



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 25, 2016

Via electronic mail

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Via electronic mail

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Via electronic mail

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RE: FOIA Request for Review – 2015 PAC 37541

Dear Ms. Johnson, Mr. Mahr, and Mr. Richart:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that Park Ridge-Niles Community Consolidated School District No. 64 (School District) improperly redacted certain information from the records responsive to Ms. Jennifer Johnson's September 2, 2015, FOIA request.

On that date, Ms. Johnson submitted a FOIA request to the School District seeking copies of a settlement agreement and notice of remedial warning regarding a tenured teacher. On September 10, 2015, the School District provided those records to Ms. Johnson, but

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redacted certain information pursuant to sections 7(1)(a), 7(1)(b), and 7(1)(c) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(c) (West 2015 Supp.)) and section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2015 Supp.)).¹ In conjunction with section 7(1)(a), the School District cited the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 *et seq.* (West 2014)) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g (2012)).

On September 17, 2015, Ms. Johnson submitted the above-captioned Request for Review alleging that the settlement agreement and warning notice were overly redacted and noted, with respect to the assertion of sections 7(1)(a) and 7.5(r), that her request concerned a teacher rather than students. On September 25, 2015, the Public Access Bureau forwarded a copy of the Request for Review to the School District and requested a written explanation of its redactions, together with unredacted copies of the responsive records for our confidential review.

On October 7, 2015, the School District provided this office with those records and a written response asserting that the redactions were necessary to avoid the identification of two students. Ms. Johnson did not reply.

DETERMINATION

FOIA provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2014). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

Section 7.5(r) of FOIA exempts from disclosure "[i]nformation prohibited from being disclosed by [ISSRA]." Additionally, section 7(1)(a) of FOIA permits a public body to withhold "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The School District cited ISSRA as the State law specifically prohibiting disclosure of students' identifying information. Section 6 of ISSRA (105 ILCS 10/6 (West 2014)) generally prohibits disclosure of "school student records" except as permitted under that section. ISSRA defines "school student record" to mean "any writing or other recorded information *concerning a student and by which a student may be individually identified*, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored." (Emphasis added.) 105 ILCS 10/2(d) (West 2014).

¹ Ms. Johnson's Request for Review did not contest the School District's redaction of signatures or an employee's home address under sections 7(1)(b) and 7(1)(c) of FOIA.

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The Illinois Supreme Court has held that ISSRA does not prohibit the disclosure of records concerning students provided that information identifying individual students is redacted. *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373 (1989). There, parents of students requested standardized test scores pursuant to FOIA, and the Supreme Court held that "[a] masked record, which deletes individual identifying information, does not fall within the definition of a school student record, and is not prohibited from disclosure under [ISSRA]." *Bowie*, 128 Ill.2d at 379; see also *Human Rights Authority of State of Illinois Guardianship and Advocacy Comm'n by Aune v. Miller*, 124 Ill. App. 3d 701, 704 (1984) (ISSRA does not prohibit disclosure of records stripped of information identifying individual students in special education program); Ill. Att'y Gen. Pub. Acc. Op. No. 12-014, issued December 11, 2012, at 9 ("[I]f information identifying a student or students is removed from a record, the record is no longer a 'school student record' which is prohibited from disclosure by the [I]SSRA."). Thus, if information identifying students is redacted from a school student record, ISSRA does not prohibit disclosure of the remaining portions of the record.²

In its response to the allegations in the Request for Review, the School District asserts that it redacted only the information necessary to preclude identifying two students. Citing *Bowie* and *Garlick v. Oak Park and River Forest High School District No. 200*, 389 Ill. App. 3d 306 (1st Dist. 2009), the School District notes that ISSRA does not apply solely to records in which a student is identified, but to records in which a student "may be individually identified[.]" (Emphasis added.) 105 ILCS 10/2(d) (West 2014).

Although Ms. Johnson requested records regarding a teacher, our review confirmed that the responsive records do individually identify two School District students. Therefore, the responsive records appear to constitute school student records subject to ISSRA. However, section 2.20 of FOIA (5 ILCS 140/2.20 (West 2014)) provides that "[a]ll settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public," subject only to the redaction of discrete information that is exempt from disclosure under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.)). The following colloquy between Representative Bill Black and Representative Michael Madigan, the House sponsor of the bill, during the House debate on Senate Bill 189 (which, as Public Act 96-542, effective January 1, 2010, added section 2.20 of FOIA), explains the underlying problem that the disclosure requirements of section 2.20 of FOIA were intended to address:

²To the same extent that redacting individually identifiable information removes a record from the "school student record" classification under ISSRA, redacting individually-identifiable information removes a record from the "education records" classification under FERPA. 20 U.S.C. §1232g(5)(A) (West 2014). See *Unincorporated Operating Division of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893, 909 (Ind. App. 2003) (holding that if records involving students "were properly redacted to eliminate any identifiable student information, they would not be protected by FERPA.").

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Black: Okay, settlement agreements entered into, and this has long been a bone of contention, a school district, a city, a township, a county, whatever[.]

* * *

They reach an agreement on a lawsuit. They don't go to court. They settle for an amount of money, and this [has] often driven the taxpayer as well as the media gatekeepers crazy. Well, that did... how much did it cost? Well, we don't have to tell you that. We can't tell you that because part of the agreement was that neither side would disclose what we paid, but yet the taxpayer says, well, you paid them, literally, even though you have an insurance policy, you paid them with my tax money. What do you mean I can't tell... I can't be told what you settled the case for. If I understand what you're saying, that settlement would now be FOIAable.

