

October 26, 2012

Matthew M. Sebek
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, Illinois. 62706

Re: FOIA Request for Review – 2012 PAC 21275
Paris Community Unit School District No. 4

Dear Mr. Sebek,

This correspondence is in response to the letter I received on October 19, 2012 from your office, which was a response from Paris Community Unit School District No. 4, dated October 15, 2012.

On August 27, 2012, I submitted a FOIA request to the School District seeking among other things “copy of all video security camera footage (all cameras, between 7 am and 5 pm) from Tuesday, August 21, 2012.” On August 30, 2012, Lorraine Bailey, the School District’s Superintendent and FOIA Officer, denied this portion of the request citing 5 ILCS 140/7.5(r), which makes exempt “information prohibited from being disclosed by the Illinois School Student Records Act”.

The response from S. Jeff Funk, the School’s attorney, claims the footage in question is School Student Record, prohibited from release by the Illinois School Student Records Act, exempt from disclosure under federal law, and is unwarranted invasion of personal privacy. I will address all of these issues in my response.

Exhibits 1 through 4 of the Districts’ response do not apply as District policy does not override the Freedom Of Information Act.

Background

I am a taxpayer in the District 4 school district, contributor to an online news website (Edgar County Watchdogs), and a contributor to regularly printed monthly news magazines, namely: Disclosure and Disclosure Heartland (both also available online). The mission of these news sources is obtaining, researching, and disseminating information to the public so they can better understand how their tax dollars are being spent. This includes information pertaining to the health, safety, welfare, and legal rights of the public.

My sole interest in the public records in question is to determine what happened at Crestwood School on August 21, 2012, when a 6 year old boy wandered out of his classroom, ending up alone - outside the building - for an as yet undisclosed amount of time. I was approached about this incident by persons directly responsible for the child

alleged they were lied to, and were not given the complete facts nor truthful answers to their questions, by School Administrators, as to how this happened and how long the child was unattended outside the building.

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Responses to Community Unit School District No. 4's response:

1. The District states that "*No one other than school administrators may review camera footage*".

Exhibit 4 contradicts that statement and the District has already shown parts of the footage to the parent, grandparent, and school board members, none of which are school administrators. They also provided the parent with a copy of parts of the footage shown.

District policy does not override the Freedom Of Information Act.

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2. The District asserts the footage is "school student record" and that The Student Records Act prohibits disclosure of school student records except as specifically provided in Section 6 of the Act, 105 ILCS 10/6. The District also states the broad definition of "student record" without looking at the more restrictive definitions of the two types of "student records," which are: "student permanent record" and "student temporary record."

The Illinois School Student Records Act, 105 ILCS 10, defines "student record" in various paragraphs. Student Records are generally defined in 10/2(d):

(d) "School Student Record" means 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...

When a statute provides a general definition and further provides more specific definitions, we must read these further definitions as statutory construction being more definitive than the general definition.

Student Records are further specifically defined as two parts in Section 10/2:

(e) "Student Permanent Record" means the minimum personal information necessary to a school in the education of the student and contained in a school student record. Such information may include the student's name, birth date, address, grades and grade level, parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize.

(f) "Student Temporary Record" means all information contained in a school student record but not contained in the student permanent record. Such information may include family background information, intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations, and other information of clear relevance to the education of the student, all subject to regulations of the State Board. The information shall include information provided under Section 8.6 of the Abused and Neglected Child Reporting Act. In addition, the student temporary record shall include information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction. For purposes of this provision, serious disciplinary infractions means: infractions involving drugs, weapons, or bodily harm to another.

Where the statute provides guidance to the Student Records Custodian on the maintenance, care, and security of all student records, [105 ILCS 10-4(c)] it specifically states:

(c) Information contained in or added to a school student record shall be limited to information which is of clear relevance to the education of the student.

It is clear the footage in question does not fall under the Student Records Act's definition of a "student record," as it is not of "clear relevance to the education of the student," and the student cannot be "individually identified."

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3. The District asserts the State Board of Education regulation, amended effective January 24, 2012, defends their position of this footage being "student record" as it altered the definition set in the statute. I assert it defends my position that it is not "student record," and that the legislative intent is to allow the State Board to issue regulations and govern the contents of school student records.

