



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 21, 2010

Ms. Terri Stahulak
Freedom of Information Act Officer
Community Consolidated School District 146
6611 W. 171st Street
Tinley Park, Illinois 60477

RE: FOIA Pre-Authorization Request – 2010 PAC 6068

Dear Ms. Stahulak:

We have received and reviewed the documents that our Office requested on March 4, 2010 with respect to your notice of intention to deny disclosure of specific information pursuant to Section 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et-seq.*, as amended.

Specifically, on February 25, 2010, [REDACTED] submitted a FOIA request to the Community Consolidated School District 146 (District) seeking the complete personnel file of [REDACTED] a former custodian with the District.¹

On February 25, 2010, the District submitted a pre-authorization request to our Office, asserting the entire personnel file is exempt from disclosure pursuant to Section 7(1)(c) of FOIA which exempts from inspection and copying “[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless disclosure is consented to in writing by the individual subjects of the information.” 5 ILCS 140/7(1)(c). The exemption defines “[u]nwarranted 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.” *Id.*

On September 20, 2010, the District supplied us with the following documents:

1. An August 11, 2008 letter regarding a pending investigation into missing equipment,
2. September 26, 2008 Notice of Termination,

¹Mr. Crescent passed away approximately one year after he was terminated from the District. We note that a privacy right may survive death as does the public’s legitimate interest in the disclosure of certain information that may have related to an individual’s public duties.

3. September 26, 2008 Termination Letter,
4. Application,
5. Resume,
6. 2007 Employment Recommendation,
7. Employee Absence Input,
8. References,
9. HIPAA Privacy Statement,
10. DCFS Acknowledgment of Mandated Reporter Status, and
11. Performance evaluation of [REDACTED]

Determinations

The District's request for approval of its decision to withhold [REDACTED] entire personnel file pursuant to Section 7(1)(c) is approved in part and denied in part.

The District argues that this information should be withheld because it amounts to an invasion of [REDACTED] privacy and is exempt from disclosure pursuant to Section 7(1)(c). Language in Section 7(1)(c) states that the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy.

While job applications, personnel evaluations and termination letters contain information that is personal in nature, people who accept public employment have a reasonable expectation that their qualifications will be subject to public scrutiny. The disclosure of this type of information allows private citizens insight into the employment decisions of public bodies. In some instances, the public interest in accessing this type of information outweighs the privacy rights of the public employee.

With respect to the information contained in [REDACTED] personnel file, the documents relate to [REDACTED] professional qualifications and could be said to have had bearing on his duties as a public employee.

The District may withhold from disclosure the names of the references of [REDACTED] pursuant to Section 7(1)(c). In certain instances, an individual's relationship with a reference pre-dates an individual's employment with a public body and has no relation to the employee's public duties. Thus, while [REDACTED] references may have played a limited role in his hiring, they did not have bearing on his public duties. Further, it is unlikely that disclosure of these names would advance any public interest. However, because it appears that those references are previous employers of [REDACTED] the District may redact the names but must disclose the former places of employment. The District may also redact [REDACTED] signatures on several of the documents contained in the personnel file pursuant to Section 7(1)(c).

Please be advised that personal identifiers such as driver's licenses numbers, social security numbers, home addresses and home and personal cell telephone numbers that are contained in these documents can be properly redacted under Section 7(1)(b) of the Act and this redaction does not require pre-approval from our office. Further, it is the suggestion of this Office that certain documents that are comprised mainly of personal information, such as the HIPAA Privacy Statement and the DCFS Acknowledgment of Mandated Reporter Status, should be analyzed by the District

Based on this analysis, the District has not met its burden under Section 7(1)(c) and should disclose the personnel file of [REDACTED] to [REDACTED].

Should 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: [REDACTED]

[REDACTED]
Matthew C. Rogina
Assistant Public Access Counselor

cc: [REDACTED]