



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

October 18, 2010

Mr. Eric Grenzebach
Brown, Hay & Stephens, LLP
P.O. Box 2459
Springfield, Illinois 62705-2459

RE: Pre-Authorization Request – 2010 PAC 10119
Requester: Mr. Andy Scharf

Dear Mr. Grenzebach:

We have received written notice (Notice) from Lincoln Land Community College District No. 526 (District) of its intent to deny disclosure of certain records as exempt from disclosure under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c), (f). The District's Notice relates to a FOIA request submitted by Mr. Andy Scharf for records related to alleged incidents involving [REDACTED]

The District asserted in its Notice that some of the "requested records contain personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy unless consented to in writing by the subject of the request." It also asserted that the "records contain preliminary recommendations, memoranda and other records in which opinions are expressed and actions are formulated." Finally, the District asserted that Mr. Scharf is seeking "personal and private information regarding a student of Lincoln Land Community College that is precluded from disclosure" under the Family Educational Rights and Privacy Act of 1974 (FERPA).

Section 7(1)(c) of FOIA 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.*

Section 7(1)(f) of FOIA exempts from disclosure 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).

Determinations

The District’s use of both the Section 7(1)(c) and Section 7(1)(f) exemptions with regard to the records in question is **denied**. Section 1.2 of FOIA provides that “[a]ny public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2. Moreover, under Section 9.5(b) of FOIA, a public body asserting that records are exempt from disclosure under Sections 7(1)(c) or 7(1)(f) must include, with its Notice to our office, a detailed summary of its basis for asserting each exemption. *See* 5 ILCS 140/9.5(b).

With respect to the Section 7(1)(c) exemption, the District has failed to meet its burden of demonstrating that the information contained in the records is highly personal and that the subject’s right to privacy with respect to this information outweighs any legitimate public interest in obtaining it. *See* 5 ILCS 140/7(1)(c). Additionally, with respect to the Section 7(1)(f) exemption, the District has failed to meet its burden of demonstrating that the records contain the expression of opinions or formulation of policies or actions, and that the records have not been publicly cited or identified by the head of the public body. *See* 5 ILCS 140/7(1)(f). In this case, the District has merely reiterated the statutory language in question; it has provided no analysis or factual background establishing that the records at issue (the nature of which the District has not identified) are exempt from disclosure under Sections 7(1)(c) or 7(1)(f) of FOIA.

The District also asserted that the records in question are exempt from disclosure under FERPA. Section 7(1)(a) of FOIA provides that records containing “[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law” are exempt from disclosure under FOIA. The District’s use of the Section 7(1)(a) exemption to deny disclosure of records does not require pre-approval from our office.

Should you have questions or concerns, please feel free to contact me at (312) 793-0865.

Sincerely,

Cara Smith
Public Access Counselor

By:

Sara Gadola Gallagher
Deputy Public Access Counselor

cc: Mr. Andy Scharf
Attorney at Law
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Litchfield, Illinois 62056