



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 5, 2024

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

Mr. Andrew Mason
Managing FOIA Officer
Law Department, Chicago Public Schools
1 North Dearborn Street, 9th Floor
Chicago, Illinois 60602
amason19@cps.edu

RE: FOIA Request for Review – 2023 PAC 78019; CPS no. N014006-080423

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 2022)). For the reasons that follow, the Public Access Bureau concludes that Chicago Public Schools (CPS) did not improperly withhold records responsive to [REDACTED] FOIA request.

On August 4, 2023, [REDACTED] submitted a FOIA request to CPS on behalf of the Daily Caller seeking copies of:

[A]ny/all links, presentations, slideshows, curriculum materials, videos, handouts, videos of presentations, and PDF's, associated with any/all of the Gender & Sexuality Education Sessions

██████████
Mr. Andrew Mason
January 5, 2024
Page 2

provided by Lurie Children's (CPS Vendor # 40737) to Chicago Public Schools, from January 1, 2021, to July 14, 2023.^[1]

On August 25, 2023, CPS denied the request in its entirety pursuant to section 7(1)(j)(iv) of FOIA.² On September 6, 2023, ██████████ submitted a Request for Review contesting the denial of her request. She enclosed a spreadsheet of payments from CPS to Lurie Children's Hospital of Chicago (Lurie) with 68 line items, some of which are for workshops, trainings, or other sessions about gender, sexuality, or both.

On September 11, 2023, this office forwarded a copy of the Request for Review to CPS and asked it to provide this office with unredacted copies of any and all withheld records for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of the asserted exemption. On September 29, 2023, CPS furnished a written answer and a copy of a representative sample of the responsive records, maintaining that its denial was proper. On December 7, 2023, ██████████ submitted a reply.

DETERMINATION

Under FOIA, "[a]ll 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 2022). 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 2022).

- (j) The following information pertaining to educational matters:

* * *

- (iv) course materials or research materials used by faculty members.

There are no published judicial decisions construing this exemption.

In its answer to this office, CPS explained:

¹FOIA portal message from ██████████ to Chicago Public Schools (August 4, 2023).

²5 ILCS 140/7(1)(j)(iv) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023.

██████████
Mr. Andrew Mason
January 5, 2024
Page 3

Upon receipt of the request, the CPS FOIA office consulted with the CPS Office of Student Health and Wellness and was advised that course materials provided by Lurie Children's Hospital of Chicago are not collected centrally in the regular course of business as Lurie Hospital works with individual CPS teachers and administrators at the school level to provide tailored instructional and support services as an educational vendor. Based on this information, the District denied this request under 5 ILCS 140/7(1)(j)(iv), which exempts from release course materials or research materials used by faculty members.

* * *

As the FOIA office was similarly advised, the requestor states in her associated writing that teachers, counselors and principals in Chicago Public Schools and other school districts directly utilize Lurie's services and materials to support and provide instruction to the students they serve every day. The plain language of 5 ILCS 140/7(1)(j)(iv) indicates that the legislature clearly intended that materials such as this were to be exempt from release under the Illinois Freedom of Information Act.^[3]

██████████ replied: "My response would be that public has a right to review all public education curriculum materials. The agency providing this sex ed curriculum is being paid by Chicago schools * * * and therefore should be subject to public review."⁴

Although ██████████ argued that a FOIA requester is entitled to receive all curriculum materials from public schools, the section 7(1)(j)(iv) exemption expressly exempts from disclosure "course materials" used in public schools. FOIA does not define "course materials," but the scope of ██████████ request for "links, presentations, slideshows, curriculum materials, videos, handouts, videos of presentations, and PDF's" used by CPS for education is coterminous with the plain meaning of the term. Although dictionaries do not define this compound term, the University of California's policy on "Ownership of Course Materials" provides an example of the common meaning in defining "course materials" as:

³Letter from Andrew Mason, Managing Freedom of Information Act Officer, Chicago Public Schools, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (September 29, 2023), at 1-2.

⁴E-mail from ██████████ to Joshua Jones (December 7, 2023).

██████████
Mr. Andrew Mason
January 5, 2024
Page 4

Materials prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to, digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.^{5]}

In matching this scope, ██████████ FOIA request thus sought to obtain only the kinds of records the section 7(1)(j)(iv) exemption serves to protect. The fact that CPS paid Lurie for the requested course materials does not negate or otherwise impact the applicability of the exemption; exempt records are often created using public funds. What matters is whether the records fall within the scope of a FOIA exemption, and these do. CPS' response to this office explained how Lurie works with individual teachers and administrators at the school level to develop customized instructional materials. This office's review of the sample responsive records that CPS provided for our confidential review confirmed that CPS withheld educational slideshows and other materials prepared for use in teaching. Under these circumstances, CPS sustained its burden of demonstrating that the responsive records are exempt from disclosure under section 7(1)(j)(iv).

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 (773) 590-7951 or joshua.jones@ilag.gov.

Very truly yours,

████████████████████
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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⁵University of California Policy, Ownership of Course Materials § II (effective September 25, 2003), <https://policy.ucop.edu/doc/2100004/CourseMaterials>.