



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

December 11, 2012

**PUBLIC ACCESS OPINION 12-014  
(Request for Review 2012 PAC 21157)**

FREEDOM OF INFORMATION ACT:  
Disclosure of Student Test Scores and  
the Illinois School Student Records Act

Ms. Kim Barker  
10849 Chaucer Drive  
Willow Springs, Illinois 60480

Ms. Catherine Chang  
Freedom of Information Officer  
Pleasantdale School District 107  
Administrative Office  
7450 South Wolf Road  
Burr Ridge, Illinois 60527

Dear Ms. Barker and Ms. Chang:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 120/9.5(f) (West 2011 Supp.)). For the reasons that follow, this office concludes that Pleasantdale School District 107 (School District) violated section 3 of FOIA (5 ILCS 140/3 (West 2010)) by failing to disclose certain de-identified student test scores to Ms. Barker.

**BACKGROUND**

**Prior Related FOIA Request**

On February 13, 2012, Ms. Kim Barker requested various records from the School District, including "[r]aw data for the current 4th graders' Math scores on the 2011 Fall

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ITBS [Illinois Test of Basic Skills] by student (names redacted)."<sup>1</sup> She also requested that the School District "color code the list by Pleasantdale placement level for each child."<sup>2</sup> On February 29, 2012, the School District denied that portion of the request, asserting that the record containing these scores is exempt from disclosure pursuant to section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2011 Supp.)), which exempts "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act [105 ILCS 10/1 *et seq.* (West 2010)]." On March 1, 2012, Ms. Barker submitted a Request for Review to the Public Access Counselor disputing the denial of her request.

On July 31, 2012, the Public Access Bureau issued a non-binding determination which concluded that because section 7.5(r) of FOIA and the Illinois School Student Records Act (SSRA) exempt from disclosure only information that is identifiable to individual students, the School District improperly denied Ms. Barker's request for de-identified test score data. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18734, issued July 31, 2012. The determination stated that the "District must re-order the scores, redact the student names and any other identifying information, and release the scores to Ms. Barker[.]" but did not direct the School District to color code the list of scores. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18734 at 3. The School District, however, did not comply with that determination.

### **Second FOIA Request**

On August 3, 2012, Ms. Barker submitted a second FOIA request to the School District seeking "[r]aw data for the current 4th graders' Math scores on the 2011 Fall ITBS - by student (names redacted). \* \* \* Please color code the list by Pleasantdale placement level for each child. \* \* \* In an excel or word document would be fine."<sup>3</sup> On August 16, 2012, the School District denied that request by asserting that re-ordering the test scores would require the School District to create a new record. The School District's denial letter also stated that "the report format of DataManager provided by Riverside Publishing does not have the flexibility of re-ordering names to protect student confidentiality as required under the [SSRA]."<sup>4</sup> On August

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<sup>1</sup>FOIA request submitted by Kim Barker to Pleasantdale School District 107 (February 13, 2012) (Request for Review 2012 PAC 18734).

<sup>2</sup>FOIA request submitted by Kim Barker to Pleasantdale School District 107 (February 13, 2012) (Request for Review 2012 PAC 18734).

<sup>3</sup>E-mail from Kim Barker to Mark Fredisdorf, Superintendent, and Catherine Chang, Freedom of Information Officer, Pleasantdale School District 107 (August 3, 2012).

<sup>4</sup>Letter from Catherine Chang, Freedom of Information Officer, Pleasantdale School District 107 to Kim Barker (August 16, 2012).

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28, 2012, Ms. Barker submitted a Request for Review to the Public Access Counselor disputing the denial of her second FOIA request.

On September 10, 2012, the Public Access Bureau forwarded a copy of the Request for Review to the School District and requested a written explanation of its basis for denying Ms. Barker's August 3, 2012, FOIA request:

We are unclear as to the meaning of the School District's statement "the report format of DataManager provided by Riverside Publishing does not have the flexibility of re-ordering names to protect student confidentiality as required under the [SSRA]." Please explain that statement and identify the format in which these records are furnished to the School District. Please also provide a detailed written explanation to support the assertion that complying with our prior determination would require the creation of a new record, *taking into account that our prior determination did not direct the School District to color code the list of test scores*. In addition, please provide a written explanation for the assertion that providing test scores with the names of students redacted and scrambled would violate the confidentiality provisions of the School Student Records Act[.]<sup>5</sup> (Emphasis in original.)