"School Student Record" shall have the meaning set forth in Sections 2 (d) of the Act [105 ILCS 10-2(d)], except that school student records shall not include:

Video or other electronic recording created and maintained by law enforcement professionals working in a school or for security or safety reasons or purposes, provided the information was created at least in part for law enforcement or security or safety reasons or purposes; and

Electronic recordings made on school buses, as defined in Section 14-3 of the Criminal Code of 1961 [720 ILCS 5/14-3].

This amended State Board of Education regulation supports my assertion the footage is not student record, as it was created "...for security or safety reasons," and was created at least in part for "...security or safety reasons."

As for the District's assertion that this amendment altered the definition set in the statute and exceeded the authority of the regulatory agency promulgating them, the statute specifically states, under the definition of permanent student records [105 ILCS 10-2(f)]: "...and such other entries as the State Board may require or authorize." This amendment is "other entries as the State Board may require or authorize."

Additionally, the statute [105 ILCS 10-3(a)] specifically states:

Sec. 3. (a) The State Board shall issue regulations to govern the contents of school student records, to implement and assure compliance with the provisions of this Act and to prescribe appropriate procedures and forms for all administrative proceedings, notices and consents required or permitted under this Act. All such regulations and any rules and regulations adopted by any school relating to the maintenance of, access to, dissemination of or challenge to school student records shall be available to the general public.

This paragraph is the legislature's specific intent to allow the State Board to govern the contents of school student records and for them to issue regulations supporting this intent.

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4. Federal Law: Family Educational Rights and Privacy Act, 20 USC 1232g (FERPA).

The District asserts this footage is exempted under FERPA's federal prohibition on release of "educational records."

FERPA's own guidance, published as an overview of amended regulations for students and parents, specifically states:

below), and the right to file a complaint with the Department. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

The requested footage does not contain information directly relating to a student, as general security camera footage is not considered "educational records" unless it is maintained by the school as part of a student's (disciplinary) record, in instances where

disciplinary action is warranted. No action of this type is included in the requested footage; therefore, it is not considered "educational records."

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5. The district did concede the requested security camera footage may not "contain information directly related" to every student whose image appeared on the camera(s).

The Family Policy Compliance Office (FPCO) has issued informal guidance about how Districts should be treating videos. Since video surveillance captures everything that occurs in an area, it is not information directly related to any one student and therefore a video is generally not an education record. FERPA does not apply to security videotapes unless and until the school administration decides to make the videotape part of a school disciplinary proceeding. Once it is used in a disciplinary matter, it becomes a student record. - The footage in question has not been used in disciplinary matters.

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6. The District then stated that: "Disclosure Of The Video Recordings Will Constitute An Unwarranted Invasion Of Personal Privacy," citing 5 ILCS 140-7(1)(c) as the reason.

The Illinois Freedom Of Information Act [5 ILCS 140 *et seq*]:

Section 7: Exemptions.

(1) When 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. Subject to this requirement, the following shall be exempt from inspection and copying:

(c) Personal 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. "Unwarranted invasion of personal privacy" means 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. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

Since the security camera footage captures images that happen in a general area, in a public building, there is no expectation of privacy. These types of images are neither "highly personal" nor objectionable to a reasonable person. The only exceptions would be restrooms, locker rooms, and changing rooms where there is a general expectation of privacy. Therefore, this request should not be considered an unwarranted invasion of personal privacy. There is a legitimate public interest in obtaining this information, as it directly relates to the health, safety, welfare, and legal rights of students and parents.

FOIA defines "Private Information" in Sec. 2 (c-5):

(c-5) "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Security camera footage is hardly an unwarranted invasion of personal privacy as video (without audio) is simply a series of pictures, generally anywhere between 3 and 30 pictures per second. The webpage for the District has numerous pictures of a majority of their student population shown in the gallery section – surely that would fall under the same privacy claims.

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7. I own and operate a video production studio, fully capable of redacting the faces of individuals in video. I have the hardware and software required to accomplish the redactions should the District be incapable of this. Furthermore, I am willing to sign a legally binding agreement to redact that information, and certify destruction of originals to the satisfaction of the District, should the Attorney General Office require disclosure with redactions.

8. It is not my interest to upload all the video footage requested for the general public to view; but rather to determine the timeline of events that took place, write an article, and upload video (redacted if need be) pertinent to the article.

Thanks for your consideration,



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