



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 22, 2010

Henry Thiele
FOIA Officer Designee
131 S. Dee Rd.
Park Ridge, Illinois 60068-4398

RE: FOIA Pre-Authorization Request, 2010 PAC 8083

Dear Mr. Thiele:

We have reviewed Maine Township High School District 207's pre-authorization request and associated documents submitted on June 21, 2010. [REDACTED] submitted a Freedom of Information Act ("FOIA") request to the School District and subsequently narrowed it, requesting "an email from [REDACTED] company executive) during May 2010 wherein he emailed a draft copy of a verified derivative complaint to school district agents or employees, and any emails or communications related to that complaint or discussion of its contents." The School District disclosed "a transmittal email from [REDACTED] with the complaint, along with a forward to the Superintendent." The School District, however, did not disclose additional "forwards" of the information. It claims the forwarded email correspondences [REDACTED] seeks are internal, pre-decisional documents. It asserts that this information is exempt from disclosure under section 7(1)(f) of FOIA. 5 ILCS 140/7(1)(f).

On June 28, 2010, we concluded that further inquiry was warranted and directed the School District to provide us with the withheld emails. We also requested that the School District explain in detail why it believes that the emails are exempt from disclosure under Section 7(1)(f).

Section 7(1)(f) 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).

We **approve in part and deny in part** the use of Section 7(1)(f) to withhold the emails here. Careful review of the emails discloses that only the May 14 email from [REDACTED] to the School District Board, time stamped 11:04:42, expresses an opinion or formulates a policy. Moreover, this email has not been publicly cited or identified by the head of the School District. Accordingly, this single email is exempt from disclosure under Section 7(1)(f).

The remaining emails, however, do not contain information expressing opinions or formulating policies and, therefore, do not fall within the purview of Section 7(1)(f). Although these emails may conceivably be reviewed to formulate a School District policy in the future, as the School District contends, the emails themselves do not contain the type of information falling within the purview of Section 7(1)(f). Instead, these emails simply state facts, such as when the lawsuit was filed and when it was received, or provide comments where no opinion is expressed or policy is formulated. Accordingly, the School District has failed to satisfy its burden of demonstrating that the remaining emails are exempt from public disclosure.

If you have any questions or concerns, please feel free to contact me at (312) 814-5044. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:



Sumit Dhavle
Assistant Attorney General

cc:



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