



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

August 24, 2018

**PUBLIC ACCESS OPINION 18-010
(Request for Review 2018 PAC 53172)**

**FREEDOM OF INFORMATION ACT:
Disclosure of General Allegations Against
Public Body in a Settlement Agreement**

Ms. Valerie Gardner
UniServ Director – Region 56
Illinois Education Association – IEA-NEA
4747 Lincoln Mall Drive, Suite 501
Matteson, Illinois 60443

Mr. Brian K. O'Keeffe
Assistant Superintendent of Finance
Arbor Park School District No. 145
17301 Central Avenue
Oak Forest, Illinois 60452-4920

Dear Ms. Gardner and Mr. O'Keeffe:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that Arbor Park School District No. 145 (District) violated the requirements of FOIA by improperly redacting the nature of the claims giving rise to the settlement agreement responsive to Ms. Valerie Gardner's April 13, 2018, FOIA request.

BACKGROUND

On April 13, 2018, Ms. Gardner, on behalf of the Illinois Education Association-NEA (Association), submitted a FOIA request to the District seeking "copies of records that pertain to the settlement agreement between [the] * * * District * * * and Mr. Ronald

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Murabito[,]"¹ a former principal in the District. On April 17, 2018, the District provided her with a redacted copy of the settlement agreement, but did not specify the exemption in section 7 of FOIA (5 ILCS 140/7 (West 2017 Supp.)) claimed to authorize the redactions or provide the other information required by section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).² On April 23, 2018, in response to an e-mail from Ms. Gardner asking why the redacted information was not disclosed,³ the District stated that "[i]nformation in the provided record was redacted because it constitutes personal information in which disclosure would constitute a clearly unwarranted invasion of personal privacy, which is exempt from inspection under Section 7(1)(c) of FOIA [5 ILCS 140/7(1)(c) (West 2017 Supp.)]."⁴ The District also notified Ms. Gardner of her right to have its decision reviewed in accordance with section 9(a) of FOIA.⁵

On May 15, 2018, this office received via e-mail Ms. Gardner's letter dated April 27, 2018, requesting review of the District's partial denial of her request.⁶ Specifically, she alleged that the District: (1) failed to timely assert the exemption under which the records were exempt from disclosure and failed to provide information to her regarding her right to appeal; and (2) did not assert a genuine basis for the unwanted invasion of privacy exemption of section 7(1)(c) when balancing the interests of the parties, because under section 2.20 of FOIA (5 ILCS 140/2.20 (West 2016)) all settlement agreements are subject to inspection and copying, unless an exemption applies. On May 22, 2018, the Public Access Bureau sent a copy of the Request for Review to the District and asked it to provide an unredacted copy of the settlement agreement for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of section 7(1)(c).⁷

¹Letter from Valerie Gardner, UniServ Director, IEA/NEA Region 56, to Brian O'Keefe, Assistant Superintendent of Finance/CSBO, Arbor Park School District 145 (April 13, 2018).

²Letter from Brian K. O'Keeffe, Assistant Superintendent of Finance/CSBO, Arbor Park School District 145, to Valerie Gardner, UniServ Director, IEA/NEA Region 56 (April 17, 2018).

³E-mail from Valerie Gardner to Brian O'Keeffe (April 19, 2018).

⁴Letter from Brian K. O'Keeffe, Assistant Superintendent of Finance/CSBO, FOIA Officer, Arbor Park School District 145, to Valerie Gardner, UniServ Director, IEA/NEA (April 23, 2018).

⁵Letter from Brian K. O'Keefe, Assistant Superintendent of Finance/CSBO, FOIA Officer, Arbor Park School District 145, to Valerie Gardner, UniServ Director, IEA/NEA Region 56 (April 23, 2018).

⁶Letter from Valerie Gardner, Illinois Education Association, IEA-NEA, Matteson Office, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 27, 2018).

⁷Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Brian K. O'Keeffe, Assistant Superintendent of Finance, Arbor Park School District No. 145 (May 22, 2018).

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On June 5, 2018, legal counsel for the District provided this office with the requested materials.⁸ On June 6, 2018, the Public Access Bureau forwarded a redacted copy of the District's response⁹ to Ms. Gardner for comment.¹⁰ She did not reply.

