



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 19, 2022

Via electronic mail



Via electronic mail

Ms. Annie Righi
Freedom of Information Act Officer
Chicago Public Schools
42 West Madison, 3rd Floor
Chicago, Illinois 60602
arighi@cps.edu

RE: FOIA Request for Review – 2020 PAC 65306; CPS No. N008658-082520

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 2020)).

On August 25, 2020, [REDACTED] submitted a FOIA request to Chicago Public Schools (CPS) seeking "[t]he security video for CPS Event Detail Report #678534, submitted on Thursday, January 13, 2011 for an event on either Tuesday, January 11, 2011 or Wednesday January 12, 2011."¹ On October 13, 2020, CPS denied his request pursuant to sections 7(1)(j)(iii)² and 7.5(r)³ of FOIA. CPS' response to [REDACTED] asserted that the recording fell within the scope of those exemptions because, "[t]he video footage you seek

¹Chicago Public Schools' online FOIA center FOIA request submitted by [REDACTED] (August 25, 2020).

²5 ILCS 140/7(i)(j)(iii) (West 2020).

³5 ILCS 140/7.5(r) (West 2020).

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contains images of students, and was likely used in student disciplinary proceedings."⁴ On October 20, 2020, ██████████ submitted this Request for Review disputing CPS' denial of his request. In his Request for Review, ██████████ alleged that the video footage he seeks captures a physical altercation involving a then-assistant principal and a student, which led to the then-assistant principal being charged for assaulting the student.⁵ He also asserted that the student received a \$10,000 settlement from CPS because of the incident in question.

On October 28, 2020, the Public Access Bureau sent a copy of the Request for Review to CPS and asked it to provide a copy of the responsive video footage, for this office's confidential review, along with a detailed explanation of the factual and legal bases for withholding the recording pursuant to the above-stated sections of FOIA. On December 10, 2020, CPS provided a written response that was submitted under a claim of confidentiality pursuant to section 9.5(d) of FOIA,⁶ and a separate, non-confidential, response for this office to forward to ██████████. On December 17, 2020, this office sent ██████████ a copy of the CPS's non-confidential response. On January 7, 2022, this office requested additional information from CPS. On March 3, 2022, CPS responded to this office's inquiry.

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 2020); *see also Southern Illinoisan v. Illinois Dep't 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 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

Section 7.5(r) of FOIA

Section 7.5(r) of FOIA exempts from inspection and copying "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act [ISSRA]." Section

⁴Letter from Annie Righi, Freedom of Information Act Officer, Chicago Public Schools, to ██████████ (October 13, 2020).

██████████ also submitted with his Request for Review a copy of CPS' investigative memorandum concerning the underlying incident, which he appears to have obtained in response to a previous FOIA request. Identifiable student information has been redacted from this memorandum, but the un-redacted portion contains a very detailed description of the incident reflected in the responsive video footage.

⁶5 ILCS 140/9.5(d) (West 2020).

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6(a) of ISSRA⁷ provides that "[n]o school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated[.]" Section 2(d) of ISSRA⁸ broadly defines "school student record" as "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.)

It is undisputed that the recording in question captures former students in a hallway while those students were attending school. Some of the materials ██████████ filed with his Request for Review include Cook County Circuit Court records and settlement information naming a student who was involved in a civil suit concerning the underlying incident. ██████████ also submitted copies of police records which provide a physical description of a student involved in the incident and a CPS memorandum providing a detailed description of the video recording of the incident. When combined with this other information, the responsive recording could be used to individually identify at least one student captured on the footage.

An administrative rule implementing ISSRA, however, generally excludes from the "school student record" definition, "[v]ideo or other electronic recordings created and maintained * * * for security or safety reasons or purposes, provided the information was **created at least in part for law enforcement or security or safety reasons or purposes**[.]"⁹ The rule also provides:

The content of a video or other electronic recording may become part of a student's school student record to the extent school officials use and maintain this content for a particular reason (e.g., disciplinary action, compliance with a student's Individualized Education Program) regarding that specific student. Video or other electronic recordings that become part of a student's school record shall not be a public record and shall be released only in conformance with Section 6(a) of the Act and the federal Family Educational Rights and Privacy Act (citation omitted).^[10]

⁷105 ILCS 10/6(a)(West 2020).

