



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

March 11, 2011

Ms. Valerie Carr  
Superintendent/Freedom of Information Act Officer  
New Berlin Community Unit School District 16  
212 Church Street  
Loami, Illinois 62661

RE: FOIA Pre-Authorization Request - 2010 PAC 9985

Dear Ms. Carr:

We have received and reviewed the written notice from the New Berlin Community Unit School District 16 (District) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on September 21, 2010, Mr. David Kane, staff reporter for the *State Journal-Register*, submitted a FOIA request to the District seeking all documents relating to the suspension of New Berlin High School head football coach Jeff Harres.

On October 6, 2010 the District submitted a Notice of Intent to Deny to this Office explaining it intended to partially deny a portion of Mr. Kane's request and that certain communications between the District and Mr. Harres are exempt from disclosure pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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." On October 18, 2010, the District supplemented its Notice of Intent to Deny with copies of five documents that the District seeks to withhold pursuant to Section 7(1)(f).<sup>1</sup>

<sup>1</sup> These documents include an undated document entitled "Administration Recommendations," a September 16, 2010 letter to Mr. Harres from New Berlin High School Athletic Director Mike Denault, a September 19, 2010 draft letter from Mr. Harres to the parents and guardians of the District and a September 19, 2010 final letter from Mr. Harres to the parents and guardians of the District.

## Determinations

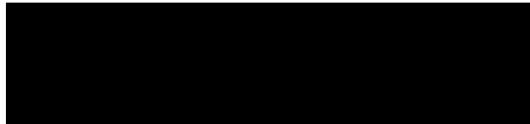
The District's request for approval of its decision to withhold information pursuant to Section 7(1)(f) is approved in part and denied in part. The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1<sup>st</sup> Dist. 1987).

Upon review of the correspondence that the District seeks to withhold, we conclude that the September 16, 2010 determination letter from Mr. Denault to Mr. Harres, the September 19, 2010 *final letter* from Mr. Harres to the parents and guardians of the District and the administrative recommendations document cannot be properly characterized as *preliminary* recommendations or opinions by the District and accordingly, do not fall within the scope of Section 7(1)(f). Specifically, these documents consist of disciplinary charges against Mr. Harres and the action taken by the District in response to those charges.

The District may, however, withhold a September 19, 2010 draft letter by Mr. Harres to the parents and guardians of the District pursuant to Section 7(1)(f).

In summary, the District has not met its initial burden that the September 16 and September 19, 2010 correspondence and the administrative recommendations are exempt from disclosure pursuant to Section 7(1)(f). The District may withhold the document specified above (the September 19, 2010 draft letter by Mr. Harres to the District parents and guardians) pursuant to Section 7(1)(f). Should you have any questions or concerns, please feel free to contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,



Matthew C. Rogina  
Assistant Public Access Counselor

cc: Mr. David Kane  
*State Journal Register*  
No. 1 Copley Plaza  
Springfield, Illinois 62701

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