



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

July 1, 2010

Stevenson High School District #125
c/o Ms. Heidi Katz
Robbins Schwartz Nicholas Lifton & Taylor
55 W. Monroe St., Suite 800
Chicago, IL 60603

RE: FOIA Pre-approval Request – 2010 PAC 5777, 7128

Dear Ms. Katz:

On February 11, 2010, we received from Stevenson High School District #125 a written notice of its intent to assert the Section 7(1)(c) and (f) exemptions in response to a Freedom of Information Act (FOIA) request dated January 5, 2010. The request sought various records related to a controversy over administrative involvement with the Stevenson High School Student newspaper. Additionally, on April 30, 2010 we received a subsequent notice of the District's intent to assert the Section 7(1)(c) and 7(1)(f) exemptions to withhold information in response to a FOIA request for identical records, dated April 14, 2010.

The District has indicated that it intends to redact from responsive records information that would reveal the identities of private individuals, including students or parents of students, who provided to District officials opinions or input into the controversy pursuant to Section 7(1)(c). Additionally, the District has indicated it intends to withhold records or portions of records consisting of internal communications and drafts of public statements under Section 7(1)(f).

Section 7(1)(c) of the Freedom of Information Act permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "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." Based on our review of the District's explanation of the information it intends to withhold as constituting a clearly unwarranted invasion of personal privacy and its explanation of its bases for asserting that exemption, we have determined that the District has met its burden to justify withholding the identities of parents and students who submitted opinions or communications to the District. The comments and opinions submitted are highly personal in nature and the release of those messages in conjunction with the identities of the individuals submitting them would likely be objectionable

to a reasonable person. Further, the subjects' rights to privacy outweigh any public interest in release of their identities. The public interest in this information is sufficiently served by the release of redacted versions of those submissions that will allow for public understanding of the nature of the comments and opinions submitted without those expressions being linked to specific private individuals. As such, information revealing the identities of students and parents who submitted communications to the District with regard to the controversy properly fit within the Section 7(1)(c) exemption and are appropriate for redaction.

However, it appears that the District intends to withhold information in excess of what is necessary to protect the identities of parents, students or other private individuals and those persons' rights to voice their opinions or concerns to the administration. Specifically, we believe that redaction of the entire content of communications articulating general opinions is overbroad. Rather, only those portions conveying information that would link the comments to a specific individual may be redacted. Similarly, communications between the attorneys for the district and attorneys representing students should not be withheld in their entirety under Section 7(1)(c). Information within those communications identifying the student clients may be redacted, but the arguments and analyses contained in those communications do not implicate any personal privacy interests. To aid the District in evaluating which portions of the requested records we do not view as exempt under Section 7(1)(c), we are providing copies of the specific records at issue with our suggestions to the District. The enclosed copies indicate which portions of the District's proposed redactions we view as non-exempt. With regard to those identified portions, asserting of the Section 7(1)(c) privacy exemption is not proper.

Additionally, we note that this letter is not intended to address whether any of the records in question are exempt from disclosure under Section 7(1)(a) as Student Records prohibited from disclosure by the School Code. This letter also is not intended to address the District's assertion that all of the records that it has claimed as Student Records are exempt under Section 7(1)(c). Our review is limited to the application of the Section 7(1)(c) exemption to the records and portions thereof that the District has indicated its intent to deny on that basis.

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).

Based on our review of this information, we have determined that the District has met its burden of justifying its determination to withhold the draft statements and internal communications identified pursuant to Section 7(1)(f). The Illinois Appellate Court in *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), 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." *Id.* 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." *Id.* at 247-248. The court noted that no previous Illinois caselaw interpreted the use of the word 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." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

The records at issue appear to fall within the scope of the exemption. The District's descriptions indicate that the communications in question were predecisional and constituted part of the District's deliberative process in determining how to properly address the controversy that had arisen. Those records contain opinions and discussions of strategies and options for dealing with the issues raised and for addressing the public. As such, the records and information identified are exempt from disclosure under Section 7(1)(f).

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

Sincerely,

Cara Smith
Public Access Counselor

By: 

Amanda M. Lundeen
Assistant Public Access Counselor

cc: Ms. Lisa Green
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MEMORANDUM

TO: Ms. Heidi Katz, Attorney for Stevenson High School District 125

FROM: Amanda Lundeen, Assistant Public Access Counselor

DATE: 7/1/2010

RE: Explanation of enclosures to July 1, 2010 letter regarding PAC files 5777 and 7128

Enclosed are those documents for which we have determined that the District has over-extended its reliance on the Section 7(1)(c) exemption for an unwarranted invasion of personal privacy. The portions of the attached documents marked in gray reflect the District's redactions. We have highlighted in yellow those portions that we believe do not fall within the scope of the Section 7(1)(c) exemption.

Please note that copies of these enclosures were excluded from the letters sent to the requesters.

CCs sent blind
from one another
and without
enclosures.

Enclosures saved
separately in DB