On September 24, 2012, the School District responded to the Public Access Bureau by stating that its only option for accessing the test score data is to run a report through the test score reporting service to which it subscribes. The reporting service automatically generates a report that lists the scores by student name in alphabetical order. Because there are only 80 students to which the request is applicable, the School District maintains that redacting the names of the students from the report would not protect their identity because anyone with access to a class roster could determine each student's test score based on the order in which it is listed. Further, the School District stated that the format in which the reporting service provides the test scores does not permit the School District to scramble test scores: "To get a hardcopy printout of the list, the option is to click on 'Print.' There is no option to export the list to another program, such as Excel, to enable the District to re-order the names."<sup>6</sup> The School District

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<sup>5</sup>Letter from Steve Silverman, Assistant Attorney General, Public Access Bureau, to Catherine Chang, Freedom of Information Officer, Pleasantdale School District 107 (September 10, 2012).

<sup>6</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP (Attorney for Pleasantdale School District 107), to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

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included with its response a written statement from an employee of the test score reporting service stating that "for security and data integrity purposes, subscribers are unable to change scores, student demographic information or otherwise manipulate documents that list student scores."<sup>7</sup> Based on those limitations, the School District asserted that it is unable to provide masked, scrambled test scores without printing a paper copy of the report, redacting the names, cutting the scores into strips of paper, arranging the strips in random order, and either furnishing those strips or copies of the strips to the requester;<sup>8</sup> the School District asserted that this would require it to create a new record, which it is not obligated to do.

With respect to SSRA, the School District asserted that section 7.5(r) of FOIA provides a "*per se* exemption for student records information[.]"<sup>9</sup> However, the School District's response also states:

We do not believe disclosing scrambled and redacted student information violates [SSRA], and we have never asserted that it would. The issue is not whether scrambled and redacted records can be disclosed. The issue is whether a public body is obligated to scramble records in the first place, particularly when it is unable to scramble the data without creating a new record. Under these circumstances, we do not believe such an obligation exists.<sup>10</sup>

In her reply dated October 3, 2012, Ms. Barker stated that she would find it acceptable if the School District would print the report, redact the students' names, cut the scores into strips of paper, mix them up, and send them to her in an envelope.<sup>11</sup>

On October 24, 2012, this office properly extended the time to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.

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<sup>7</sup>Statement of Catherine Lawrence, Assessment Consultant, Riverside Publishing Company (undated).

<sup>8</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>9</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>10</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>11</sup>E-mail from Kim Barker to Steve Silverman, Assistant Attorney General, Public Access Bureau (October 3, 2012).

## ANALYSIS

All public records in the possession or custody of a public body are presumed to be open to inspection and copying. 5 ILCS 140/1.2 (West 2010). Section 3 of FOIA provides, in pertinent part:

(a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. \* \* \*

(b) Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

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 2010).

### Possession of Responsive Records

The School District asserts that it does not possess responsive records because it would have to create a new record in order to comply with Ms. Barker's request. The requirements of FOIA apply to public records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2011 Supp.). A public body is not required to compile data that it "*does not ordinarily*" maintain or to answer questions in response to FOIA requests. (Emphasis added.) *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).

The Public Access Bureau has previously reviewed and rejected the School District's arguments. With respect to Ms. Barker's first FOIA request for the records at issue here, the Public Access Bureau applied the reasoning of the Illinois Supreme Court's decision in *Bowie v. Evanston Community Consolidated School Dist. No. 65*, 128 Ill. 2d 373 (1989), in concluding that the School District does possess responsive records which are subject to disclosure after appropriately redacting identifying information. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18734, issued July 31, 2012. In *Bowie*, the school district asserted, among other things, that it should not be required to produce several years of test score data information in a masked and scrambled format because "to produce the information [in a de-identified format] would require it to 'create a new, non-exempt record from an otherwise exempt record.'" *Bowie*, 128 Ill. 2d at

377-78. The court disagreed, holding that neither deleting exempt portions of a record nor scrambling information in a record constitutes the creation of a new record. *Bowie*, 128 Ill. 2d at 382.

In response to the Public Access Bureau, the School District argues that *Bowie* is factually distinguishable because "the holding clearly is premised on the assumption that the District had a means of redacting and scrambling" the records whereas the test scores at issue here are maintained in an electronic format which cannot be manipulated by the School District.<sup>12</sup> *Bowie* does not specifically state whether the records were maintained in electronic or paper format, nor does the Court's opinion discuss the mechanics involved in deleting and/or scrambling the requested data.<sup>13</sup> If the requested data in *Bowie* was not in electronic format, then the Evanston School District would have been faced with redacting identifying information and scrambling a paper record, just as the School District here claims to be.

