



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 24, 2011

McHenry Community High School District 156
Teresa A. Lane, Superintendent
4716 W. Crystal Lake Rd
McHenry, IL 60050

Re: Pre-authorization request – 2010 PAC 11979

Dear Ms. Lane:

We have reviewed a request by McHenry Community High School District 156 for pre-authorization to withhold records requested by Joseph Bustos under the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended. Mr. Bustos requested copies of records regarding a School Board resolution and remedies issued to an employee of the District. Pursuant to Section 7(1)(f) (5 ILCS 140/7(1)(f)), the District requested pre-authorization to withhold a letter to the employee regarding the School Board resolution that authorized a "Notice to Remedy."

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). The Section 7(1)(f) exemption applies to "predecisional materials used by a public body in its deliberative process." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247, 799 N.E.2d 859, 864 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a decision is made." *Id.* at 248, 799 N.E.2d at 864.

The District contends that the "purpose of the letter was for the employee to review the proposed remedies and for the Board of Education to consider prior to making its final decision." (District's Request for Pre-authorization, January 20, 2011.) The District identifies the final decision in this matter as the School Board's resolution to authorize the Notice to Remedy. (*Id.*) We have reviewed a copy of the letter, which is dated one day after the School Board took final action by passing the resolution. The letter is neither pre-decisional nor part of the District's

deliberative process. Rather, it is a letter addressed to the affected employee which notifies the employee of the School Board's position as to his past conduct. Indeed, the employee received the letter together with a copy of the School Board's resolution that authorized the Notice to Remedy.

Accordingly, the District's request for pre-authorization to withhold the letter pursuant to Section 7(1)(f) is **denied**.

This letter shall serve to close this matter. If you have any questions, please feel free to contact me at 312-814-6756 or ssilverman@atg.state.il.us.

Sincerely,

Cara Smith
Public Access Counselor

By:


Steve Silverman
Assistant Public Access Counselor

cc: Joseph Bustos, Reporter
Northwest Herald
7717 S. Route 31
Crystal Lake, IL 60014