⁸105 ILCS 10/2(d) (West 2020).

⁹23 Ill. Adm. Code §375.10 (2020), last amended at 44 Ill. Reg. 13364, effective July 28, 2020 (Emphasis added.)

¹⁰23 Ill. Adm. Code §375.10 (2020), last amended at 44 Ill. Reg. 13364, effective July 28, 2020.

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Based on the plain language of the above-quoted rule, if the requested recording has become a part of the former-student's educational record—because CPS used or maintained that recording for a particular reason regarding that student—then the recording would constitute a "school student record," pursuant to ISSRA, and would be exempt from disclosure pursuant to section 7.5(r) of FOIA. On January 7, 2022, this office asked CPS whether the responsive footage became part of any student's record. On March 3, 2022, CPS maintained that the video was exempt, but did not confirm that the footage had been made part of any student's record. In the absence of this information, the Public Access Bureau is unable to conclude that the recording constitutes a "school student record," and therefore, CPS did not sustain its burden of demonstrating by clear and convincing evidence that the recording is exempt in its entirety under section 7.5(r) of FOIA.

Section 7(1)(j)(iii) of FOIA

CPS also withheld the recording under section 7(1)(j)(iii), which exempts from disclosure "information concerning a school or university's **adjudication** of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student[.]" (Emphasis added.) Black's Law Dictionary defines "adjudication" as meaning "[t]he legal process of resolving a dispute; the process of judicially deciding a case." *Black's Law Dictionary* 47 (9th ed. 2020). Similarly, an "adjudication hearing" is defined as an "[a]gency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard." *Black's Law Dictionary* 788 (9th ed. 2009).

Based on the plain language of the exemption, the Public Access Bureau has previously determined that "to apply [s]ection 7(1)(j)(iii), a school's adjudication of a disciplinary matter should include, at the very least, the commencement of some type of formal hearing to determine the rights of the students." Ill. Att'y Gen. PAC Req. Rev. Ltr. 11072, issued February 9, 2011, at 2. Here, CPS has not demonstrated that any formal hearing was held to determine the rights of a student. Accordingly, this office concludes that CPS has not sustained its burden of demonstrating that the records are exempt from disclosure under section 7(1)(j)(iii) of FOIA.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA¹¹ exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 7(1)(c) defines "unwarranted invasion of personal

¹¹5 ILCS 140/7(1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

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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." Section 7(1)(c) further provides that "disclosure of information that **bears on the public duties of public employees and officials** shall not be considered an invasion of personal privacy." (Emphasis added.)

A public body's assertion that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption, and the burden is on the public body having charge of the record to prove that standard has been met. *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994).

Because the video footage involves a public employee's actions while he was performing his public duties as an assistant principal, the recording unequivocally bears on the performance of that employee, and therefore, the disclosure of the footage would not constitute an unwarranted invasion of the assistant principal's personal privacy. See Ill. Att'y Gen. Pub. Acc. Op. No. 18-018, issued December 31, 2018, at 6 (complaints or allegations of misconduct against public employees are generally not exempt from disclosure in whole under section 7(1)(c) because such information bears on the performance of the employees' public duties).

Further, there is a strong public interest in monitoring how public employees perform their public duties, including disclosure of records concerning a public employee's alleged misconduct. See Ill. Att'y Gen. Pub. Acc. Op. No. 21-007, issued July 27, 2021, at 7 (noting a "broad public interest in monitoring the affairs of local government to hold public officials accountable."). However, images that identify the former student, as well as any other students that happened to be captured in the footage, are highly personal by their very nature, and their disclosure would be objectionable to a reasonable person. These students' right to privacy outweighs any legitimate public interest in disclosure of their images on those recordings.

Therefore, this office concludes that CPS has not sustained its burden of demonstrating that the recording is exempt in its entirety pursuant to section 7(1)(c) of FOIA. Accordingly, this office requests that CPS provide [REDACTED] with a copy of the responsive recording, with the students' images redacted.

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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, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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