



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 22, 2022

Via electronic mail



Via electronic mail

Mr. Dan W. Cox
Superintendent
Rochester CUSD No. 3A
4 Rocket Drive
Rochester, Illinois 62563
dcox@rochester3a.net

RE: FOIA Request for Review – 2022 PAC 73794

Dear [REDACTED] and Mr. Cox:

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)). For the reasons that follow, the Public Access Bureau concludes that the Rochester Community Unit School District 3A (School District) improperly withheld records responsive to [REDACTED] September 13, 2022, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the School District seeking records pertaining to the investigation of a complaint she filed related to her son's medical homebound instruction. Specifically, she sought copies of: (1) the formal grievance report, (2) the investigation materials, and (3) "information of what Rochester has documented with regard to providing academic and educational services to [her son] while on medical homebound."¹ On

¹E-mail from [REDACTED] to Dan Cox (September 13, 2022).

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September 20, 2022, the School District denied the first two parts of the request pursuant to section 7(1)(n) of FOIA² and asserted that it did not have records responsive to the third part.

On October 6, 2022, this office received ██████████ Request for Review contending that the 7(1)(n) exemption did not apply because she did not seek information concerning employee disciplinary issues but rather information about the investigation into and outcome of her complaint. ██████████ also contended that the School District should have information responsive to part three of her request. Specifically, she argued that the School District is required to keep track of when, where, and what instructional services were provided to her son in order to receive a reimbursement from the Illinois State Board of Education for the services.

On October 14, 2022, this office forwarded a copy of the Request for Review to the School District and asked it to provide copies of the withheld records, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemption; this office also asked for a description of its search related to part three of the request. On October 24, 2022, this office received the requested materials. On October 26, 2022, this office forwarded a copy of the School District's response to ██████████; she did not submit a written reply.

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 Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are 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 University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(n) of FOIA exempts from inspection and copying "[r]ecords relating to a public body's **adjudication** of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." (Emphasis added.) Black's Law Dictionary defines the word "adjudication" as "[t]he legal process of resolving a dispute; the process of judicially deciding a case." Black's Law Dictionary 47 (9th ed. 2009). Black's Law Dictionary further defines an "adjudication hearing" as an "[a]gency proceeding in which a person's rights and duties are decided after notice and an

²5 ILCS 140/7(1)(n) (West 2021 Supp.), as amended by Public Acts 102-791, effective May 13, 2022; 102-1055, effective June 10, 2022.

opportunity to be heard." Black's Law Dictionary 788 (9th ed. 2009). In *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶13, 7 N.E.3d 741, 745 (2014), the Illinois Appellate Court similarly construed an "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision."

In *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶¶14-16, 52 N.E.3d 711, 714 (2016), the Illinois Appellate Court distinguished between records that relate to investigations of complaints against employees and records that relate to the adjudication of employee discipline or grievances. In that case, the court explained: "A complaint or grievance is part of an investigatory process that is separate and distinct from a disciplinary adjudication [internal citation.] A complaint or grievance initiates an investigative process; any disciplinary adjudication that may take place as a result of the investigation comes later." *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶14, 52 N.E.3d at 714. The court held that records documenting investigations do not fall within the scope of section 7(1)(n) of FOIA. *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶¶14-16, 52 N.E.3d at 714. See also *Kalven*, 2014 IL App (1st) 121846, ¶13, 7 N.E.3d at 745 (scope of section 7(1)(n) is limited to records generated during an adjudication and does not encompass records of the underlying investigation).

In its response to this office, the School District asserted that it had interpreted [REDACTED] complaint as alleging misconduct against certain School District employees, specifically "that particular employees failed to provide homebound instruction to her son."³ Accordingly, the School District conducted an investigation into the allegations against the employees. The School District explained that the investigation determined that the complaint was unfounded, and thus no disciplinary actions were taken. The School District argued that "the underlying report and evidence" related to the complaint fell within the scope of section 7(1)(n) because it involved a grievance against its employees.⁴

Based on this office's review of the School District's response and withheld records, the records were not generated in connection with a formalized legal proceeding that could constitute an "adjudication" of an employee grievance or disciplinary case. The grievance report and accompanying materials reflect that the School District interviewed teachers, gathered information related to homebound instruction for [REDACTED] son, and documented the outcome of its findings in a report. Even if this investigation of the grievance could be construed as an investigation of an employee disciplinary case, records pertaining to the investigation are distinguishable from records of an adjudication. Written statements and other evidence gathered

³Letter from Dan W. Cox, Superintendent of Schools, Rochester Community Unit School District 3A, to Teresa Lim, Assistant Attorney General, Public Access Bureau (October 24, 2022).


⁴Letter from Dan W. Cox, Superintendent of Schools, Rochester Community Unit School District 3A, to Teresa Lim, Assistant Attorney General, Public Access Bureau (October 24, 2022).


during an investigation, as well as memoranda explaining the outcome of the investigation, generally do not fall within the scope of section 7(1)(n) because investigations and adjudications are separate processes. Ill. Att'y Gen. Pub. Acc. Op. No. 21-010, at 7-8, issued October 12, 2021 (records pertaining to alleged employee misconduct, including an incident report by complainant, response of the accused, and memoranda documenting results of investigation, not exempt under section 7(1)(n)). If the investigation had substantiated the complaint, it possibly could have led to an adjudication of an employee disciplinary case. Instead, the investigation concluded that the complaint was unfounded. Because these investigatory records precede any potential disciplinary adjudication, the School District improperly withheld the records responsive to parts 1 and 2 of the request pursuant to section 7(1)(n) of FOIA.

As noted above, part 3 of ██████████ sought "what Rochester has documented with regard to providing academic and educational services to [her son] while on medical homebound."⁵ ██████████ further stated: "I would like the specific day(s) and time(s) said academic instruction was provided, who provided it, where they provided it, and what subject matter and specific lesson content that was covered."⁶ 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 2020). However, "[a] request to inspect or copy must reasonably identify a public record and not general data, information, or statistics." *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App 4th 130427, ¶34, 8 N.E.3d 11, 19 (2014). Further, a public body is not required to answer questions or create new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989). Rather than reasonably describing records, ██████████ posed questions about when, where, and how her son received homebound instruction. The School District asserted it does not possess responsive records, and FOIA does not require it to compile the dates, instructors, and other specified details in response to the request. This office nonetheless notes that the records responsive to parts 1 and 2 contain information related to the provision of homebound instruction.

⁵E-mail from ██████████ to Dan Cox (September 13, 2022).

⁶E-mail from ██████████ to Dan Cox (September 13, 2022).


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In accordance with the conclusions expressed in this determination, this office requests that the School District provide  with copies of the records responsive to the first two parts of her request. 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 the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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