



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

June 21, 2024

Via electronic mail

Mr. Josiah A. Groff
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
jgroff@laboradvocates.com

Via electronic mail

Ms. Ana Diaz
Freedom of Information Act Officer
Chicago Public Schools
1 North Dearborn Street, 9th Floor
Chicago, Illinois 60602
apdiaz2@cps.edu

RE: FOIA Request for Review – 2023 PAC 77963; CPS no. N013898-070623

Dear Mr. Groff and Ms. Diaz:

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), as amended by Public Act 103-069, effective January 1, 2024). For the reasons stated below, the Public Access Counselor concludes that Chicago Public Schools (CPS) improperly withheld certain e-mails responsive to Mr. Josiah A. Groff's July 6, 2023, FOIA request.

On that date, Mr. Groff submitted a FOIA request to CPS seeking copies of:

All written communications about the level of compensation received or to be received by your employee Elba M. Iniguez for her work as an Instructional Support Leader,

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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including emails on that subject matter sent to or from the email addresses EMIniguez@cps.edu and [REDACTED]^[1]

On August 3, 2023, CPS responded by providing a copy of an offer letter, but redacted discrete information pursuant to sections 7(1)(b) and 7(1)(c) of FOIA, and withheld certain communications pursuant to 7(1)(f) of FOIA.² On August 30, 2023, Mr. Groff submitted this Request for Review contesting the partial denial of his request. He argued that section 7(1)(f) cannot apply to communications with Ms. Iniguez before she was hired.

On September 5, 2023, the Public Access Bureau forwarded a copy of the Request for Review to CPS and requested unredacted copies of any withheld records for this office's confidential review, together with a detailed explanation of the legal and factual bases for withholding them. On November 3, 2023, CPS provided those materials, additionally citing section 7(1)(n) of FOIA.³ On November 15, 2023, Mr. Groff replied to that response. He stated: "The FOIA request does not seek correspondences related to deliberations by management, rather it requests discussions between a member of management and a prospective employee."⁴ Thus, although Mr. Groff's FOIA request was not limited to communications between CPS and Ms. Iniguez, he narrowed the scope of this Request for Review to such communications.

DETERMINATION

Under FOIA, all public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Department 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 2022).

Section 7(1)(f) exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The purpose of section 7(1)(f) is to allow government officials to fully and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*,

¹FOIA portal message from Josiah A. Groff to Chicago Public Schools (July 6, 2023).

²5 ILCS 140/7(1)(b), (1)(c), (1)(f) (West 2022), as amended by Public Act 103-154, effective June 30, 2023.

³5 ILCS 140/7(1)(n) (West 2022), as amended by Public Act 103-154, effective June 30, 2023.

⁴Letter from Josiah A. Groff to Joshua M. Jones, Deputy Bureau Chief (November 15, 2023), at 1-2.

344 Ill. App. 3d 242, 248 (2003). "[I]n order to be exempt under this provision, the responsive materials must be both (1) inter or intra agency and (2) predecisional and deliberative." *Fisher v. Office of Illinois Attorney General*, 2021 IL App (1st) 200225, ¶ 19.

In response to Mr. Groff's Request for Review, CPS defended its partial denial under section 7(1)(f) of FOIA. CPS stated that "pre-decisional content in which opinions are expressed, drafts are shared, and decision-making is occurring were withheld in accordance with section 7(1)(f) of the FOIA."⁵ CPS described the withheld records as follows:

The responsive emails reflect communications between the CPS Office of Diverse Learner Supports and Services and the CPS Talent Office and Ms. Iniguez, in which employees provide their opinions and engage in open and frank discussion in order to appropriately determine how to respond to a request concerning a salary matter. Those emails contain pre-decisional content, expression of opinions, and comments designed to formulate a response and are therefore exempt from disclosure.^[6]

CPS also denied Mr. Groff's allegation that Ms. Iniguez was not employed by CPS at the time of the communications, stating that she "was using her District-provided email address in addition to a personal email address to discuss these matters."⁷

In his reply, Mr. Groff argued that "[t]he fact that Iniguez was employed by CPS at the time the correspondences occurred may meet the standard of an 'intra-agency' communication. But that does not automatically render the communications exempt. The communications must *also* be pre-decisional or deliberative." (Emphasis in original.)⁸ Mr. Groff contended:

It is our understanding that an individual seeking an employee transfer does not possess the power to set the terms under which they are negotiating. Therefore, we suspect that the requested emails do not address the development of an internal policy or

⁵Letter from Ana Diaz, Freedom of Information Act Officer, Chicago Public School[s], to Joshua M. Jones, Deputy Bureau Chief (November 3, 2023), at [1].

