

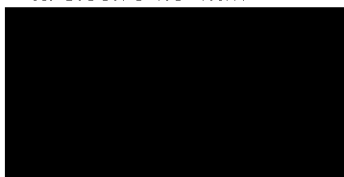


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 18, 2020

Via electronic mail



Via electronic mail

Ms. Annie Righi
Freedom of Information Act Officer
Chicago Public Schools
One North Dearborn Street, 9th Floor
Chicago, Illinois 60602
arighi@cps.edu

RE: FOIA Request for Review – 2020 PAC 61967

Dear [REDACTED] and Ms. Righi:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2018)). For the reasons stated below, the Public Access Bureau concludes that the response by Chicago Public Schools (CPS) to [REDACTED] December 20, 2019, FOIA request did not violate FOIA.

On December 20, 2019, [REDACTED] submitted a four-part FOIA request to CPS seeking:

1. The selective enrollment test results (Classical Reading, Classical Math, and Gifted) of each student enrolled in each selective enrollment school for Kindergarten and first grade anonymized to prevent the identification of individual students. I am requesting data be provided to me in a spreadsheet-readable format (e.g. csv, xls, xlxs, tab-delimited txt, tab-separated values) that maintains the integrity of the data.

1. [sic 2.] The complete list of test scores for each student that completed the selective enrollment testing (Classical Reading, Classical Math, and Gifted) placement tests during the 2016-2017, 2017-2018, 2018-2019 testing periods (ie the testing that is used to determine placement for the 2018--2020 school years), anonymized to prevent the identification of individual students. This shall include the non-identifying student information including the raw and normalized scores for the placement test, the date of testing (month and year), socioeconomic tier of the student, sex, race[,] ethnicity, and IEP status of the tested student, grade, the school they enrolled the year after testing, subsequent NWEA MAP test results for reading and math for those students (for the beginning, middle, and end of year scores and percentiles), and TRC/Dibels Next test results for those students (for the beginning, middle, and end-of-year scores and percentiles). I am requesting data be provided to me in a spreadsheet-readable format (e.g. csv, xls, xlxs, tab-delimited txt, tab-separated values) that maintains the integrity of the data.
2. [sic 3.] The anonymized data on students offered early enrollment into a CPS school for the 2017 through 2020 school years. Early enrollment students are those with birthdays after the conventional cutoff of being age five by September 1st for kindergarten or equivalent age by September 1st for higher grades. I am requesting each student's placement testing results (scores and percentiles), socioeconomic tier of the student, sex, race, ethnicity, and IEP status of the tested student, grade, the school they enrolled in, subsequent NWEA MAP test results for reading and math for those students (for the beginning, middle, and end of year scores and percentiles), and TRC/Dibels Next test results for those students (for the beginning, middle, and end-of-year scores and percentiles). I am requesting data be provided to me in a spreadsheet-readable format (e.g. csv, xls, xlxs, tab-delimited txt, tab-separated values) that maintains the integrity of the data.
3. [sic 4.] The dates and call times for all phone calls between both the CPS Office of Diverse Learners and the CPS Office of Access and Equity to and from phone numbers 312-404-1880, 773-

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968-7128, and 773-275-2455 from August 2017 through January 31, 2020.¹

On February 20, 2020, CPS responded that the request failed to cite a public record for review, would require the manual creation of records not maintained by CPS in the normal course of business, would require CPS to conduct research, and that certain information was exempt under section 7.5(r) of FOIA.² CPS further contended that part four of the request also seeks answers to questions. On February 28, 2020, ██████████ submitted a Request for Review contesting CPS's response.

On March 16, 2020, this office sent a copy of the Request for Review to CPS and asked it to provide this office with a detailed written response to the allegations in the Request for Review. On April 17, 2020, CPS provided a confidential response to this office, along with a cover letter notifying this office of its confidential response.³ After this office forwarded the cover letter to ██████████, he replied on May 11, 2020.

DETERMINATION

Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2018)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection and copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2018), as amended by Public Act 101-081, effective July 12, 2019) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 and 8.5 of this Act."

¹FOIA request on Chicago Public Schools FOIA Center from ██████████ (December 20, 2019). We refer to the numbered parts, as parts one through four, as indicated in the brackets above.

²5 ILCS 140/7.5(r) (West 2018), as amended by Public Acts 101-013, effective June 12, 2019; 101-027, effective June 25, 2019; 101-081, effective July 12, 2019; 101-221, effective January 1, 2020; 101-236, effective January 1, 2020; 101-375, effective August 16, 2019; 101-377, effective August 16, 2019; 101-452, effective January 1, 2020; 101-466, effective January 1, 2020; 101-600, effective December 6, 2019; 101-620, effective December 20, 2019; 101-649, effective July 7, 2020.

³Because CPS claimed its entire response was confidential, this office is not at liberty to reveal its content in this determination. In the future, CPS should provide this office with an additional response letter to forward to the requester with any confidential information redacted, in accordance with section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2018) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.")).

