



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 11, 2011

Mr. Steve Mahrt
Corporation Counsel
Town of Normal
100 East Phoenix Road
Normal, Illinois 61761

Re: FOIA Pre-Authorization Request 2010 PAC 11305

Dear Mr. Mahrt:

The Office of the Public Access Counselor (Office) has reviewed the Pre-Authorization Request submitted to this Office by the Bloomington-Normal Public Transit System (BNPTS) and the responsive documents submitted by the Town of Normal on behalf of the BNPTS on December 9, 2010.

On November 11, 2010, Mr. Mike Ferrell, President of the Amalgamated Transit Union, submitted a Freedom of Information Act (FOIA) request seeking "information concerning the hiring process that was used to fill the General Managers vacancy at B-N Public Transit System."

On December 9, 2010 the Town submitted a Pre-Authorization Request to this Office. In the Request, the Town sought our approval to withhold certain documents from disclosure pursuant to Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)) 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." *Id.* 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.* The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy. *Id.*

The Town also sought our approval to withhold several e-mails relating to the hiring process pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(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."

Analysis and Determinations

The Town's request for approval to withhold certain information pursuant to Section 7(1)(c) is approved. The Town's request for approval to withhold certain information pursuant to Section 7(1)(f) is approved.

Section 7(1)(c)

The Town seeks to withhold application materials of all unsuccessful applicants. In analyzing whether an applicant for a public position has a right of privacy, this Office made the following determination in No. 2010 PAC 6805, a Pre-Authorization Request involving a FOIA request submitted to the University of Illinois by *WLS-TV*. In that letter, we noted the following with regard to applications for the presidency position:

Applications for employment generally contain information that is personal in nature and the release of which would be objectionable to the reasonable person. Further, in many cases, the fact that an individual is seeking new employment for a position is information that a reasonable person would view as highly personal and the release of that information is likely to be viewed as objectionable by most individuals. Publication of an individual's application for a position can negatively impact that individual's current employment and the release of personal information about applicants may also negatively impact a public body's ability to attract qualified applicants for open positions. Accordingly, as a result of our review, we have determined that the University may properly decline to disclose under Section 7(1)(c) the names of applicants for the position of University President and the applications submitted by those individuals.

Similarly, the disclosure of the names of the individuals who submitted application materials to the BNPTS for the general manager position could be seen as highly personal or objectionable to the reasonable person. The BNPTS must disclose, however, all application and hiring materials related to the successful applicant, if the BNPTS has made a selection.

Section 7(1)(f)

The Town seeks to withhold emails between BNPTS personnel about the hiring process and drafts of the job posting and employment agreement. The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987).

Upon review of these e-mails, we conclude that they are opinions and recommendations by BNPTS personnel about prospective candidates and the hiring process. We also conclude that the drafts of the job posting and employment agreement are preliminary and may be withheld pursuant to Section 7(1)(f). The Town must disclose all final drafts to the requester if such documents have already been generated.

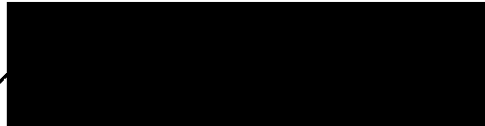
Conclusions

In summary, this Office finds the following:

1. The Town has met its initial burden with regard to the application materials of the unsuccessful candidates and may withhold these documents pursuant to Section 7(1)(c).
2. The Town has met its initial burden with regard to e-mails and draft documents pursuant to Section 7(1)(f).
3. The Town must disclose all final draft documents and the documents relating to the successful candidate for the general manager position.

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

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Mike Ferrell, President
Amalgamated Transit Union Local No. 752
309 S. Vale Street
Bloomington, Illinois 61701

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