



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 15, 2011

Mr. Steven Richart
Hodges, Loizzi, Esinehammer, Rodick & Kohn
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005

Re: FOIA Pre-Authorization Request 2010 PAC 10763

Dear Mr. Richart:

The Office of the Public Access Counselor (Office) has reviewed the Pre-Authorization Request submitted to this Office by Westmont Community School District No. 201 (District) and the responsive documents submitted by the law firm Hodges, Loizzi, Esinehammer, Rodick & Kohn on behalf of the District on December 14, 2010.

On October 29, 2010 an anonymous citizen submitted a Freedom of Information Act request to the District seeking documents related to the District's search for a new superintendent from March 1, 2010 to the date of the citizen's FOIA request.

On November 16, 2010 the District submitted a Pre-Authorization Request to this Office. In the Request, the District sought our approval to withhold documents relating to unsuccessful applicants 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 District also sought our approval to withhold several e-mails and other documents relating to the District's search for the new superintendent position 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.”

On November 29, 2010, this Office initiated further review of the matter and the District fully complied on December 2, 2010.

Analysis and Determinations

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

Section 7(1)(c)

The District seeks to withhold resumes, cover letters, letters of references of the unsuccessful applicants and a list of applicants for the superintendent position. 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 District for the superintendent position could be seen as highly personal or objectionable to the reasonable person. The District must disclose, however, all application and hiring materials related to the successful applicant, if the District has made a selection.

The District also seeks to withhold a June 8, 2010 letter to the unsuccessful applicants. While letters addressed to specific applicants may be withheld, disclosure of the form letter without any identifying information cannot be characterized as highly personal or objectionable under Section 7(1)(c) and must be provided to the requester.

Section 7(1)(f)

The District seeks to withhold e-mails between District personnel about the hiring process, interview questions, preliminary memoranda about the interview process and applicant evaluations. 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 documents, we conclude that they are opinions and recommendations by District personnel and the District's attorney about prospective applicants and express a particular course of action with regard to the hiring process and superintendent position. Accordingly, these documents can be properly withheld under Section 7(1)(f).

Conclusions

In summary, this Office finds the following:

1. The District has met its initial burden with regard to the application materials of the unsuccessful applicants and may withhold these documents pursuant to Section 7(1)(c).
2. The District has met its initial burden with regard to e-mails, drafts and applicant evaluations documents pursuant to Section 7(1)(f).
3. The District must disclose all documents relating to the successful candidate for the superintendent 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: 

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