



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

Lisa Madigan
ATTORNEY GENERAL

August 16, 2010

Ms. Cassandra Daniels
FOIA Officer
Chicago Public Schools
125 S. Clark Street, 7th Floor
Chicago, Illinois 60603

RE: FOIA Pre-Authorization Request - 2010 PAC 8824

We have received and reviewed the written notice from the Chicago Public Schools (CPS) 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 February 18, 2010, [REDACTED] submitted a FOIA request seeking the CPS Fiscal Current Expenditure Report and the following line item budget information for each CPS unit:

Oracle unit number, unit name, fund number, fund description (name), account number, account description (account name), grant number, grant description, FY 2010 original budget amount, current budget amount, commitments, obligations, expenditures and funds available. A position listing of the same date as the rest of the budget that includes the following: unit number, unit description, fund number, account number, program number, grant number, position number, job code, job description, employee name, position value, annual salary, open date of position and close date of position.

[REDACTED] filed second FOIA request on March 30, seeking identical information to the February 18 request but specified the position information. On April 9, 2010, CPS supplied [REDACTED] with an expenditure report but withheld the position dates. [REDACTED] then submitted to the Public Access Counselor a Request for Review of CPS's denial of that information. This Office, in a letter dated April 22, 2010, asked CPS to provide a written explanation of its basis for withholding the requested information. No written response to that inquiry was ever received from CPS.

On July 21, 2010, [REDACTED] filed a third request with CPS again requesting the information specified in her February 18 and March 30 requests.

On July 28, 2010, CPS sent a pre-authorization request to this Office asserting that the open and closing dates of CPS positions are exempt from disclosure pursuant to Section 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." 5 ILCS 140 7(1)(f).

Prior to addressing this specific request by CPS, it is incumbent upon this Office to reiterate that a public body that receives a request for records and asserts that the records are exempt under either Section 7(1)(c) or Section 7(1)(f) of FOIA must, within the statutory time periods provided for response, submit written notice to the requester and to the Public Access Counselor of its intention to deny the request in whole or in part on that basis. 5 ILCS 140/9.5(b) (emphasis added).

In these circumstances, ██████ submitted three nearly identical requests to CPS within a five-month period. CPS failed to provide the information regarding position dates in response to ██████ April, 2010, request, without first seeking approval of the Public Access Counselor to withhold that information. CPS only filed a pre-authorization notice with the Public Access Counselor in response to ██████ third (July) request. Clearly, CPS failed to comply with the requirements of the Freedom of Information Act by not submitting a timely Notice of Intent to Deny with respect to the April, 2010, request. Any subsequent failure by CPS to strictly comply with the pre-approval process set out in Section 9.5(b) may result in the Public Access Counselor's denial of asserted exemptions.

Determinations

CPS's request for approval of its decision to withhold the open and close dates for CPS positions pursuant to Section 7(1)(f) is approved. In its letter, CPS explains that it seeks to withhold position dates because the budget, which contains the position dates, has not been finalized and is subject to revision, and that the release of the proposed position date information prior to the finalization of the budget could be disconcerting to staff members whose positions may be affected.

Based on this explanation, CPS has sustained its burden under Section 7(1)(f) of demonstrating that this information is preliminary in nature and falls within the scope of Section 7(1)(f). CPS may, therefore, withhold the information with respect to the position dates.

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

Sincerely,

Cara Smith
Public Access Counselor

By: 

Matthew C. Rogina
Assistant Public Access Counselor

