



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2017

Via electronic mail
Ms. Gail F. Buscemi
Business Manager
Wilmette Public Schools District 39
Mikaelian Education Center
615 Locust Avenue
Wilmette, Illinois 60091
buscemig@wilmette39.org

RE: FOIA Request for Review – 2017 PAC 50257
Requester: Ms. Taryn Phaneuf
Date of FOIA Request: August 21, 2017

Dear Ms. Buscemi:

The Public Access Bureau has received the attached Request for Review of the response by the Wilmette Public Schools District 39 (District) to a Freedom of Information Act (FOIA) request submitted by Ms. Taryn Phaneuf. We have determined that further action is warranted.

On August 21, 2017, Ms. Phaneuf, on behalf of the *North Cook News*, submitted a FOIA request seeking the results from 2016-2017 CRC School Climate Survey for parents, students, and teachers; for each of the three categories, Ms. Phaneuf sought the response summary charts, lists of answer choices with corresponding percentages and number of responses, and the full detailed content of all comments for specified questions (ones that were not made available to the public). On August 28, 2017, the District responded and asserted that there were no summary charts or lists of answer choices, but denied the request for the detailed content of comments under section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2016), as amended by Public Acts 100-26, effective August 4, 2017; 100-201, effective August 18, 2017).

As required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2016)), please provide, for our confidential review, a representative sample of the records responsive to Ms. Phaneuf's FOIA request. Please also provide a detailed explanation of the factual and legal

Ms. Gail F. Buscemi
November 7, 2017
Page 2

bases of the applicability of section 7(1)(f) of FOIA. Please specifically address Ms. Phaneuf's assertion that the head of the public body waived the applicability of section 7(1)(f) by publicly citing and identifying the records in a final report.

This information must be submitted to our office within seven (7) business days after receipt of this letter. Under FOIA, "[t]he 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 requester may, but is not required to, respond in writing[.]" 5 ILCS 140/9.5(d) (West 2016). **If you claim that any portion of your written response is confidential, please send two versions of your response letter: a complete copy for this office's confidential review and a redacted version suitable for this office to forward to the requester.**

If you have any questions, you may contact me by mail at the Springfield address listed on the first page of this letter, by e-mail at nolson@atg.state.il.us, or by phone at (217) 782-9078. Thank you.

Very truly yours,



NEIL P. OLSON
Deputy Public Access Counselor
Public Access Bureau

Attachment

cc: *Via electronic mail*
Ms. Taryn Phaneuf
Local Labs Media Services
1118 Plum Grove Road, No. 190
Rolling Meadows, Illinois 60008
foia@locallabs.com

Public Access

50251

From: FOIA LocalLabs <foia@locallabs.com>
Sent: Friday, October 27, 2017 1:32 PM
To: Public Access
Subject: FOIA response appeal
Attachments: Response Phaneuf FOIA 170828.pdf; AG letter.doc

To whom it may concern:

Attached is a letter appealing a denial of a FOIA request made to Wilmette Public Schools (District 39). I've also pasted the original request and the district's response.

While I am employed by Local Labs Media Services, this request is made directly on behalf of North Cook News and its publisher. There is no commercial purpose to the request. Here are examples of stories we have produced based on FOIA'd data for North Cook News and its sister sites:

- <https://northcooknews.com/stories/511216273> (FOIA'd from state dept. of corrections)
- <https://dupagepolicyjournal.com/stories/511235753> (FOIA'd from Milton Township)
- <http://swillinoisnews.com/stories/511226097> (FOIA'd from Sandoval superintendent)

Thank you for your understanding. Please let me know if you have any questions.

Best,

Taryn

--- Original request ----

Ms. Buscemi:

I'm writing to submit an amended request following the response we received from Wilmette Public Schools District 39 (attached).