The School District states that jurisdictions are split on the issue of whether a public body is required to scramble and re-order data, and that "we are not aware of any case or opinion that requires a public body to scramble data when the public body has no way of manipulating the data."<sup>14</sup> However, the School District acknowledged that it can de-identify the test scores by printing a paper copy of the report, redacting the names, cutting the test scores into strips of paper, and scrambling the strips. Further, the only case cited by the School District in support of its assertion that a public body is not required to provide scrambled data to comply

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<sup>12</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>13</sup>In his dissenting opinion, however, Justice Miller stated as follows:

[FOIA] simply does not differentiate between records stored in computers and those maintained manually.

\* \* \*

Nor am I convinced that such a distinction would be advisable. The recognition of a greater duty to modify exempt information that is stored in computers than that which is stored manually would essentially mean that public records maintained by computers would be subject to broader disclosure requirements than manually kept records. Thus a distinction between computer and manually maintained records may create an incentive in public bodies to record certain types of information in computer form and other types in manual form depending on how desirable its disclosure to the public may be perceived. I do not believe that such incentives are in the public interest. *Bowie*, 128 Ill. 2d at 387.

<sup>14</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

with FOIA (*Sargent School Dist. RE-33J v. Western Services, Inc.*, 751 P.2d 56, 61 (Colo. 1988)) is not applicable here because unlike Illinois' law, Colorado's Open Records Act does not require a public body to redact exempt portions of records and disclose the remainder. *Bowie*, 128 Ill. 2d at 383. In contrast, section 7 of FOIA (5 ILCS 140/7 (West 2011 Supp.)), as amended by Public Acts 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012; 97-847, effective September 22, 2012) expressly provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." (Emphasis added.) Noting that distinction, the *Bowie* court characterized *Sargent* as "inapposite." *Bowie*, 128 Ill. 2d at 383.

Further, both Illinois and federal courts have rejected claims that a public body creates a new record when it compiles information in its possession in a new format to make the information available for inspection and copying. In *Hamer v. Lentz*, 132 Ill. 2d 49, 56 (1989), the Illinois Supreme Court considered whether a public body was required to create a computer program to generate a hardcopy of information which it possessed only on computer tape, and concluded that it was required to do so. "In sum, the \* \* \* information is maintained by defendants in the ordinary course of business, is nonexempt, and thus must be disclosed. Disclosure of the information in no way involves the creation of a new record." *Lentz*, 132 Ill. 2d at 57; see also *Family Life League v. Dept. of Public Aid*, 112 Ill. 2d 449, 459 (1986) (the need to create a computer program to redact confidential information from records in the possession of a public body does not constitute the creation of a new record).

A similar conclusion was reached by the court in *Disabled Officer's Ass'n v. Rumsfeld*, 428 F. Supp. 454, 455 (D.D.C. 1977). In *Rumsfeld*, the United States Department of Defense asserted that it did not possess a record responsive to a request for the names and addresses of retired service members with disabilities because a single list containing that information did not exist. The Department of Defense contended that "FOIA applies only to documents in existence and that the FOIA cannot be used by the plaintiff to force defendants to compile a record." *Rumsfeld*, 428 F. Supp. at 455. In support of that position, the Department cited *Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 95 S. Ct. 1491 (1975). In that case, the United States Supreme Court held that FOIA did not require a public body to write final opinions in order to respond to a request for final opinions which the public body did not possess. *Renegotiation Board*, 421 U.S. at 191, 95 S. Ct. at 1504. The *Rumsfeld* court, however, held that ruling was inapplicable because the Department of Defense possessed the requested names and addresses, albeit not in a single cohesive document:

Plaintiff is not attempting to use the FOIA to force defendants to create a record which they do not already have, and its request is one for an existing record within the meaning of the Act. If the Department of Defense did not maintain records on retired disabled officers, then plaintiff's request could be seen as an attempt to compel defendants to compile information they do not possess and *Renegotiation Board v. Grumman Aircraft Engineering Corp.*, *supra*, would have more applicability to this case. However, defendants have stated that the Department of Defense has personnel and financial records pertaining to retired disabled officers, and plaintiff is only requesting them to disclose a limited portion of, or amount of information from these files, the names and addresses of the retired disabled officers. The fact that defendants may have to search numerous records to comply with the request and that *the net result of complying with the request will be a document the agency did not previously possess is not unusual in FOIA cases nor does this preclude the applicability of the Act.* (Emphasis added.) *Rumsfeld*, 428 F. Supp. at 456.