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Database Records

FOIA "is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body[.]" 5 ILCS 140/1 (West 2018). Thus, FOIA does not require a public body to compile data that it does not ordinarily keep. *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836, ¶75, 56 N.E.3d 1049, 1065 (2016). See also *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App 4th 130427, ¶¶33-34, 8 N.E.3d 11, 19 (2014) ("[a] request to inspect or copy must reasonably identify a public record and not general data, information, or statistics."); *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989) (a public body is not required to create records in order to respond to a FOIA request). However, data kept in databases constitute public records subject to the requirements of FOIA. See *Hites*, 2016 IL App (2d) 150836, ¶¶80-81, 56 N.E.3d at 1066-67.

In *Hites*, the Illinois Appellate Court analyzed a series of requests for information contained in multiple databases. The *Hites* court distinguished requests for raw data maintained in a public body's databases from requests seeking information about the data, which would require the creation of new records. The court analogized a database to a file cabinet and stated that "the data that populates the database is like the files. FOIA permits a proper request for a single file, some of the files, or all of the files." *Hites*, 2016 IL App (2d) 150836, ¶¶71, 56 N.E.3d at 1065. The court held that compiling raw data already maintained in databases and available through computerized searches of the public body's databases did not involve the creation of new records, even if the public body had to create and apply computer programming or coding to retrieve the information. *Hites*, 2016 IL App (2d) 150836, ¶¶75-81, 56 N.E.3d at 1065-67.

This office has reviewed ██████████ Request for Review, CPS's confidential response, and ██████████ reply. In response to the first three parts of ██████████ FOIA request, CPS informed him that "CPS does not maintain any one record or database that reflects the testing and demographics data that you seek. In order to respond to those portions of your request, the CPS would be required to compile data from multiple sources and district departments, then combine the data, creating new record(s) not maintained by the District in the normal course of business."⁴ ██████████ Request for Review asserts that CPS should provide him the records because it maintains the records in its systems. However, in contrast to *Hites*, the available information indicates that CPS would need to do more than compile existing data in order to comply with the first three parts of ██████████ FOIA request. FOIA does not require a public body to collect, cross-reference, match, and collate various data scattered through its departments and multiple databases. See *Martinez v. Cook Cty. State's Attorney's Office*, 2018 IL App (1st) 163153, ¶25, 103 N.E.3d 351, 357 (2018) (request that would have required public

⁴FOIA response on Chicago Public Schools FOIA Center from Annie Righi, Freedom of Information Officer, Chicago Public Schools, to ██████████ (February 20, 2020).

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body to manually review its files and compile each "instance" in which it "used" specific information did not reasonably describe a record but instead was a general request for data that was "scattered throughout [the public body's] records"). This office has located no legal support for the notion that FOIA requires a public body to compile information from multiple sources and create a custom report for a requester. Accordingly, this office concludes that CPS's response to the first three parts of ██████████ request did not violate FOIA.

In his reply, ██████████ clarified that part one of his request was "for the selective enrollment testing that was completed this school year for admission into selective enrollment schools for the 2021 school year. * * * I am requesting just the scores for the recently completed testing to examine anomalies in the data."⁵ In the event that ██████████ wishes to confer with CPS to clarify the information he is seeking and to discuss options for obtaining some of the information he requested, this office asks that CPS consult with him about whether the release of those records would be feasible.⁶

Dates and Times of Phone Calls

The requirements of FOIA apply to "public records," which are existing records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2018). However, a public body is not required to answer questions or generate new records in response to a FOIA request. *Kenyon*, 184 Ill. App. 3d at 32.

Part four of ██████████ FOIA request sought the dates and call times for certain phone calls spanning nearly two and a half years. CPS responded to ██████████ that his request failed to request a record but asked questions about a large volume of records which it would

⁵ E-mail from ██████████ to Senior Assistant Attorney General [Edie] Steinberg (May 11, 2020).

⁶Because we conclude that CPS did not improperly deny the first three parts of ██████████ FOIA request, it is not necessary to address the issue of whether the requested anonymized records were exempt from disclosure under section 7.5(r) of FOIA, which exempts from inspection and copying information prohibited from being disclosed by the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 *et seq.* (West 2018)). However, this office notes that while section 6(a) of ISSRA (105 ILCS 10/6(a) (West 2018)) provides that "[n]o school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated[.]" a masked record, which deletes or redacts individual identifying information, is not exempt from disclosure under ISSRA. *See Bowie v Evanston Community Consolidated School District 65*, 128 Ill 2d 373, 379 (1989) (records of aggregate test scores of a large number of student in multiple grades redacted of identifying information and scrambled not exempt as a school student record). *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 48297, issued October 3, 2017 (data regarding the names of grammar schools from which freshmen enrolled in certain selective enrollment high schools did not identify individual students even though ten or less students enrolled from certain schools; the data did not include additional details about the students, such as demographic information or a description of a well-publicized event involving the students).

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need to review and then create a new record to answer his questions. Indeed, [REDACTED] did not identify records which he wished to be made available to him, and CPS was not obligated under FOIA to answer [REDACTED] general inquiry questions regarding the dates and times of certain phone calls. *See Kenyon*, 184 Ill. App. 3d at 32-33. Because [REDACTED] Request for Review stated that he was seeking call logs and suggested that he could provide a more narrow range of dates for those records, [REDACTED] may wish to submit a new FOIA request for the specific call logs he seeks.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at 312-814-5201 or at the Chicago address listed on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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