



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

April 26, 2011

Mr. M. Curt Richardson
Miller, Hall & Triggs
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RE: Pre-Authorization Request - 2010-PAC 9428

Dear Mr. Richardson:

We have received and reviewed the written notice from McLean County, Unit School District No. 5 (District) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(c) of the Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq.*, as amended.

On August 27, 2010, Edith-Brady-Lunny, a staff reporter with the *Pantagraph* submitted a Freedom of Information Act (FOIA) request to the District seeking a copy of "[a] security video recording of a May 18, 2010 incident at Kingsley Junior High School involving [REDACTED] and other students." Ms. Lunny also sought correspondence generated by the District in response to the incident.

On September 3, 2010, the District submitted a Pre-Authorization Request with the Office of the Public Access Counselor and asserted that the videotape is exempt from disclosure under 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." 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.* This Office attempted to resolve the dispute between the District and the *Pantagraph* by suggesting that the District's concerns could be addressed by the removal of the images of the faces of the students on the security tape. On April 20, 2011, the District indicated that it would not agree to producing a blurred copy and asserted that a modified version of the security tape would still be exempt under the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1).

¹ Ms. Lunny has indicated to the Office of the Public Access Counselor that he no longer seeks the correspondence related to the incident.

Because the pre-authorization process under Section 9.5(b) of FOIA (5 ILCS 140/9.5(b)) is limited to reviewing the assertions of the Section 7(1)(c) and Section 7(1)(f) exemptions, we cannot consider the applicability of ISSRA at this point.

Determination

The District's request for approval to withhold the videotape in its entirety is denied.

In No. 2010 PAC 7531, we concluded the following with regard to a request to the District from Ms. Kristen Hamilton, assistant news director for *WMBD-TV*:

The requested video reveals nothing more than the physical appearance of several students who were present and may have witnessed [REDACTED] collapse at Kingsley Jr. High School. The tape does not reveal the identities of the students who were present, or disclose any information about those students that might otherwise be protected by State law. Absent a showing that disclosure of the tape would reveal information about those present that is highly personal or which would be objectionable to the reasonable person, the School District has failed to meet its burden in demonstrating that the video is exempt from disclosure in its entirety under Section 7(1)(c) of FOIA.

Similarly, we renew our finding in 2010 PAC 7531, in that the District may not withhold the security video in its entirety pursuant to Section 7(1)(c). In addition, the District has not demonstrated that producing a copy of this security video which removes the images of the other students would not be feasible.

We encourage the *Pantagraph* and the District to reach an agreement that allows the *Pantagraph* to view a copy of the security video that removes the images of the faces of students not involved in the altercation.

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

Sincerely,

[REDACTED]

Matthew C. Rogina
Assistant Public Access Counselor

cc: Ms. Edith Brady-Lunny
eblunny@pantagraph.com