



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 27, 2013

Mr. John Kraft  
7060 IL HWY 1  
Paris, Illinois 61944

Ms. Lorraine Bailey, Superintendent  
Paris Community Unit School District No. 4  
15601 U.S. Highway 150  
Paris, Illinois 61944

RE: FOIA Request for Review – 2012 PAC 21275

Dear Mr. Kraft and Superintendent Bailey:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Paris Community Unit School District No. 4 (District) did not improperly deny Mr. John Kraft's FOIA request for security camera footage of a specific incident.

On August 27, 2012, Mr. Kraft submitted a FOIA request to the District seeking various records, including "all video security camera footage (all cameras, between 7am and 5 pm) from Tuesday, August 21, 2012."<sup>1</sup> (Emphasis in original.) On August 30, 2012, the District provided certain responsive records but withheld all security camera footage pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)), which exempts "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The District cited the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 *et seq.* (West 2012)) as the applicable State law. On September 5, 2012, Mr. Kraft submitted a Request for Review to the Public Access Bureau, disputing the District's denial of his request for security camera footage and stating that he could "narrow [his] request to video between the hours of 12:00 noon and 2:30 p.m. if that would make [sic] easier to accomplish."<sup>2</sup>

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<sup>1</sup>E-mail from John Kraft to Lorraine Bailey, Superintendent, Paris Community Unit School District No. 4 (August 27, 2012).

<sup>2</sup>Letter from John Kraft to the Public Access Counselor (September 5, 2012).

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On **October 1, 2012**, the Public Access Bureau forwarded a copy of the Request for Review to the District and asked it to provide a written explanation of the factual basis for asserting section 7(1)(a), together with un-redacted copies of the responsive records. On October 15, 2012, the District provided this office with sixteen compact discs containing security camera footage recorded at Crestwood School on August 21, 2012, from 7:00 a.m. to 5:00 p.m. The District also asserted additional bases for denying Mr. Kraft's request for the security camera footage. First, the District asserted that the footage is exempt from disclosure under section 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2012)), which exempts from disclosure "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act." Second, the District asserted that the records are exempt from disclosure under section 7(1)(a) of FOIA based on the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g (2012)). Lastly, the District asserted that the footage is exempt from disclosure under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2012)).

On **October 29, 2012**, Mr. Kraft replied to each of the District's arguments. Providing background for his request, he asserted: "[m]y 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."<sup>3</sup>

On **August 16, 2013**, counsel for the District informed a representative of this office that the recording of the student in question spanned just three minutes, and sent this office the relevant portion of the recording. In response to this office's request for clarification, Mr. Kraft advised that a determination on the portion of the footage covering the time the student exited and re-entered the building would suffice. Accordingly, we have limited our review to that portion of the security camera footage.

### DETERMINATION

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 2012); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). 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 2012).

### **Section 7(1)(c) of FOIA**

Section 7(1)(c) of FOIA exempts "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal

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<sup>3</sup>Letter from John Kraft to the Public Access Counselor (October 29, 2012).

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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."

Mr. Kraft states that he is a contributor to news sources that focus on "obtaining, researching, and disseminating information to the public so they can better understand how their tax dollars are being spent."<sup>4</sup> Mr. Kraft asserts that the public interest in disclosure of the security footage is to determine whether the District was truthful about the details of the incident, such as the amount of time the child was locked out of the school. Specifically, Mr. Kraft informed an Assistant Attorney General in the Public Access Bureau by telephone on August 16, 2013, that he had heard that the child remained outside for as much as half an hour, but that the footage shown to the child's family members after the incident was only a few minutes long, and portions of it appeared to be missing.

The footage in question is highly personal by its very nature, and the release of the footage would constitute a substantial invasion of personal privacy. The footage depicts a young child at school in a potentially embarrassing and distressing incident. Mr. Kraft argues that an unwarranted invasion of personal privacy cannot arise from disclosure of the footage because it displays a general area in a public building in which there was no expectation of privacy. Whether the disclosure of information about an incident would constitute an unwarranted invasion of personal privacy turns not on where the incident occurred or any expectation about it at the outset, but rather whether the content of the information is such that its disclosure would be objectionable to a reasonable person. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 14122*, issued June 15, 2012 (disclosure of security camera footage from general area of school building would constitute unwarranted invasion of the privacy of a deceased student's family because it depicted the student a few hours before his death). The disclosure of security camera footage of a six year old child at school in trying circumstances would be objectionable to a reasonable person.

If the District could edit the security footage to conceal the child's identity, then an unwarranted invasion of personal privacy might be avoided. However, the District has advised an Assistant Attorney General in the Public Access Bureau by telephone on August 16, 2013, that it does not possess the requisite technological capacity to redact a video recording. The District is not required to obtain sophisticated software or specialized assistance in order to comply with a request of this nature. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 17871*, issued May 11, 2012. Mr. Kraft has asserted that he is capable of redacting the child's face from the video and would sign a legally binding agreement to do so. However, if the un-redacted footage was

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<sup>4</sup>Letter from John Kraft to the Public Access Counselor (October 29, 2012).

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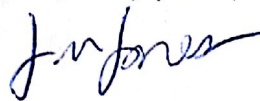
disclosed to Mr. Kraft, it would constitute an unwarranted invasion of personal privacy even if he were to redact the child's identity for subsequent viewers. Consequently, his offer would not resolve this issue.

Accordingly, we conclude that the security camera footage requested by Mr. Kraft is exempt from disclosure under section 7(1)(c) of FOIA because the release of the footage would constitute a substantial invasion of personal privacy. Because that determination is dispositive, we decline to address the District's other bases for withholding the footage.

Ordinarily, this office does not comment upon the specifics of records disclosed for purposes of our review. In these circumstances, however, it may be helpful to both parties to note that our review of the security footage corroborates the District's assertion that the child was outside of the school building for approximately three minutes. The duration of the footage is documented with a time-stamp. At two points during the time in which the child is outside, the screen momentarily goes black and then resumes, with the time-stamp indicating the number of seconds that transpired in the interim. In a telephone call on August 16, 2013, a representative of the District confirmed for this office that the District's security cameras operate, in part, on motion-sensor technology, which accounts for the alleged "missing" portions of footage. The security camera recording simply depicts a child exiting a school building, remaining outside for a few minutes, and then re-entering the building.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-1679 if you have any questions. This letter shall serve to close this matter.

Very truly yours,



JOSH JONES  
Assistant Attorney General  
Public Access Bureau

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