



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 31, 2011

Mark Wancket
Director of Public Information
Illinois State Board of Education
100 N. First Street
Springfield, IL 62777-0001

Re: Pre-authorization request – 2011 PAC 12280

Dear Mr. Wancket:

We have received from the Illinois State Board of Education (ISBE) a notice of intention to deny disclosure of certain information requested by Madeline Talbott under the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended. Ms. Talbott requested copies of emails and written correspondence between individuals who create, administer and score the Illinois Basic Skills test for teachers. ISBE requested pre-authorization to withhold certain records pursuant to Section 7(1)(f) (5 ILCS 140/7(1)(f)) of FOIA.

Section 7(1)(f) exempts from inspection and copying “[p]reliminary drafts, notes, recommendations, memoranda and other records 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). The Section 7(1)(f) exemption applies to “inter- and intra-agency predecisional and deliberative material.” *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247, 799 N.E.2d 859, 864 (1st Dist. 2003). The exemption is “intended to protect the communications process and encourage frank and open discussion among agency employees before a decision is made.” *Id.* at 248, 799 N.E.2d at 864.

The request for pre-authorization to withhold the records is approved. We have reviewed copies of the records in question, which consist of preliminary drafts, emails and other documents which ISBE considered in formulating policy decisions and making other determinations. Such records are pre-decisional in nature. Furthermore, ISBE has asserted that none of those records were cited by the head of the public body. Accordingly, we conclude that ISBE has sustained its initial burden of demonstrating that the records are exempt from disclosure under Section 7(1)(f).

ISBE has clarified that it is not requesting pre-authorization to withhold pursuant to Section 7(1)(f) certain statistical information responsive to Ms. Talbott’s request which is contained in

attachments to the emails we reviewed. However, ISBE asserted in its response to our further inquiry that portions of those statistics are exempt from disclosure under the Family Educational Rights and Privacy Act of 1974 (FERPA). 20 U.S.C. § 1232(g)(4)(a). We construe that response as asserting that portions of the statistics are exempt from disclosure under Section 7(1)(a) (5 ILCS 140/7(1)(a)) of FOIA based on FERPA. ISBE also has asserted that additional information is exempt from disclosure under Section 7(1)(b) (5 ILCS 140/7(1)(b)). Because prior approval by the Public Access Counselor is not required for the assertion of exemptions other than Section 7(1)(c) (5 ILCS 140/7(1)(c)) and Section 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

This letter shall serve to close this file. If you have any questions, please feel free to contact me at 312-814-6756 or ssilverman@atg.state.il.us.

Sincerely,


Steve Silverman
Assistant Public Access Counselor

cc: Madeline Talbott, Lead Organizer
Action Now
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