



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 23, 2011

Ms. Beth Janicki-Clark
Assistant Village Attorney
801 Burlington Ave.
Downers Grove, IL 60515

Re: Pre-Authorization Request – 2011 PAC 12373
FOIA Requester: Dr. Lisa L. Smith – Community High School District 99

Dear Ms. Janicki-Clark:

We have received and reviewed the written notice from the Village of Downers Grove (Village) of its intention to deny disclosure of certain information for being exempt from disclosure under subsection 7(1)(c) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

On February 4, 2011, Dr. Lisa L. Smith of Community High School District 99 (District) submitted a FOIA request to the Village for “all records related to a recent theft investigation at North High School, Downers Grove, IL.”

The Village seeks approval to use the exemption contained in Section 7(1)(c) to redact polygraph records associated with the investigation as “an unwarranted invasion of personal privacy.” Two District employees took polygraph tests as part of the investigation.

Determination

Section 7(1)(c) 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”. The exemption defines “unwarranted 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. **The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.**” 5 ILCS 140/7(1)(c) (emphasis added).

The Village’s use of the Section 7(1)(c) exemption with regard to polygraph results of the District’s employees is **denied**. FOIA specifically restricts the use of the 7(1)(c) exemption so that it cannot be used to withhold information that “bears on the public duties of public employees and officials.” Thus, information regarding public employees must be released if it “bears on” their public duties. During the investigation, multiple District employees were interviewed in their roles as employees of the District.

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The polygraph tests were administered as a part of this investigation. Therefore, information regarding the investigation cannot be considered an invasion of their personal privacy and cannot be withheld under 7(1)(c).

Although we have concluded that the documents are not exempt under Section 7(1)(c), it is the opinion of this office, after thorough review of the documents in question, that it would be proper for the Village to redact the examiner's opinions pursuant to Section 7(1)(f) of FOIA. 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 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 statements in question are opinions of the examiner and, therefore, may be withheld under Section 7(1)(f).

Should you have questions or concerns, please feel free to contact me at (312) 814-8413. This correspondence shall serve to close this matter.

Sincerely,

A solid black rectangular redaction box covering the signature of Rebecca Riddick.

By: Rebecca Riddick
Assistant Public Access Counselor

cc: Dr. Lisa L. Smith
lsmith@csd99.org