On July 11, 2018, this office properly extended the time within which to issue a binding opinion by 30 business days, to August 24, 2018, pursuant to section 9.5(f) of FOIA.¹¹

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). "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 3(a) of FOIA (5 ILCS 140/3(a) (West 2016)) further provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure contained in section 7 of FOIA are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 2.20 of FOIA

In her Request for Review, Ms. Gardner argued that the redacted information is subject to disclosure pursuant to section 2.20 of FOIA (5 ILCS 140/2.20 (West 2016)), which provides that "[a]ll settlement and severance agreements entered into by or on behalf of a public

⁸Letter from Cynthia M. Baasten, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (June 5, 2018).

⁹*See* 5 ILCS 140/9.5(d) (West 2016) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."). The District provided this office with a redacted copy of its response for forwarding to the requester.

¹⁰Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Valerie Gardner, UniServ Director – Region 56, Illinois Education Association – IEA-NEA (June 6, 2018).

¹¹Letter from Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Valerie Gardner, UniServ Director – Region 56, Illinois Education Association – IEA-NEA, Brian K. O'Keeffe, Assistant Superintendent of Finance, Arbor Park School District No. 145, and Cynthia M. Baasten, Engler Callaway Baasten & Sraga, LLC (July 11, 2018).

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body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted."¹² By enacting section 2.20, the General Assembly clearly intended to require the disclosure of settlement agreements subject only to the redaction of discrete information within the scope of the narrowly construed exemptions in section 7 of FOIA. If a public body could redact from a settlement agreement all information regarding the nature of the claims being settled, then disclosure of the redacted document would provide little insight into the conduct of government. With that in mind, this office will analyze whether the District has demonstrated by clear and convincing evidence that the information redacted from the settlement agreement is exempt from disclosure.

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as:

[T]he disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. *The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.* (Emphasis added.)

By using the qualifying language "*clearly unwarranted invasion of personal privacy*," the General Assembly required a "stricter standard to claim exemption" which the public body possessing the records bears the burden of sustaining. (Emphasis in original.) *Schessler v. Department of Conservation*, 256 Ill. App. 3d 198, 202 (4th Dist. 1994). A public body's assertion that the release of information would constitute a clearly unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Department of Public Health*, 327 Ill. App. 3d 192, 196 (1st Dist. 2001). As cited by both the District and the Ms. Gardner, Illinois courts consider the following four factors in determining whether the disclosure of information would constitute a clearly unwarranted invasion of personal privacy: "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative

¹²Letter from Valerie Gardner, Illinois Education Association, IEA-NEA, Matteson Office, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 27, 2018), at 2.

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means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

Before applying this balancing test, however, a public body must first demonstrate that the withheld information is highly personal or that its disclosure would be objectionable to a reasonable person. See *Lieber v. Southern Illinois University*, 279 Ill. App. 3d 553, 563 (5th Dist. 1996), *aff'd on other grounds*, 176 Ill. 2d 401 (1997) (because public body did not set forth a "sufficiently detailed factual basis to meet its threshold requirement of showing that disclosure would constitute an unwarranted invasion of personal privacy," it was unnecessary to consider the requester's interest in seeking the information).

Based on this office's review of an unredacted copy of the settlement agreement, the withheld portion of one of the agreement's recital clauses describes the nature of Mr. Murabito's allegations against the Board only in broad, general terms. The redacted information does not provide any details of the circumstances or events giving rise to Mr. Murabito's allegations, nor does it name any individuals or describe any specific conduct that could form the basis of the allegations. Similarly, the two redacted paragraphs on page 3 of the settlement agreement list very generally the types of claims and causes of action that Mr. Murabito could potentially have brought against the Board, as is typical in such agreements, in order to assure that all potential claims are released. These sections of the settlement agreement, describing only the general nature of Mr. Murabito's allegations and potential claims against the Board, are not highly personal, even if they have some relevance to his personal life. Although the District argued in its non-confidential response that "given the sensitive nature of the issues [information redacted,] providing the Association with an unredacted copy of the settlement agreement would be a devastating and irreversible invasion of Mr. Murabito's privacy[.]"¹³ the District did not articulate why disclosure of the general nature of the allegations and potential claims against it would significantly infringe on Mr. Murabito's personal privacy. Absent specific details of the alleged misconduct occurring in the District, the redacted information cannot be considered highly personal, and its disclosure would not be objectionable to a reasonable person.

