



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 17, 2010

Ms. Maryam T. Brotine
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
Via e-mail to:
mbrotine@rsnlt.com

RE: FOIA Pre-authorization Request- 2010 PAC 7719

Dear Ms. Brotine:

We have received and reviewed the written notice from McHenry County College (MCC) of its intention to deny ██████████'s Freedom of Information Act (FOIA) request for "performance evaluations for former MCC President Walt Packard for the last two years he held that post" pursuant to Section 7(1)(c) of FOIA. 5 ILCS 140/7(1)(c).

Determination

Section 7(1)(c) of FOIA 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." It also 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."

We have determined that MCC has not met its burden of demonstrating that Section 7(1)(c) exempts former MCC President Packard's performance evaluations from disclosure. Evaluations of public employees directly address the manner in which public employees perform their public duties. Public bodies use these evaluations to determine if employees should be retained, promoted, or terminated. As such, they clearly bear on the public duties of public employees, for purposes of Section 7(1)(c) of FOIA. Accordingly, disclosure of such evaluations would not constitute an unwarranted invasion of personal privacy.

We further note that MCC's citation to Section 24A-7.1 of the Illinois School Code and House Bill 5154, in support of its 7(1)(c) assertion, is unpersuasive. Section 24A-7.1 of the Illinois School Code, which exempts from disclosure performance evaluations for certain public educators, is simply not applicable to MCC, which, as a community college, is governed by the Public Community College Act (110 ILCS 805/1-1, *et seq.*), and not the Illinois School Code. With respect to House Bill 5154's proposed amendment of Section 11 of the Personnel Record Review Act to exempt performance evaluations of public employees, that Bill was amendatorily vetoed by the Governor on July 26, 2010 in a manner that significantly limits the scope of that legislative change to certain law enforcement personnel. *See* Governor Quinn's Amendatory Veto of HB 5154 (July 26, 2010).

In accordance with this letter, MCC may release the requested records to the requester. If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:

Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc:



Ms. Pat Stejskal
FOIA Officer
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