⁶Letter from Ana Diaz, Freedom of Information Act Officer, Chicago Public School[s], to Joshua M. Jones, Deputy Bureau Chief (November 3, 2023), at [1-2].

⁷Letter from Ana Diaz, Freedom of Information Act Officer, Chicago Public School[s], to Joshua M. Jones, Deputy Bureau Chief (November 3, 2023), at [2].

⁸Letter from Josiah A. Groff to Joshua M. Jones, Deputy Bureau Chief (November 15, 2023), at 1.

intra-agency deliberations as to salary policies at CPS writ large. Rather, we are requesting factual exchanges related to where an individual's salary will fall within an already existing policy, not exchanges among hiring personnel about the development of various salary thresholds.^[9]

This office's review of the withheld communications between Ms. Iniguez and CPS administrators confirmed that although they are predecisional in nature, they are not deliberative. "In order to qualify for the deliberative process exemption, a document must be * * * deliberative in the sense that it is actually related to the process by which policies are formulated." *Chicago Tribune Co. v. Cook County Assessor's Office*, 2018 IL App (1st) 170455, ¶ 28. The communications with Ms. Iniguez contrast with the communications among CPS administrators that CPS provided for this office's confidential review, as the communications among CPS administrators clearly evince deliberations in which opinions are expressed and policies or actions are formulated. The administrators are engaged in a decision-making process with each other in those e-mails, *about* Ms. Iniguez. Section 7(1)(f) protects their ability to fully and frankly discuss salary matters among themselves in order to arrive at the best possible outcomes for the public without fear of outside interference. Yet, Mr. Groff is not interested in such e-mails. Rather, he seeks the e-mails between Ms. Iniguez and CPS administrators, in which Ms. Iniguez is not part of the decision-making process. Because disclosure of the e-mails between Ms. Iniguez and CPS administrators would not expose the administrators' deliberative discussions related to her salary, this office concludes that CPS improperly denied the communications pursuant to section 7(1)(f) of FOIA.

Section 7(1)(n) of FOIA

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.) In section 7(1)(n), "the phrase 'relating to' must be read narrowly and in light of FOIA's purpose to generally provide open access to public records." *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 13. In *Peoria Journal Star*, the Illinois Appellate Court concluded that a report of an employee grievance was not exempt from disclosure under section 7(1)(n) because it "was created well before any adjudication took place and existed independent of any adjudication." *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶ 16.

In its answer to this office, CPS asserted that section 7(1)(n) exempts the communications with Ms. Iniguez because:

⁹Letter from Josiah A. Groff to Joshua M. Jones, Deputy Bureau Chief (November 15, 2023), at 2.

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[T]he records being sought are related to the adjudication of a grievance submitted by another employee. This employee, who is currently employed in a similar position, filed a grievance alleging that she was being unfairly paid less * * *. Iniguez's communications about her compensation are directly connected to the pending grievance. As such, the emails requested by Mr. Groff (who, it should be respectfully noted, is routinely retained by the Chicago Teachers Union to pursue employee grievance matters filed by its members) are exempt from disclosure pursuant to [section 7(1)(n)].^[10]

In reply, Mr. Groff argued that this matter is analogous to *Peoria Journal Star* because the e-mails between Ms. Iniguez and the administrators predated the grievance to which CPS refers and exist independently of any adjudication of that grievance. This office agrees. The communications between Ms. Iniguez and the CPS administrators precede and exist without regard to the grievance materials CPS supplied to this office. Construing the phrase "relating to" narrowly, CPS did not demonstrate that the later, separate grievance retroactively made Ms. Iniguez's communications exempt under section 7(1)(n).

To remedy its improper denial, this office asks CPS to provide Mr. Groff with copies of the responsive communications between Ms. Iniguez and CPS administrators.

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, please contact me at joshua.jones@ilag.gov or (773) 590-7951.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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¹⁰Letter from Ana Diaz, Freedom of Information Act Officer, Chicago Public School[s], to Joshua M. Jones, Deputy Bureau Chief (November 3, 2023), at [2].