



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2018

Via electronic mail



Via electronic mail
Mr. Jim Blaney
Director of Community Relations
Freedom of Information Act Officer
Valley View Community Unit School District 365U
801 West Normantown Road
Romeoville, Illinois 60446
blaneyjc@vvsd.org

Via electronic mail
Ms. Stephanie B. Donovan
Tressler LLP
233 South Wacker Drive, 22nd Floor
Chicago, Illinois 60606
sdonovan@tresslerllp.com

RE: FOIA Request for Review – 2018 PAC 51268

Dear [REDACTED], Mr. Blaney, and Ms. Donovan:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that Valley View Community Unit School District 365U (School District) did not properly assert section 3(g) in response to one of [REDACTED] October 30, 2017, FOIA requests.

On that date, [REDACTED] submitted an amended version of a FOIA request that had been deemed voluminous by the School District. His amended request sought copies of any

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"written reprimands authored by Sharon Hawks" starting after January 1, 2013.¹ His original request had sought copies of all records "pertaining to the adjudication of all student disciplinary cases at Bolingbrook High School" for the month of September 2017. Thus, instead of amending his request so that it was no longer voluminous, [REDACTED] considerably expanded the scope of his request to include additional years and other campuses.² On November 3, 2017, the School District extended the time to respond by ten business days pursuant to section 3.6(d) of FOIA (5 ILCS 140/3.6(d) (West 2016)). On November 9, 2017, [REDACTED] agreed to an additional extension of five business days. On November 21, 2017, the School District responded to the amended request as well as three other separate FOIA requests that [REDACTED] had submitted on October 30, 2017. The School District granted, in part, and denied, in part, the four requests pursuant to sections 7(1)(b), 7(1)(c), 7(1)(f), 7.5(q), and 7.5(r) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(f) (West 2017 Supp.); 5 ILCS 140/7.5(q), 7.5(r) (West 2017 Supp.)).

On January 17, 2018, this office received [REDACTED] Request for Review disputing the completeness of the School District's response to his request for the written reprimands. Specifically, he asserted that the School District had provided him with copies of documents responsive to the other three FOIA requests but not to his request for the written reprimands authored by Ms. Hawks, the School District's Executive Director of Human Resources. He provided this office with snapshots of disciplinary letters signed by Ms. Hawks and stated that those letters were obtained through other FOIA requests submitted to the School District.

On January 29, 2018, this office forwarded a copy of the Request for Review to the School District and asked it to provide this office with copies of any records responsive to [REDACTED] request for the written reprimands that it had withheld from him, together with a detailed explanation of the legal and factual basis for the applicability of the FOIA exemptions relevant to those records. If no written reprimands were withheld, this office asked the School District to provide a description of the measures that it took to search for responsive records, including the specific recordkeeping systems that it searched and any personnel who it consulted. On February 8, 2018, an attorney for the School District contacted this office and expressed the School District's interest in informally resolving the matter. The attorney indicated that the School District would reach out to [REDACTED] and attempt to work with him to informally resolve his Request for Review. On February 9, 2018, the School District updated this office, stating that it had contacted [REDACTED] and was attempting to work with him to narrow his request for the written reprimands. On February 13, 2018, however, the School District notified this office

¹Letter from [REDACTED] to James Blaney, FOIA Officer (October 30, 2017).

²Letter from Jim Blaney, Freedom of Information Officer, Valley View Community Unit School District 365U, to [REDACTED] (October 27, 2017).

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that [REDACTED] had rejected its offer. The School District also acknowledged that it had overlooked his request for written reprimands; the School District indicated that it would continue to try to get [REDACTED] to narrow that request. On February 15, 2018, the School District sent [REDACTED] an e-mail asking if he would narrow his request and providing suggestions for doing so; on February 22, 2018, he declined.

On March 14, 2018, having been unable to informally resolve the matter, the School District provided this office with a formal written response to [REDACTED] Request for Review as well as copies of its correspondence with [REDACTED] related to his request for the written reprimands. In its written response, the School District asserted that compliance with [REDACTED] request would be unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2016)). On March 21, 2018, this office forwarded a copy of the School District's response to [REDACTED]; he replied on April 2, 2018.

DETERMINATION

"All 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 2016); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). 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 2016).

