



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 2, 2014

Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

Ms. Barbara Mitchell
Freedom of Information Officer
College of DuPage
545 Fawell Blvd.
Glen Ellyn, Illinois 60137

Ms. Catherine R. Locallo
Attorney
Robbins Schwartz
55 West Monroe Street, Suite 800
Chicago, Illinois 60603

RE: FOIA Request for Review – 2014 PAC 27598

Dear Mr. Kraft, Ms. Mitchell, and Ms. Locallo:

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 discussed below, the Public Access Bureau concludes that the College of DuPage's (College) response to Mr. John Kraft's FOIA request did not violate FOIA.

BACKGROUND

On December 24, 2013, Mr. Kraft submitted a FOIA request to the College for copies of the W-2 forms for Dr. Breuder for the past four years. On January 8, 2014, the College denied that request under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2013 Supp.)). Mr. Kraft's Request for Review disputed the applicability of that exemption, asserting that the records are subject to disclosure under section 2.5 of FOIA (5 ILCS 140/2.5 (West 2012)).

This office forwarded a copy of Mr. Kraft's Request for Review to the College and asked it to provide a detailed explanation of its legal and factual bases for asserting the exemption, as well as copies of the withheld records. On February 21, 2014, the College

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responded by reiterating its assertion that the requested W-2 forms are exempt from disclosure under section 7(1)(b) of FOIA. The College's response referenced certain determination letters issued by the Public Access Bureau approving the withholding of W-2 forms pursuant to section 7(1)(b) of FOIA. The College also noted that it had "no objection to providing Mr. Kraft with a record detailing Dr. Breuder's salary information."¹ Mr. Kraft did not reply to that response.

DETERMINATION

All public records maintained by 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 Dept. 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

Section 7(1)(b) exempts from disclosure "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" as "unique identifiers, including a person's * * *, personal financial information[.]"

As the College correctly pointed out, the Public Access Bureau has previously determined that an individual's W-2 form constitutes "personal financial information" which is a form of "private information" under the definition of that term in section 2(c-5) of FOIA. Ill. Att'y Gen. PAC Req. Rev. 17122, issued February 2, 2012; Ill. Att'y Gen. PAC Pre-Auth. al9280, issued September 2, 2010; Ill. