



e-BLACKBOARD

MAY 29, 2009

SCARIANO, HIMES & PETRARCA

Freedom of Information Act

The Freedom of Information Act (FOIA) is undergoing a dramatic revision in Illinois - both in the judiciary and legislative systems. Both the judicial and legislative branches are calling for increased transparency in the government, and are taking steps to ensure that the policy of the state is clearly one of openness and accountability.

RECENT SUPREME COURT DECISION

On May 21, 2009, the Illinois Supreme Court affirmed an appellate court decision which held that: (1) disclosure of a superintendent's employment contract did not constitute an invasion of person privacy for purposes of exemption from the Act's disclosure requirements; and (2) a superintendent's employment contract does not fall into FOIA's exemption for personnel files. *Stern v. Wheaton-Warrenville Community Unit School District 200*, 2009 WL 1416105.

This case at issue arose when Mark Stern, a resident of Wheaton-Warrenville Community Unit School District 200, filed a FOIA request for the superintendent's contract. School District 200 denied the request on the basis that, because the contract is contained in the personnel file, it is exempt from disclosure. After involving the Illinois Attorney General, and appealing the denial of his request to the Board of Education, Stern filed a complaint in the Circuit Court of DuPage County seeking disclosure of the contract under FOIA. The Circuit Court held in favor of the school district, finding that a superintendent's contract should reasonably be found in a personnel file, and that a personnel file is exempt from disclosure under FOIA.

Stern appealed to the Appellate Court, which reversed the Circuit Court's decision on grounds that a superintendent's contract would bear upon his or her public duties and was thus subject to disclosure under FOIA.

The Supreme Court affirmed the Appellate Court's decision and held that: (1) the Superintendent's contract bore upon his public duties, thus subjecting it to disclosure under FOIA; and (2) the physical location of a document bears no relation to whether it must be disclosed. The Court recognized that one purpose of FOIA is to allow access to documents that bear upon an employee's public duties, while the intent of the personnel files exemption is to protect an employee's personal privacy. In this instance, the superintendent's contract bore upon public duties, and its disclosure would most likely not affect his privacy. The court stated that private information that may be in the contract, such as a social security number or a bank account number, could be redacted before the document was disclosed in response to a FOIA request.

Accordingly, school districts should be aware that employees' contracts will be subject to disclosure under FOIA, so long as the contract bears upon that employee's public duties, subject only to the redaction of information that if disclosed would clearly violate an employee's personal privacy rights. This holds true regardless of the physical location of the document.

LEGISLATIVE ACTION

In the wake of this Supreme Court decision, which clarifies FOIA's call for governmental transparency, the Illinois General Assembly rushed Senate Bill 189 through both Houses; it is a dramatic re-write of portions of the Open Meetings Act and FOIA. As of Thursday, May 28, 2009, both houses had unanimously passed Senate Bill 189 and it was sent to Governor Quinn. If Governor Quinn signs Senate Bill 189, it will become law.

Senate Bill 189 clearly states that there is a presumption that all records in the custody of a public body are presumed to be open to inspection or copying. If a public body asserts that a document is exempt from disclosure, the public body must be able to prove as much by clear and convincing evidence.

The new legislation would also amend FOIA by clarifying that all public documents and related communications, including email messages among officials and employees, will be subject to disclosure pursuant to FOIA. Additionally, under Senate Bill 189, the timelines for complying with FOIA will be shortened, and if a public body fails to respond to a request within the designated timeline, the public body is prohibited from charging for copies. Further, if a public body denies a request, and such denial is subsequently overturned, costs will be borne by the public body, and penalties for non-compliance will be imposed.

The new legislation would create a Public Access Counselor, a position that will be a part of the Illinois Attorney General's office, and will be charged with training and regulating state employees in the distribution of public information, as well as issuing binding opinions as to whether documents requested are exempt under FOIA. Those decisions may be appealed to the circuit court pursuant to the Administrative Review Act.

Finally, Senate Bill 189 requires each public body to appoint Freedom of Information Officers, which will have special duties under the Act with regard to compiling and disclosing documents.

If you have any questions regarding the impact of the Supreme Court's ruling, please contact our offices. As the legislative process comes to a close with respect to amendments to the Act, we will provide you additional updates regarding your obligations when faced with a FOIA request.

The information herein was prepared by Scariano, Himes and Petrarca, Chtd. to provide general guidance on issues affecting educators. This publication is not intended to provide specific legal advice or to create an attorney-client relationship. We are pleased to provide legal assistance to you on the subjects addressed in this communication or on other subjects. Reproduction is permitted with credit to Scariano, Himes & Petrarca, Chtd.

Scariano, Himes and Petrarca, Chtd., represents more than 100 school districts, special education cooperatives and vocational education cooperatives. Our attorneys have expertise in all areas of education law and practice in three locations to more readily serve our clients:

CHICAGO OFFICE
Two Prudential Plaza
180 N. Stetson, Suite 3100
Chicago, Illinois 60601-6702
Phone 312.565.3100 / Fax 312.565.0000

CHICAGO HEIGHTS OFFICE
1450 Aberdeen
Chicago Heights, Illinois 60411 Phone
708.755.1900 / Fax 708.755.0000

WAUKEGAN OFFICE
209 W. Madison Street
Waukegan, Illinois 60085
Phone 847.662.5800 / Fax 847.662.6813

[CLICK here](#) to remove your email address from our list.

State and federal law require that this document be designated as advertising material.

© 2009 Scariano, Himes & Petrarca, Chtd.