Sections 3(g) and 3.6(c) of FOIA

Section 3(g) of FOIA provides, in pertinent part:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. *Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing*, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such

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a response shall be treated as a denial of the request for information. (Emphasis added.)

Correspondingly, section 3.6(c) of FOIA (5 ILCS 140/3.6 (West 2016)) provides that if the amended version of a request deemed to be voluminous remains voluminous, the public body's response shall:

- (i) provide an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents; (ii) deny the request pursuant to one or more of the exemptions set out in this Act; **(iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions;** or (iv) provide the records requested. (Emphasis added.)

In its response to this office, the School District acknowledged that its November 21, 2017, "response letter does not contain the phrase 'unduly burdensome' nor explain why responding to the request is unduly burdensome."³ Nonetheless, the School District argued that it may properly treat the request as unduly burdensome because its response was timely and because it "had already practically complied with section 3(g)" by meeting with [REDACTED] on November 9, 2017, and explaining the burdensomeness of the request.⁴ The School District further argued: "He knew why the request was unduly burdensome. He had been provided with an opportunity to confer with the School District to narrow the request to manageable proportions."⁵ The School District thus contended that it "has complied with Section 3(g) of FOIA, and the technicality of not documenting the pre-response conversation in the response should not be used to elevate form over substance, particularly given the hardship" of complying with the request.⁶ Specifically, the School District asserted that it would have to search through

³Letter from Stephanie B. Donovan, Tressler LLP, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 14, 2018), at 6.

⁴Letter from Stephanie B. Donovan, Tressler LLP, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 14, 2018), at 6.

⁵Letter from Stephanie B. Donovan, Tressler LLP, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 14, 2018), at 6.

⁶Letter from Stephanie B. Donovan, Tressler LLP, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 14, 2018), at 7.

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approximately 2,200 personnel files of current employees and additional files of former employees in order to locate responsive records.⁷ The School District further asserted that only Ms. Hawks and one other School District employee were permitted to review personnel files.

In his reply to that response, [REDACTED] disputed the School District's characterization of the November 9, 2017, meeting. He asserted, in pertinent part:

During this meeting, we discussed the burden that the totality of my FOIA request[s] have had on the School District. While Mr. Blaney did express reservations about the general volume of my FOIA requests, and question the reasons behind them, Mr. Blaney did not indicate that the School District intended to invoke the unduly burden exemption, or provide me with an opportunity to narrow the request. (Emphasis in original.)^[8]

[REDACTED] further contended that the School District's failure to notify him in writing that it considered his request to be unduly burdensome precludes the School District from retroactively denying his request on that basis.

Although the parties disagree over what was specifically discussed at the November 9, 2017, meeting, it is undisputed that the School District's November 21, 2017, response did not invoke section 3(g) of FOIA or provide [REDACTED] with a written explanation as to how compliance with that request would burden its operations. Because sections 3(g) and 3.6(c) of FOIA require a public body to deny a request as unduly burdensome in writing, the School District did not demonstrate that it followed the requisite procedures for denying the request as unduly burdensome. Accordingly, this office concludes that the School District responded improperly to [REDACTED] request for the written reprimands.

Based on the available information, however, there does not appear to be a feasible way for the School District to comply with [REDACTED] amended request given the manner in which the School District maintains its disciplinary records for personnel. Specifically, the School District has contended that disciplinary records are maintained only in individual personnel files, and that there are no reasonable means to locate the disciplinary letters beyond manually searching through each file of current and past employees; this office has not

⁷Letter from Stephanie B. Donovan, Tressler LLP, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 14, 2018), at 3.

⁸Letter from [REDACTED] to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (March 30, 2018).

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received information to the contrary. The School District further explained that an exhaustive search of each personnel file would be impracticable given the number of personnel files it maintains and the limited number of staff authorized to review such files. Under these circumstances, this office does not ask the School District to perform a search of all of its personnel files for responsive records. [REDACTED] may wish to consider submitting another request that limits the scope of his request to a shorter time frame, a specific school or schools, or types of employees. This office also reminds the School District that it must follow the statutory procedures for properly denying a request as unduly burdensome, including providing a written denial that sets forth the reasons why compliance would unduly burden its operations.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

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