



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 15, 2010

Rich Township High School District 227
c/o Mr. John E. Fester
Scariano, Himes & Petrarca
Two Prudential Plaza, Suite 3100
180 N. Stetson
Chicago, Illinois 60601-6702

RE: FOIA Pre-Approval Request – 2010 PAC 6749

Dear Mr. Fester:

We have received and reviewed the written notice from Rich Township High School District 227 of its intent to deny disclosure of certain records related to the superintendent interview process as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act. 5 ILCS 140/1 *et seq.*, as amended (FOIA).

██████████ submitted a FOIA request to the District dated March 25, 2010, seeking records related to the District's search for a new superintendent, specifically:

Results of the "Community Survey" conducted by the board of education with respect to the search for a new superintendent to include the "actual numbers" received by each candidate and not any board created summaries.

Any and all materials used at interviews of finalist for superintendent conducted on February 27, 2010 at Rich Central High School which were given to the various community committees for the purpose of ascertaining those committee members choice(s) for superintendent; this document should include the actual raw numbers and names of all candidates with their [sic] corresponding numbers

In its written notice, the District has asserted that some of the responsive documents are exempt from disclosure under subsection 7(1)(f) of FOIA as "preliminary drafts, notes, recommendations, memoranda or other records in which opinions are expressed or policies or actions are formulated." In particular, the District has indicated its intent to withhold

“Committee Consensus Reports (Consensus Reports)” and the “IASB Superintendent Search, Report to the Board from the IASB (IASB Report).”

With regard to the Consensus Reports, the District has indicated that those reports are “recommendations made by the committee members in which the opinions of the committee members regarding the qualifications of the superintendent candidates are expressed.” The District has also indicated that the IASB Report was “created to aid in developing search criteria and as a resource for the Board’s preparation for interviews with finalists.”

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. 5 ILCS 140/7(1)(f).

The Illinois Appellate Court in *Harwood v. McDonough*, 344 Ill. App. 3d 242, 244 (1st Dist. 2003), considered a FOIA request for a copy of a report prepared by a consulting firm as part of a State agency’s consideration of the relocation of the Boeing Company’s headquarters to Illinois. In analyzing the applicability of section 7(1)(f) to this report, the court noted that the Illinois Supreme Court has recognized 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.” *Id.* at 247. The *Harwood* court adopted the defendant’s argument that the word “preliminary” in section 7(1)(f) does not refer to the “posture of the particular document sought to be disclosed” but rather to “predecisional intra-agency communications.” *Id.* at 247-248. After reviewing federal cases construing the parallel provision in the federal FOIA, the court held that section 7(1)(f) applied to the report:

The ... report was one of the materials on which [the State agency] relied in formulating its ultimate decision of whether to pursue the Boeing relocation and the components of its incentive package once it made that decision. Although the report constituted the “final” product of the outside consultant, ... it was nonetheless a “preliminary” document in relationship to the eventual and “final” decision made by [the State agency.] *Id.* At 248.


As a result of our review of the information provided by Rich Township High School District 227, we have determined that the District’s reliance on the Section 7(1)(f) exemption with regard to the Consensus Reports and the IASB Report is **approved**. The Consensus Reports contain recommendations and opinions of the members of the committees created by the Board to give input to the Board as part of its selection process. According to the information from the District, the IASB Report is being used by the District as part of its deliberative process in relation to the selection of the new superintendent. As such, the IASB Report, like the consultant’s report in *Harwood*, falls within the definition of predecisional materials covered by section 7(1)(f). Additionally, the District has stated that none of the reports it proposes to exempt from disclosure have been publicly cited or identified by the head of the public body. Thus, the District may properly withhold these reports as exempt under Section 7(1)(f) of FOIA.

If you have any questions, please feel free to contact me at (217) 785-7438. This letter will serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


Amanda M. Lundeen
Assistant Public Access Counselor

cc:

