OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 16, 2010

Ms. Allison Strupeck
Freedom of Information Act Officer
Supervisor of Communication Services
Community Unit School District No. 300
Allison.strupeck@d300.org

RE: FOIA Pre-Authorization Request – 2010 PAC 8707

Dear Ms. Strupeck:

The Office of the Public Access Counselor has received the Pre-Authorization Request from Community Unit School District No. 300 and reviewed the responsive documents submitted to this Office on December 13, 2010.

Specifically, on July 12, 2010, [redacted] submitted a FOIA request to the District seeking information related to former District employee Mary M. Krah Miller. Specifically, [redacted] requested the following information:

1. Any and all records and transcripts,
2. Breathalyzer reports and findings,
3. Evaluation reports,
4. Parent complaints,
5. Legal proceedings and results,
6. Any offers given to Ms. Miller,
7. Any disability packages given to Ms. Miller, and
8. Police report from her breathalyzer test

On July 26, 2010, the District submitted a Pre-Authorization Request to our Office and asserted that information contained in Items 1 and 2 is exempt 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." 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," but further provides that the disclosure of information that bears on the public duties of employees shall not be considered an invasion of personal privacy. On December 13, 2010, this Office received the documents the District seeks to withhold from disclosure pursuant to Section 7(1)(c).[1] On December 14, 2010, Brian Crowley, Attorney for Franczek Radelet and Rose PC, informed this Office on behalf of the District that documents responsive to Items 3-8 were either being withheld on other bases than Section 7(1)(c) or that no responsive documents exist.[2]

Determinations

The District's request for approval of its decision to withhold Items 1 and 2 pursuant to Section 7(1)(c) is approved in part and denied in part. The records responsive to these items will be categorized below.

Employment Information

The District argues that disclosure of Ms. Miller's resume, employment application, writing sample, voluntary transfer requests and transcripts would cause an unwarranted invasion privacy and that those documents are therefore exempt from disclosure pursuant to Section 7(1)(c). As noted above, however, the disclosure of information that bears on the public duties of public employees and officials is not considered to be an invasion of privacy.

While job applications contain information that is personal in nature, people who accept public employment have a reasonable expectation that their qualifications will be subject to public scrutiny. The disclosure of the job applications, resumes and other documents created in the course of a public employee's tenure with that public body allows private citizens insight into the employment decisions of public bodies. In some instances, the public interest in accessing these documents outweighs the privacy rights of the public employee.

Nothing in these records suggests that they contain information that could constitute a highly unwarranted invasion of personal privacy under Section 7(1)(c). To the contrary, Ms. Miller's resume, writing sample, voluntary transfer requests and employment application all relate to Ms. Miller's professional qualifications and indeed bear on Ms. Miller's qualifications and duties as a public employee.

The District may, however, withhold from disclosure Ms. Miller's academic transcripts pursuant to Section 7(1)(c). In certain instances, transcripts pre-date an individual's employment with a public body and include detailed information on classes taken and grades received that has no relation to the employee's public duties and can be considered highly personal. Thus, while Ms.

[1] The District seeks to withhold several 2009 letters between Ms. Miller and the District pursuant to Section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n)) which exempts from inspection and copying "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." Application of Section 7(1)(n) does not require pre-approval from the Office of the Public Access Counselor and we therefore decline to discuss any matters relating to Section 7(1)(n).

[2] Pursuant to a December 14, 2010 conversation with a representative of this Office, Attorney Crowley informed us that evaluations of Ms. Miller were being withheld pursuant to the Personnel Records Review Act (820 ILCS 40/1 *et seq.*), Item 4 was being withheld pursuant to the Student Records Act (105 ILCS 10/1) and that no responsive documents exist for Items 5-8.

Miller's college transcripts played a limited role in her hiring, they contain significant information that does not bear on her public duties.

With regard to the information related to the sick days and leave of absence taken by Ms. Miller, a public employee does have a protectable privacy interest in the disclosure of details beyond the general category of the leave taken. Absent a compelling reason for disclosure, the privacy interests of the employee in not having the specific circumstances relating to the taking of leave disclosed will outweigh the public's general interest. Although the public may have a legitimate interest in verifying whether a public employee's compensated time is properly accounted for, it does not ordinarily have a compelling need to learn the specific nature of an employee's illness or whether he or she plans to travel for vacation. Accordingly, the District must disclose any records that document the general nature of Ms. Miller's absences and leave status, but may redact from such records any information regarding the underlying reasons for the leave.

Medical Information

We have determined that certain of the responsive records constitute medical records within the meaning of Section 7(1)(b), which therefore may be withheld.[3] Application of Section 7(1)(b) does not require prior approval by the Public Access Counselor.

Financial Information

With regard to financial information, the District must disclose the following pursuant to Section 2.5 of FOIA:

1. A March 16, 2004 payroll notification form,
2. A May 13, 2005 payroll notification form,
3. A January 24, 2006 payroll notification form,
4. A January 29, 2006 payroll notification form,
5. A March 27, 2006 TRS supplementary report
6. A May 18, 2006 Teachers Retirement System supplementary report,
7. A May 18, 2006 TRS letter regarding disability benefits, and
8. A June 2, 2009 payroll notification form.

Section 2.5 of FOIA (5 ILCS 140/2.5) that provides that "[a]ll records ***relating*** to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." (Emphasis added.) Information relating to Ms. Miller's pension contributions and the payroll notification forms would fall squarely within the definition of Section 2.5.[4] Therefore, the District must release with

[3] Section 2(c-5) of FOIA (5 ILCS 140/7(1)(b) defines private information as unique identifiers, such as "a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses. Private information also includes home addresses and personal license plates, except as otherwise provided by law or when compiled without the possibility of attribution to any person."

[4] Pursuant to a December 14, 2010 conversation with a representative of this Office, [redacted] indicated that he was not seeking insurance information or Ms. Miller's date of birth. The District may redact the information in its records.

information subject to the permissible redactions of Section 7(1)(b). However, it is the suggestion of this Office that certain documents that are comprised mainly of personal information such as deferred compensation and wage deduction documents can be withheld in their entirety pursuant to Section 7(1)(b).

Based on this analysis, the District should release the records specified above and may withhold the transcripts and the private information set forth in Section 7(1)(b).

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

Sincerely,

Cara Smith
Public Access Counselor

By: [redacted]

Matthew C. Rogina
Assistant Public Access Counselor

cc: [redacted]

Brian Crowley
Franczek, Radelet and Rose PC
300 S Wacker Dr Ste 3400
Chicago, IL 60606-6763

8707 pre-auth al dl 7(1)(c) emp inf sd