Pursuant to the Illinois Freedom of Information Act, I am requesting electronic copies of the following records:

1. Regarding the results from the 2016-2017 CRC School Climate Survey for Parents: Any and all 1) response summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 9, 10, 12, 14, 20, 33, 34, 42, 43, 45, 47, 53, 55, 57, 63, 81, 82, 90, 91, 99, 100, 102, 104, 110, 112, 114, 120, 122, 124, 130, 153, 154, 162, 163, 171, 172, 180, 181, 183, 185, 191, 193, 195, 201, 203, 205, 211, 213, 249, 250, 258, 259, 267, 268, 276, 277, 285 and 286. These are the questions for which answers were not made available to the public.
2. Regarding the results from the 2016-2017 CRC School Climate Survey for Students: Any and all 1) summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 3, 5, 10. These are the questions for which answers were not made available to the public.
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The purpose of the request is to access and disseminate information as a matter of public interest and is not for the principal purpose of personal or commercial benefit. I qualify as media under the definition in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees). Therefore, I request you furnish any responsive documents and items without charge.

If any element of this request is denied in whole or in part, I ask that you justify all withholdings individually by reference to specific exemptions of the Act.

If you have any questions please do not hesitate to contact me.

Thank you for your time.

Best,

Taryn Phaneuf

FOIA Desk Manager

--

LocalLabs Media Services
2118 Plum Grove Road #190, Rolling Meadows, IL 60008
p.(224) 202-6987
f. (866) 659-0742
foia@locallabs.com

October 27, 2017

Via Email

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706

Fax: 217-782-1396

publicaccess@atg.state.il.us

RE: Review of Denial of FOIA Request to D39 Schools

Dear Public Access Counselor:

We write seeking review of a denial by District 39 - Wilmette Public Schools (D39) to provide responsive documents to a FOIA request submitted on August 21, 2017. This FOIA request was submitted in response to a final report that was publicly circulated to parents and the community and which referenced, paraphrased and highlighted information from the requested documents. D39 denied the FOIA request on August 28, 2017 based on the exemption of the FOIA Act found in section 7(1)(f) relating to preliminary notes, drafts, opinions and other memoranda. Our request for review to your office comes within the 60 day statutory window for such requests.

At issue are comments submitted by students, teachers and parents in response to a survey sent out by D39 and its subsidiary body, the Community Review Committee (CRC). D39 wrongfully denied the FOIA requests to release the survey comments, even though those comments have been the focus of much public discussion and have been discussed and paraphrased in public reports. D39's denial was improper because: 1) the survey comments are not properly classified as notes, drafts or other memoranda, i.e., work product, of a governmental body; 2) D39 has waived its right to the 7(1)(f) exemption upon which it relies by its heads having facilitated the public discussion and dissemination of a final report which paraphrased and discussed the survey comments at issue; and 3) the survey comments have already been reviewed by some parents thereby making it unfair and prejudicial against other parents who were not given the same opportunity to review the comments.

Survey Comments not properly exempt under Section 7(1)(f)

The exemption in Section 7(1)(f) restricts protected documents to those deemed "*Preliminary*." It is understood and commonly accepted that work product documents such as notes, opinions, and drafts that influence policy and final reports should be protected, however, this exemption does not protect documents that are highlighted and discussed in a *final* report shared with the public. As you will see from the example below, the comments that were requested in the FOIA were discussed and referenced in the final report and even paraphrased therein. Quote from the final CRC School Climate Report paraphrasing content of survey comments (page 6):

*"The second highest number of comments were about **political ideology**, specifically with respect to the sentiment that **students with conservative views are not respected -- and are even harassed** -- in D39 schools. It should be noted that even though political ideology was not specifically asked about in the surveys, responses to this effect (indicating that students with conservative political views were not being treated well at school) were seen across the board in all three surveys, including those submitted to parents, teachers, and students in grades 5-8."*

The reference to and reliance on the comments in a publicly shared final report, by default, means they cannot be "preliminary" in nature and fall outside the exemption. By refusing to release the comments, the public has no way to verify the portrayal of these comments or assess their context.

It should be further noted that these survey comments are also not "opinion" in the manner intended by the statutory exemption. The exemption rightfully protects "work product". Opinions of governmental officers that amount to preliminary work product should be protected but this same protection does not extend to *anyone's* opinions. Opinions that would fall within the "preliminary" records exemption of 7(1)(f) assume a "give and take" between parties. In this situation, there was no give and take - parents, students and teachers provided responses to survey questions and D39 did not go back and forth with the parents, students and teachers - as an anonymous survey, there would be no way to do so. D39 did not work with these opinions and distill or amend them. Instead these survey comments consist of countable representations of conditions in the school (i.e., factual data), representing the number of students affected (or not) by the topics queried. In the example of conservative students experiencing harassment, no survey questions were asked on this topic so the only way in which results can be verified and counted by the public derive from review of the survey comments that are the subject of the FOIA. D39's notes, reflections and discussions about this data, i.e., the survey comments, have not been requested.

Case law further supports release of the survey comments, mandating that the exemption applies only to preliminary or pre-decisional materials and not to items that are referenced and discussed in a final report. They also apply only to opinions among agency representatives, not from anyone in the general public. "The section 7(1)(f) exemption applies to *"inter- and intra-agency predecisional and deliberative material."* Harwood v. McDonough, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). Section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion **among agency employees** before a final decision is made." Harwood, 344 Ill. App. 3d at 248." Information provided to an agency is not inter-agency. Further, survey comments that are referenced and paraphrased in a final report are not pre-decisional. The opinions provided in the survey comments are 1) not the agency's opinions and 2) were discussed, referenced and paraphrased in the final report.

D39 has waived its right to the 7(1)(f) exemption upon which it relies by publicly announcing and discussing the survey comment

Moreover, Section 7(1)(f) provides that the head of a government body can waive exemption 7(1)(f) by publicly citing such documents. D39's heads have publicly cited the final report and circulated the final report, which discusses and paraphrases the survey comments, to the entire community. Moreover, Ray Lechner, the Superintendent of D39 schools, and Mark Steen, the School Board President of D39, both, during a public school board meeting on June 19, 2017, introduced discussion of the report and delegated that discussion to Erin Stone, a D39 parent acting as Head of the Community Review Committee, which acts as a subsidiary body to D39 (see video at 22:02). Erin Stone, specifically discussed the comments at 25:51 of the video.

The fact that the Superintendent, School Board President and Head of the CRC have publicly disseminated and facilitated public discussions of the final report (which report contains discussions and paraphrasing of responses from the survey comments), waives the 7(1)(f) exemption. As such, these comments cannot be considered exempt as preliminary notes, drafts and/or opinions.

Survey comments have already been reviewed by some parents, creating an unfair situation where all parents and community members do not have access.

The Community Review Committee that commissioned the survey and had the final report prepared, which discussed and quoted from the survey comments, is comprised of many parent members. As such, some parents - those lucky enough to have been handpicked to sit on the CRC - have had the opportunity to read the comments; while others, not on the committee, have been denied that same essential courtesy. Erin Stone, a D39 parent, publicly referenced the fact she read the comments. In the interest of fairness and in not prejudicing a group of parents and community members by withholding information relating to a valid public concern from them, the survey comments should be released.

Conclusion

It should be noted that under FOIA, "[a]ll 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." (Emphasis added.) 5 ILCS 140/1.2 (West 2016).

Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2016)) provides that if a public record contains information that is exempt from disclosure, but also contains information that is not exempt from disclosure, the public body may elect to redact the exempt information, but must make the remaining information available for inspection and copying. In other words, unless a record is exempt from disclosure in its entirety, a public body is allowed to redact only the portion of the record that is exempt and must disclose the rest of the record.

In general, the use of exemptions to withhold or redact information is permissive rather than mandatory under FOIA. See *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995) ("The purpose of the

Act is to ensure disclosure of information, not to protect information from disclosure. * * * The exemptions cannot be read to prohibit dissemination of such information, but rather are simply cases where disclosure is not required."). "[T]he exceptions to disclosure set forth in the FOIA are to be read narrowly so as not to defeat the FOIA's intended purpose." Southern Illinoisan v. Illinois Dep't of Public Health, 218 Ill. 2d 390, 416 (2006).

In light of the foregoing reasons, we respectfully request the Public Access Counselor of the Attorney General's office to mandate disclosure of the survey comments to which D39 wrongfully denied access. The survey comments at issue have been the focus of much public discussion and are referenced within and paraphrased in a final public report. They have been wrongfully withheld by D39 for the following reasons: 1) the survey comments are not properly classified as preliminary notes, drafts or other memoranda, i.e., work product, of a governmental body; 2) D39 has waived its right to the 7(1)(f) exemption upon which it relies by its heads publicly disseminating and discussing the final report which discusses and paraphrases the survey comments; and 3) the survey comments have already been reviewed by some parents and community members, thereby making it unfair and prejudicial against other parents who were not given the same opportunity to review the comments. The survey comments were submitted anonymously by students, teachers and parents. To the extent any identity may unintentionally be revealed, D39 may redact any personally identifying information.

Thank you,

Taryn Phaneuf

FOIA Desk Manager
Local Labs Media Services
2118 Plum Grove Road #190
Rolling Meadows, IL 60008
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Gail F. Buscemi
Business Manager

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f 847.256.1782

August 28, 2017

Via Email

Taryn Phaneuf
FOIA Desk Manager
LocalLabs Media Services
2118 Plum Grove Road #190
Rolling Meadows, IL 60008
foia@locallabs.com

RE: RESPONSE TO AMENDED FOIA REQUESTS

Dear Ms. Phaneuf:

Thank you for writing to Wilmette Public Schools District No. 39 with your requests for information pursuant to the Illinois *Freedom of Information Act* ("FOIA"), 5 ILCS 140/1 *et seq.*, originally received on August 9, 2017. On August 16, the District invited you to narrow your requests because of the size and scope of your requests. On August 21, you amended your request to the following:

1. Regarding the results from the 2016-2017 CRC School Climate Survey for Parents: Any and all 1) response summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 9, 10, 12, 14, 20, 33, 34, 42, 43, 45, 47, 53, 55, 57, 63, 81, 82, 90, 91, 99, 100, 102, 104, 110, 112, 114, 120, 122, 124, 130, 153, 154, 162, 163, 171, 172, 180, 181, 183, 185, 191, 193, 195, 201, 203, 205, 211, 213, 249, 250, 258, 259, 267, 268, 276, 277, 285 and 286. These are the questions for which answers were not made available to the public.
2. Regarding the results from the 2016-2017 CRC School Climate Survey for Students: Any and all 1) summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments

(personal names may be redacted) for questions: 3, 5, 10. These are the questions for which answers were not made available to the public.

3. Regarding the results from the 2016-2017 CRC School Climate Survey for Teachers: Any and all 1) summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 3, 5, 11. These are the questions for which answers were not made available to the public.

For the survey questions listed in your requests, there are no summary charts or list of answer choices; all of them are open-ended questions seeking comments from the responders. As to your requests for the detailed content of all comments, your requests are denied. The survey responses contain information regarding opinions of various constituents and are used by the District to help formulate policies and actions to improve its services. The results of the survey responses are therefore exempt under 7(1)(f) of FOIA because they are records "in which opinions are expressed, or policies or actions are formulated." 5 ILCS 140/7(1)(f); *see also* 2011 PAC 14928 (climate survey responses are exempt); 2011 PAC 14058 (comments by survey respondents are exempt); 2011 PAC 13448 (survey results of employees' opinion are exempt); 2016 PAC 44309 and 2016 PAC 44311 (survey takers' opinions were exempt because the responses were used in the District's decision-making process). The District has not waived its exemption for these specific survey questions by publicly citing and identifying them.

You have a right to have the denial of your requests reviewed by a Public Access Counselor (PAC) at the Office of the Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
Email: publicaccess@atg.state.il.us



If you choose to file a Request for Review with the PAC, you must do so within 60 days of the date of this letter. 5 ILCS 140/9/5(a). Please note that you must include a copy of your original FOIA requests and this letter when filing a Request for Review with the PAC. You also have the right to seek judicial review of any denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

As the District's FOIA Officer, I am responsible for the District's response to your requests. If I have misunderstood or misinterpreted your requests in any way, please clarify your requests in writing to me.

Sincerely,

Gail F. Buscemi
FOIA Officer

453063_2

Public Access

50257

From: FOIA LocalLabs <foia@locallabs.com>
Sent: Friday, October 27, 2017 7:51 PM
To: Public Access
Subject: Re: FOIA response appeal
Attachments: Local Labs Mail - Amended FOIA request.pdf

I'm sorry about that. I've attached the original email in PDF form.

Thank you for considering our request for review.

Best,

Taryn Phaneuf

On Fri, Oct 27, 2017 at 4:07 PM, Public Access <PAccess@atg.state.il.us> wrote:

Taryn,

We need you to sign your Request for Review with your full name. We also need a complete copy of the FOIA request you submitted to Wilmette-one that shows to whom it was sent, date it was sent, etc.

Thanks,

Mary Jo

Administrative Secretary

From: FOIA LocalLabs [mailto:foia@locallabs.com]
Sent: Friday, October 27, 2017 1:32 PM
To: Public Access <PAccess@atg.state.il.us>
Subject: FOIA response appeal

To whom it may concern:

Public Access

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Administrative Secretary

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- <http://swillinoisnews.com/stories/511226097> (FOIA'd from Sandoval superintendent)

Thank you for your understanding. Please let me know if you have any questions.

Best,

Taryn

---- Original request ----

Ms. Buscemi:

I'm writing to submit an amended request following the response we received from Wilmette Public Schools District 39 (attached).

Pursuant to the Illinois Freedom of Information Act, I am requesting electronic copies of the following records:

1. Regarding the results from the 2016-2017 CRC School Climate Survey for Parents: Any and all 1) response summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 9, 10, 12, 14, 20, 33, 34, 42, 43, 45, 47, 53, 55, 57, 63, 81, 82, 90, 91, 99, 100, 102, 104,

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2. Regarding the results from the 2016-2017 CRC School Climate Survey for Students: Any and all 1) summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 3, 5, 10. These are the questions for which answers were not made available to the public.

3. Regarding the results from the 2016-2017 CRC School Climate Survey for Teachers: Any and all 1) summary chart(s); 2) list(s) of answer choices with corresponding percent and number of responses; and 3) full detailed content of all comments (personal names may be redacted) for questions: 3, 5, 11. These are the questions for which answers were not made available to the public.

The purpose of the request is to access and disseminate information as a matter of public interest and is not for the principal purpose of personal or commercial benefit. I qualify as media under the definition in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees). Therefore, I request you furnish any responsive documents and items without charge.

If any element of this request is denied in whole or in part, I ask that you justify all withholdings individually by reference to specific exemptions of the Act.

If you have any questions please do not hesitate to contact me.

Thank you for your time.

Best,

Taryn Phaneuf

FOIA Desk Manager

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LocalLabs Media Services
2118 Plum Grove Road #190, Rolling Meadows, IL 60008

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FOIA LocalLabs <foia@locallabs.com>

Amended FOIA request

FOIA LocalLabs <foia@locallabs.com>
To: Gail Buscemi <buscemig@wilmette39.org>

Mon, Aug 21, 2017 at 4:17 PM

Ms. Buscemi:

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Taryn Phaneuf

FOIA Desk Manager

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LocalLabs Media Services
2118 Plum Grove Road #190, Rolling Meadows, IL 60008
p.(224) 202-6987
f. (866) 659-0742
foia@locallabs.com

10/27/2017

Local Labs Mail - Amended FOIA request



Response LocalLabs FOIA 170816 .pdf
191K