Madigan: The answer is yes. (Emphasis added.) Remarks of Rep. Black and Rep. Madigan, May 27, 2009, House Debate on Senate Bill No. 189, at 104-105.

In addition, this colloquy between Representative Michael Tryon and Representative Madigan evinces the General Assembly's intention to include settlement agreements that have been sealed by court order or that contain personal information:

Tyron: Speaker Madigan[,] having been a former county board chairman, we were faced many times with FOIA requests and sometimes difficult FOIA requests and one of the things that was awful difficult was in the cases of settlements of court cases. In the settlement of a court case, there were times where the plaintiff was requesting that there be * * * nondisclosure. It could have been a sexual harassment case; it could have been certain types of cases where there was a need to disclose the names of the individuals maybe even the amount of the settlement. If the court approves a settlement agreement that, as part of that settlement agreement, has nondisclosure, is that FOIAable?

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Madigan: The answer is that [is] a public record that would be subject to FOIA, but please understand that you do have exceptions in the statutes such as privacy, deliberative process.

Tryon: So that doesn't...

Madigan: Let me also add, you can do redactions

Tryon: Okay

Madigan: You can do redactions

Tryon: So, * * * if part of the settlement was negotiated and part of the negotiation of the settlement was approved by a court and in one specific case I'm thinking of was a Federal Court and the amount was nondisclosable. Would that be nondisclosed as well?

Madigan: Again, it's subject to FOIA, but let me add that the intent of the Bill is not to look with favor upon governments entering into sealed records and sealed agreements in court. I mean, that's part of what we're trying to do here. We're trying to open things up.

Tryon: Okay.

Madigan: And we certainly would not to be encouraging governments to enter into agreements like that.

Tryon: Okay. And certainly, in cases of privacy then you're saying that the exception would apply possibly to names and that type of thing?

Madigan: The answer is yes. Remarks of Rep. Madigan and Rep. Tryon, May 27, 2009, House Debate on Senate Bill No. 189 at 109-111.

Thus, the General Assembly has balanced the public interest in transparency of settlement agreements with individual privacy rights by providing in section 2.20 that discrete information that is exempt from disclosure under FOIA may be redacted from settlement

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agreements before disclosure. With respect to the interplay between section 2.20 and ISSRA, the Public Access Bureau has previously determined that a settlement agreement involving a school district must be disclosed if the student identifying information therein can be redacted in a manner that masks the students' identities. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 31101, issued June 5, 2015, at 7 (a school district improperly withheld an entire settlement agreement that could have been redacted to preclude student identifying information from being disclosed under section 7(1)(a) based on ISSRA).³

Upon review of the records in question, this office concludes that the School District improperly redacted information that reveals the basis of the settlement agreement. Although the School District redacted only the information by which two students could be identified in some manner, much of that information is necessary to understand the reason for the settlement agreement. It generally does not comport with the purpose of section 2.20 to withhold the nature of the claims at issue in a settlement agreement. *See also* section 2.5 of FOIA (5 ILCS 140/2.5 (West 2014)) ("All 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."). Because of the nature of the settlement agreement, it would be impossible to disclose the underlying reason for it without indirectly identifying two students. This office also notes that the minutes of the Board of Education's August 27, 2015, open meeting provide that the Board voted unanimously in favor of the following action item, which linked the settlement agreement to a student issue:

It was moved by Board member Paterno and seconded by Board member Zimmerman that the Board of Education of Park Ridge-Niles Community Consolidated School District No. 64, approve the formal settlement agreement with [REDACTED]

³Although the School District referenced FERPA in its response to this office, it did not advance an argument demonstrating that any provision of FERPA specifically prohibits disclosure of the responsive records with the students' names redacted. Accordingly, it suffices to state that this office has previously determined that FERPA does not specifically prohibit de-identified records from disclosure within the meaning of section 7(1)(a) of FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 33656, issued March 24, 2016, at 5 ("FERPA does not specifically prohibit Illinois from doing anything, so the University may not use the federal law as authority to withhold the records pursuant to section 7(1)(a) of FOIA." (quoting *Chicago Tribune Company v. University of Illinois Board of Trustees* 781 F. Supp. 2d 672, 676-77 (N.D. Ill. 2011), *rev'd on other grounds*, 680 F.3d 1001 (7th Cir. 2012)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 12590, issued April 11, 2011, at 2-3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 11856, issued March 8, 2011, at 4-5.

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and [REDACTED] regarding the resolution of both a student residency dispute and employee discipline matter.^[4]

Under the unique circumstances of this matter, a balance must be struck between the confidentiality provisions of ISSRA and sections 2.20 and 2.5 of FOIA to protect the students' identities while providing the necessary transparency as to the reasons for the settlement agreement. Redacting the students' names but disclosing the remainder of the records would prevent the students from being directly identified while revealing the nature of the settlement agreement. Accordingly, this office asks the School District to provide copies of the responsive records to Ms. Johnson after redacting the students' names.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If either party should have any questions, please contact me at (217) 524-7958 or at the Springfield address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,

[REDACTED]
SHARI L. WEST
Assistant Attorney General
Public Access Bureau

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