



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 6, 2010

Anna Pasternak
FOIA Officer
School District U-46
355 E. Chicago Street
Elgin, Illinois 60120

RE: Pre-Authorization Request – 2010 PAC 10892

Dear Ms. Pasternak:

We have received and reviewed the written notice from School District U-46 (District) of its intention to deny disclosure of 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.

Jameel Naqvi of the Daily Herald submitted two FOIA requests, dated November 9, 2010, seeking the following information:

FOIA Request #1

Any and all employment applications submitted by individuals seeking the vacant chief operating officer position in Elgin Area School District U-46.

Documentation of the job description, necessary qualifications and compensation posted for the chief operating officer position in Elgin Area School District U-46.

FOIA Request #2

Any and all correspondence, including e-mail and written communication, between [REDACTED] and Elgin Area School District U-46 or any of the district's employees.

In its written notice, the District asserted that employment applications and correspondence between individuals seeking employment and the District are exempt from disclosure under Section 7(1)(c) of FOIA, stating that:

Employment applications and communications submitted by individuals seeking a vacant position are made under a reasonable expectation that they will be considered only by the potential employer, and not be released to third parties. Further, if employment

applications and communications are made public, the District would be severely hindered in its ability to obtain future, candid employment applications, as potential applicants would have a reasonable fear that their seeking employment would become public.

On December 3, 2010, you informed us that the District's chief operating officer position is currently vacant.

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." *Id.* In addition, "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.*

Determination

First, the District's proposed application of the exemption found in Section 7(1)(c) to deny disclosure of any employment applications for the vacant chief operating officer position is approved. Applications for employment generally contain information that is personal in nature and the release of which would be objectionable to a reasonable person. Further, publication of an individual's application for a position can negatively impact that individual's current employment and the release of personal information about an applicant may also negatively impact a public body's ability to attract qualified applicants for open positions. As the position at issue is vacant, this information does not bear on the public duties of a public official. We have determined that the District has met its initial burden of demonstrating that the employment applications for the vacant chief operating officer position are exempt from disclosure under Section 7(1)(c) of FOIA.

Second, the District's proposed application of the exemption found in Section 7(1)(c) to deny disclosure of correspondence between [REDACTED] and the District or any of its employees is approved. We have reviewed the responsive documents provided by the District, which consist of 17 emails, and have determined that disclosure of this information would be objectionable to a reasonable person. Disclosure of this correspondence may negatively impact a public body's ability to attract qualified applicants for open positions. As the position at issue is vacant, we have determined that the District has met its initial burden of demonstrating that correspondence, as to the vacant position, between [REDACTED] and the District or any of its employees is exempt from disclosure under Section 7(1)(c) of FOIA.


Accordingly, the District may issue a partial denial letter withholding from disclosure any employment applications for the vacant chief operating officer position and any relating correspondence between [REDACTED] and the District or any of its employees.

If you have any questions, please feel free to contact me at (312) 814-1003 or joleary@atg.state.il.us. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By 

 Jessica O'Leary
Assistant Attorney General

cc: Jameel Naqvi
Daily Herald Staff Writer
Paddock Publications, Inc.
385 Airport Road, Suite A
Elgin, Illinois 60213-9341