Similarly, in this matter the facts are undisputed that the School District possesses the requested test scores and has various options available for scrambling and de-identifying them. For example, as the School District acknowledged, it could print a copy of the report, redact the names, and provide the scores on strips of paper in random order. Ms. Barker has confirmed that she would be satisfied with such a response. The School District also could input the test scores in random order in an electronic format and provide an electronic or paper copy of the redacted scores to Ms. Barker. Accordingly, we conclude that the School District does possess records responsive to Ms. Barker's request which must be disclosed unless those records are otherwise exempt from disclosure under section 7 of FOIA.

#### **Section 7.5(r) of FOIA**

The School District next contends that the requested test score data is *per se* exempt from disclosure under section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2011 Supp.)), which exempts "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act [105 ILCS 10/1 *et seq.* (West 2010)]." Section 6 of the SSRA generally prohibits disclosure of "school student records," except as permitted under that section. 105 ILCS 10/6 (West 2010). The SSRA, however, defines a "school student record" to mean "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." (Emphasis added.) 105 ILCS 10/2(d) (West 2010).

Thus, if information identifying a student or students is removed from a record, the record is no longer a "school student record" which is prohibited from disclosure by the SSRA.

The School District bases its argument that the information is *per se* exempt under 7.5(r) of FOIA and the SSRA on *Chicago Tribune Co. v. Board of Education of the City of Chicago*, 332 Ill. App. 3d 60 (1<sup>st</sup> Dist. 2002). The School District's reliance on this case is misplaced. In *Chicago Tribune Co.*, the City of Chicago Board of Education denied a newspaper reporter's request seeking standardized test scores and various other records concerning more than 1 million students. *Chicago Tribune Co.*, 332 Ill. App. 3d at 62. The Board asserted, among other things, that the records were *per se* exempt under then section 7(1)(b)(i) of FOIA (5 ILCS 140/7(1)(b)(i) (West 1998)), which exempted from disclosure:

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. \* \* \* Information exempted under this subsection (b) shall include[,] but is not limited to:

(i) files and personal information maintained with respect to \* \* \* students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies. *Chicago Tribune Co.*, 332 Ill. App. 3d at 65.

The version of section 7(1)(b) of FOIA in effect at the time of this decision contained several "*per se*" exemptions allowing a public body to withhold specific categories of documents from disclosure without a specific showing that the subject's right to privacy outweighed the public interest in disclosure. *Chicago Tribune Co.*, 332 Ill. App. 3d at 65. In finding that records in student files were *per se* exempt under section 7(1)(b)(i), the court emphasized that the "clear and plain wording of the exemption does not contain any language with respect to identification of individuals in order to invoke the exemption." *Chicago Tribune Co.*, 332 Ill. App. 3d at 67. The court also found that *Bowie* had no relevance to its analysis of section 7(1)(b)(i) in that case because the *Bowie* court did not construe that exemption. *Chicago Tribune Co.*, 332 Ill. App. 3d at 67-68. Because the requested records were contained in student files and the scope of section 7(1)(b)(i) was not limited to records that identify individual students, the court concluded that the records were exempt from disclosure under section 7(1)(b)(i) of FOIA regardless of whether the identities of individual students could be gleaned from the information. *Chicago Tribune Co.*, 332 Ill. App. 3d at 67-69.

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The School District acknowledges that the General Assembly deleted the language of the exemption construed in *Chicago Tribune* in Public Act 96-542, effective January 1, 2010, but asserts that "FOIA retains a *per se* exemption for student record information (exemption 7.5(r))."<sup>15</sup> The School District does not explain how its assertion that student record information is *per se* exempt under FOIA is consistent with language of the SSRA which prohibits from disclosure only "individually identifying" records. In addition, the School District's argument that section 7.5(r) of FOIA contains a *per se* exemption for records prohibited from disclosure by the SSRA is contradicted by its statement that "[w]e do not believe disclosing scrambled and redacted information violates [SSRA], and we have never asserted that it would."<sup>16</sup>

Section 7.5(r) of FOIA is applicable only to "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act." In *Bowie*, the Supreme Court held that a "masked record, which deletes individual identifying information, does not fall within the definition of a school student record, and is not prohibited from disclosure under the Act." *Bowie*, 128 Ill.2d at 379. The School District has not claimed that it cannot de-identify students in the requested records, only that it should not be required to do so. If, for example, there were so few students in a school or a class that de-identifying individual students in a FOIA response would be impossible, those facts might lead to a different conclusion under SSRA. Here, however, the de-identified test score data sought by Ms. Barker would not identify any individual student. Accordingly, this information is not exempt from disclosure under section 7.5(r) of FOIA.

