2011
Page 3

cc: Mr. Seth D. Zweifler
Student Press Law Center
1101 Wilson Blvd., Suite 1100
Arlington, Virginia 22209