Further, and contrary to the District's argument, the nature of the claims bear on the public duties of at least one public employee. In its non-confidential response, the District asserted that "the information redacted from the settlement agreement was not related to Mr. Murabito's performance as Principal at Arbor Park Middle School and, therefore, there is no issue of the public's right to information regarding his public duties."¹⁴ However, in Ill. Att'y

¹³Letter from Cynthia M. Baasten, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (June 5, 2018), at 3.

¹⁴Letter from Cynthia M. Baasten, Engler Callaway Baasten & Sraga, LLC, to Marie Hollister, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (June 5, 2018), at 3.

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Gen. Pub. Acc. Op. No. 15-004, issued June 17, 2015, which also involved a settlement agreement with a public employee, the Attorney General stated:

[I]t is significant that the settlement agreement is predicated upon the dismissal of a lawsuit alleging that the Plaintiff's civil rights were violated by a pretextual discharge from the City's Police Department. Because the allegations leading to the settlement agreement related directly to the Plaintiff's public duties as an employee of the City, under the plain language of section 7(1)(c) disclosure of this information "shall not be considered an invasion of personal privacy." Ill. Att'y Gen. Pub. Acc. Op. No. 15-004, at 5.

Similarly, in this instance the settlement agreement that Ms. Gardner sought terminated Mr. Murabito's employment and extinguished any employment-related claims he may have had. Additionally, the redacted information concerning the reasons he separated from the District bears on one or more public duties of a public employee. Consequently, such information is not exempt from disclosure under the plain language of section 7(1)(c) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On April 13, 2018, Ms. Valerie Gardner, on behalf of the Illinois Education Association-NEA, submitted a FOIA request to Arbor Park School District No. 145 seeking copies of records that pertain to the settlement agreement between the District and Mr. Ronald Murabito.

2) In a letter dated April 17, 2018, the District provided Ms. Gardner with a redacted copy of the settlement agreement. The District did not cite any FOIA exemptions or provide the other information required by section 9(a) of FOIA. On April 23, 2018, in response to an e-mail from Ms. Gardner, the District issued a supplemental response stating that it had redacted the agreement pursuant to section 7(1)(c) of FOIA. The District also notified Ms. Gardner of her right to have the partial denial reviewed by the Public Access Counselor or seek judicial review, in accordance with section 9(a) of FOIA.

3) On May 15, 2018, this office received Ms. Gardner's Request for Review contesting the District's partial denial, arguing that the public has a valid interest in accessing the terms of a settlement agreement that gave rise to the District paying an administrator over

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\$50,000 in exchange for his resignation and a waiver of claims. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA.

4) On May 22, 2018, the Public Access Bureau sent a copy of the Request for Review to the District and asked it to provide an unredacted copy of the settlement agreement for this office's confidential review, together with a detailed explanation of the factual and legal bases for the applicability of section 7(1)(c).

5) On June 5, 2018, the District, through its legal counsel, provided this office with the requested materials, and asserted that Mr. Murabito's privacy interests clearly outweigh the Illinois Education Association's interest in disclosure of the redacted information. The following day, this office forwarded a copy of the District's redacted answer to Ms. Gardner for comment. Ms. Gardner did not submit a reply.

6) On July 11, 2018, this office properly extended the time within which to issue a binding opinion by 30 business days, to August 24, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2.20 of FOIA provides that "[a]ll settlement and severance agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted."

8) Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." Section 7(1)(c) defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Section 7(1)(c) further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

9) In this instance, the redacted information describes Mr. Murabito's allegations and potential claims against the District in only broad, general terms. The District has not demonstrated that such general information is highly personal, or that its disclosure would be objectionable to a reasonable person. Moreover, the redacted portions of the settlement agreement bear on one or more public employees' public duties. Accordingly, the redacted information is not exempt from disclosure under the plain language of section 7(1)(c) of FOIA.

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For the reasons stated above, it is the opinion of the Attorney General that the District's partial denial of Ms. Gardner's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the District is directed to take immediate and appropriate action to comply with this binding opinion by providing Ms. Gardner with an unredacted copy of the requested settlement agreement.

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 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Valerie Gardner as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

cc: Ms. Cynthia M. Baasten
Engler Callaway Baasten & Srage, LLC
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CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-010) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on August 24, 2018.



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