

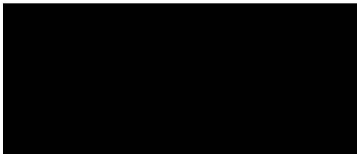


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 13, 2023

Via electronic mail



Via electronic mail

Mr. Andrew Mason
Freedom of Information Act Officer
Chicago Public Schools
42 West Madison, 3rd Floor
Chicago, Illinois 60602
amason19@cps.edu

RE: FOIA Request for Review – 2020 PAC 64820

Dear [REDACTED] and Mr. Mason:

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 2020)). For the reasons stated below, the Public Access Bureau concludes that the response by the Chicago Public Schools (CPS) to Mr. [REDACTED] May 8, 2020, FOIA request did not violate the requirements of FOIA.

On May 8, 2020, [REDACTED] submitted a three-part FOIA request seeking in part one: "Complaints and lawsuits against and investigative files of Joseph Moriarty General Counsel) along with any letters to the ARDC on his behalf and any legal bills to represent him to the ARDC or in any other complaint(s) or lawsuit(s)." On September 11, 2020, CPS denied part one of [REDACTED] FOIA request pursuant to section 7(1)(a) of FOIA (5ILCS 140/7(1)(a) (West 2020)), citing Illinois Supreme Court Rule 766 (Rule 766) (Ill. S. Ct. R. 766 (effective June 14, 2006)). On September 16, 2020, [REDACTED] submitted a Request for Review contesting the denial of part one of his FOIA request.

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On October 13, 2020, this office sent a copy of the Request for Review to CPS and asked it to provide copies of any withheld records responsive to part one of ██████████ FOIA request for this office's confidential review, together with a detailed explanation of the factual and legal bases for withholding the requested records. On December 4, 2020, CPS provided this office its response. On December 10, 2020, this office forwarded the written response to ██████████ On December 16, 2020, ██████████ submitted a reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2020). Exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." In its response to the Request for Review, CPS asserted that any responsive requests are exempt from disclosure pursuant to section 7(1)(a) of FOIA Rule 766 as the law prohibiting disclosure. Rule 766 pertains to the confidentiality and privacy of proceedings before the Attorney Registration and Disciplinary Commission (ARDC) and states, in part:

(a) Public Proceedings. Proceedings under Rules 751 through 780 shall be public with the exception of the following matters, which shall be private and confidential:

investigations conducted by the Administrator [of the ARDC] * * *.

Illinois Supreme Court rules "have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). The Illinois Supreme Court has explained: "When interpreting supreme court rules, our court is guided by the same principles applicable to the construction of statutes. [Citations.] With rules, as with statutes, our goal is to ascertain and give effect to the drafters' intention. [Citation.]" *People v. Marker*, 233 Ill. 2d 158, 164–65 (2009).

Section (a) of Rule 766 expressly provides that investigations conducted by the Administrator of the ARDC (Administrator) are "private and confidential[.]" As explained by the Court in *In re Mitan*, 119 Ill. 2d 229, 256 (1987):

The purpose underlying the general rule of privacy and confidentiality is to protect an attorney's reputation for honesty and

integrity from the irreparable harm that might result if a publicly announced disciplinary investigation or charge later proved to be without substance.

Rule 766 does not specify who is bound by this confidentiality requirement. Its purpose as explained by the Court in *Mitan*, however, can only be served if the confidentiality applies broadly. Rule 766 does not contain an exception for investigations of attorneys who are public employees or officials. If it did, FOIA could be used to circumvent the confidentiality requirements of Rule 766.¹ Accordingly, this office has previously determined that records relating to a matter that is private and confidential pursuant to Rule 766 are exempt pursuant to section 7(1)(a) of FOIA. See Ill. Att'y Gen. PAC Rev. Ltr. 67547, issued December 6, 2021, at 3-4.

The Public Access Bureau has reviewed the materials submitted by [REDACTED] as well as CPS. A review of those materials establishes that CPS properly withheld any responsive records because they relate to a matter that is private and confidential pursuant to Rule 766. [REDACTED] argued that because CPS previously provided similar types of documents in response to prior FOIA requests for records concerning other CPS employees, he is entitled to receive these records as well. Yet there is no indication that CPS waived the ability to deny the records at issue here by disclosing the same records concerning the same individual to another party. See *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 413 (1997) (providing preferential treatment by selectively disclosing names and addresses of colleges students to certain requesters while withholding the same information sought by another requester waived the ability to deny the information under FOIA). Further, "[t]he waiver rule must not be mechanically applied whenever there is disclosure of information but, rather, requires consideration of the circumstances related to the disclosure, including the purpose and extent of the disclosure as well as the confidentiality surrounding the disclosure." *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 202 (1st Dist. 2004). CPS explained that when it learned about Rule 766 it began to apply the 7(1)(a) exemption. Requiring disclosure of the records at issue because CPS previously was unaware of Rule 766 would be contrary to the rule's express intent of keeping such records confidential. Thus, CPS's choice to disclose similar types of records in the past does not preclude CPS from relying on Rule 766 to withhold records in this instance. Accordingly, this office concludes that CPS did not improperly withhold records at issue here under section 7(1)(a) of FOIA.

The Public Access Bureau has determined that resolution of this matter does not

¹There is no conflict between FOIA and Rule 766, but even if there was, we note that, "[i]t is well settled in Illinois that where a supreme court rule conflicts with a statute on the same subject, 'the rule will prevail.'" *Dalan/Jupiter, Inc. ex rel. JRC Midway Marketplace, L.P. v. Draper & Kramer, Inc.*, 372 Ill. App. 3d 362, 370 (1st Dist. 2007) (quoting *O'Connell v. St. Francis Hospital*, 112 Ill. 2d 273, 281 (1986)).

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require the issuance of a binding opinion. This file is closed. Please contact me at (312) 814-5201 or at the Chicago address on the first page of this letter if you have questions.

Very truly yours,

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

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