



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 26, 2011

Rhonda Boehne
College Legal Counsel/FOIA Officer
Kaskaskia College
27210 College Road
Centralia, IL 62801

RE: Pre-Authorization Request – 2010 PAC 11213
Requester: Beth Hundsdorfer, Belleville News-Democrat

Dear Ms. Boehne:

We have received and reviewed the written notice from Kaskaskia College of its intention to deny disclosure of certain documents 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).

On November 19, 2010, Ms. Beth Hundsdorfer requested the following records:

Any records, reports, emails, documents related to an investigation undertaken by Kaskaskia College staff related to sexual assaults on or near campus.

Emails to and from the President Underwood, Rhonda Boehne, Chase Smith, Kim Potthast, Mitch Koester, Brian Hancock, Deanna Belcher and Sedgwick Harris from Jan. 30, 2010 at midnight to present concerning a sexual assault that occurred on Jan. 30, 2010 at the apartments on Shattuc Road.

In its written notice dated December 3, 2010, the College asserts that several of the responsive documents are exempt under Section 7(1)(c), Section 7(1)(f), or both. The College provided to this Office and to Ms. Hundsdorfer a list of the documents it claims are exempt as well as an explanation of which exemption is claimed as to each document and the factual basis for the application of each exemption. The College claims that several emails, two draft letters, a witness statement, notes taken by investigators, two letters to the alleged victim and a letter to the alleged perpetrator are exempt from disclosure.

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.*

Section 7(1)(f) exempts from inspection 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).

1. Emails

Based on the College’s detailed explanation, we have determined that the College’s use of the exemption in Section 7(1)(f) of FOIA to withhold these emails is approved. These emails consist of comments on draft letters and other discussion that was used to formulate the College’s actions. The College has asserted that none of these emails has been publicly cited or identified by the Board of Trustees of the College.

2. Pre-Decisional Letter to Alleged Victim

Based on the College’s detailed explanation, we have determined that the College’s use of the exemption in Section 7(1)(c) of FOIA to withhold this letter is approved. This letter pertains entirely to an alleged sexual assault against the recipient of the letter and contains a description of the alleged incident. Even with all information identifying the alleged victim redacted, the contents of the letter remain highly personal, and the subject’s right to privacy outweighs any legitimate public interest in obtaining this letter.

3. Witness Statement

Based on the College’s detailed explanation, we have determined that the College’s use of the exemption in Section 7(1)(f) of FOIA to withhold the witness statement is approved. This statement includes the witness’s opinions given in response to questions from the College’s investigators, and this document was used to formulate the College’s actions. The College has asserted that this statement has not been publicly cited or identified by the Board of Trustees of the College.

4. Handwritten Notes by Investigators

Based on the College’s detailed explanation, we have determined that the College’s use of the exemption in Section 7(1)(f) to withhold the “personal and handwritten notes” taken by the College’s investigators is approved. These notes are pre-decisional in nature, they are drafts subject to revision, and they were used to formulate the College’s actions. The College has asserted that these notes have not been publicly cited or identified by the Board of Trustees of the College.

5. Findings Letter to Alleged Victim

We have determined that the College’s use of the exemption in Section 7(1)(c) to withhold the letter to the alleged victim is approved. Much of this letter consists of the details of how the alleged victim is to cope with attending the same school as the alleged perpetrator. Even with all identifying information redacted, the information in this letter remains highly personal, and the alleged victim’s right to privacy outweighs any legitimate public interest in obtaining this information.

6. Findings Letter to Alleged Perpetrator

We have determined that the College’s use of the exemption in Section 7(1)(c) to withhold the letter to the alleged perpetrator is denied. Although this letter pertains to a matter that is highly personal, the

public interest in disclosure outweighs the subject's right to privacy in this instance. This alleged perpetrator was arrested for sexual assault. Section 2.15 of FOIA requires disclosure of arrest records, including the identity of the individual arrested. This Section shows that the Illinois Legislature recognizes a strong public interest in disclosure of information relating to arrests. Additionally, this letter provides insight into how the College dealt with a criminal allegation against one of its students, and the public has an interest in obtaining this information. Therefore, the public interest in disclosure of this letter outweighs the subject's right to privacy in this instance.

Accordingly, the College should issue a partial denial directly to Ms. Hundsdorfer and provide her with a copy of the letter to the alleged perpetrator. The College may redact from that letter information that identifies the victim of the alleged assault. This determination serves to close this Pre-Authorization Request.

Ms. Hundsdorfer has filed a Request for Review of the College's response to her FOIA request (2010 PAC 11147). That Request for Review was premature while this Pre-Authorization Request was pending. Because this Pre-Authorization Request is now closed, the time limits in Section 9.5 for Requests for Review will begin to run as of the date of this letter. Should you have questions or concerns, feel free to contact me at (312) 814-2086.

Sincerely,

Amalia Rioja
Acting Public Access Counselor

By:



Sarah Kaplan
Assistant Public Access Counselor

cc: Beth Hundsdorfer
Belleville News-Democrat
120 South Illinois
P.O. Box 427
Belleville, IL 62220

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