### **Unduly Burdensome**

Lastly, we address the School District's argument that interpreting FOIA to require public bodies to compile and disclose information from records possessed in a format which cannot be redacted or scrambled would place undue burdens on school districts:

Such a decision would require public employees to spend considerable time re-typing reports, creating new charts, and physically cutting and pasting exempt documents together to make them non-exempt. Consider, moreover, the impact on school districts much larger than Pleasantdale (such as the Chicago Public

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<sup>15</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>16</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

Schools) that might be required to create a new test score report for thousands of students. Even if these tasks could be done, either physically or electronically, it would be a considerable waste of public employees' time and taxpayers' money.<sup>17</sup>

The School District did not timely assert that Ms. Barker's request was unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2010)), nor did it provide an opportunity for Ms. Barker to narrow her request, as is required by that section.<sup>18</sup> Accordingly, this issue has been waived by the School District.

### FINDINGS AND CONCLUSIONS

1) On August 3, 2012, Ms. Barker submitted a FOIA request to Pleasantdale School District 107 seeking math scores from the Fall 2011 Illinois Test of Basic Skills in electronic format for fourth grade students, with the names of those students redacted.

2) On August 16, 2012, the School District denied that request by asserting that re-ordering the test scores would require the School District to create a new record and stating that it was unable to order masked, scrambled test scores to protect the identity of individual students as required by the Illinois School Student Records Act.

3) On August 28, 2012, the Public Access Counselor received Ms. Barker's Request for Review of the denial of her FOIA request. Ms. Barker's Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2011 Supp.)). Therefore, the Attorney General may properly issue a binding opinion with respect to the disclosure of the requested records.

4) On September 10, 2012, the Public Access Bureau determined that further action was warranted and issued a letter to the School District requesting that it provide a written explanation for the assertion that it does not possess records responsive to Ms. Barker's request.

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<sup>17</sup>Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Steve Silverman, Assistant Attorney General, Public Access Bureau (September 24, 2012).

<sup>18</sup>Section 3(g) of FOIA provides that "[r]equests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions."

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5) On September 24, 2012, the School District responded to the Public Access Bureau by stating that the test reporting service to which it subscribes provides the test scores for the 80 fourth grade students in alphabetical order in a format which cannot be exported to another format or printed in random order. Therefore, the School District stated that its only option for providing masked, scrambled test scores would be to redact the students' names, cut the scores into strips of paper, arrange the strips in random order, and either furnish those strips or copies of the strips to Ms. Barker; the School District asserted that doing so would constitute the creation of a new record.

6) On October 3, 2012, Ms. Barker stated that the School District would satisfy her FOIA request by providing strips of paper containing de-identified test scores in random order.

7) Because the facts are undisputed that the School District possesses the test score data, the School District possesses records responsive to Ms. Barker's request even if those records must be redacted and scrambled or put in another format to protect the identity of individual students as required by the Illinois School Student Records Act.

8) The School District has not demonstrated by clear and convincing evidence that de-identified student test scores are exempt from disclosure under section 7.5(r) of FOIA.

Therefore, it is the opinion of the Attorney General that the School District violated FOIA by improperly denying Ms. Barker's August 3, 2012, FOIA request for copies of de-identified 2011 Fall ITBS test score data for fourth grade students' math scores. Accordingly, the School District is directed to take immediate and appropriate action to comply with this opinion by furnishing Ms. Barker with copies in the electronic format specified in her FOIA request or, alternatively, by providing Ms. Barker with paper copies which she has agreed to accept. Under section 9.5(f) of FOIA, the Department shall either take necessary action immediately to comply with this binding opinion or shall initiate administrative review under section 11.5 of FOIA (5 ILCS 140/11.5 (West 2010)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35

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days of the date of this decision naming the Attorney General of Illinois and Ms. Kim Barker as defendants. *See* 5 ILCS 140/11.5 (West 2010).

Very truly yours,

LISA MADIGAN  
ATTORNEY GENERAL

By:



Michael J. Luke  
Counsel to the Attorney General

cc: *Via electronic mail*  
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