



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

October 19, 2018

*Via electronic mail*

[REDACTED]

Ms. Maureen Anichini Lemon  
Ottosen Britz Kelly Cooper Gilbert & DiNolfo, LTD.  
1804 North Naper Boulevard  
Naperville, Illinois 60563  
mlemon@ottosenbritz.com

RE: FOIA Request for Review – 2018 PAC 53415

Dear [REDACTED] and Ms. Lemon:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that Oswego Community Unit School District No. 308 (School District) did not improperly withhold video footage depicting students in response to [REDACTED] FOIA request.

On April 23, 2018, [REDACTED] submitted a FOIA request to the School District seeking copies of surveillance video recordings with audio of incidents involving his son in the Boulder Hill Elementary School gymnasium. On April 26, 2018, the School District responded that the recordings do not contain audio and denied the video footage pursuant to sections 7(1)(c), 7(1)(ee), and 7(1)(ff) of FOIA (5 ILCS 140/7(1)(c), (1)(ee), (1)(ff) (West 2017 Supp.)). [REDACTED] asked this office to review that denial.

On July 5, 2018, this office sent a copy of the Request for Review to the School District and asked it to provide copies of the recordings for this office's confidential review, and a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(c), 7(1)(ee), and 7(1)(ff) exemptions. On August 10, 2018, counsel for the School District provided those materials and asserted in her written response that the recordings are also exempt from disclosure pursuant to section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2017 Supp.)). On August 15, 2018, this office sent a copy of that response to [REDACTED]; he did not reply.

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## 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 2016).

### 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 6(a) of ISSRA (105 ILCS 10/6(a) (West 2016)) further provides:

No school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except as follows:

(1) To a parent or student or person specifically designated as a representative by a parent, **as provided in paragraph (a) of Section 5[.]** (Emphasis added.)

Section 5(a) of ISSRA (105 ILCS 10/5(a) (West 2016), as amended by Public Act 100-532, effective September 22, 2017) provides that "[a] parent \* \* \* shall have the right to inspect all **school permanent and temporary records** of that parent's child." (Emphasis added.)

A "school student record" is broadly defined 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." 105 ILCS 10/2(d) (West 2016). An administrative rule implementing ISSRA generally excludes from that 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[.]" 23 Ill. Adm. Code §375.10 (2018), last amended at 42 Ill. Reg. 5899, effective March 15, 2018). However, "[t]he 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." 23 Ill. Adm. Code §375.10 (2018), last amended at 42 Ill. Reg. 5899, effective March 15, 2018).

The School District's response to this office confirmed that the videos in question

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were created for security and safety purposes. The response further stated that "[b]ecause school officials have not used or maintained the recordings for a particular reason regarding the requester's student, the videos have not become part of that child's school educational record."<sup>1</sup> The School District did not assert that the recordings have become part of any other child's school student record, either. Thus, these recordings do not constitute "school student records," and they are neither exempt from disclosure under section 7.5(r) of FOIA nor required to be disclosed to [REDACTED] pursuant to section 5(a) of ISSRA.

#### **Section 7(1)(ee) of FOIA**

Section 7(1)(ee) exempts from disclosure: "The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations." The School District's response to this office stated that the programs depicted in the videos are Oswego Park District after-school programs for minors.

Based on its plain language, the section 7(1)(ee) exemption is intended to protect information that personally identifies minors who participate in park district programs. Although the recordings appear to provide only limited insight into any interactions between children because of the camera angles and lack of audio, they personally identify numerous minors participating in Oswego Park District after-school programs. Accordingly, this office concludes that the School District did not improperly withhold them pursuant to section 7(1)(ee) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at 312-814-6756. This file is closed.

Very truly yours,

[REDACTED]  
STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

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<sup>1</sup>Letter from Maureen Anichini Lemon, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, LTD., to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (August 10, 2018), at 3.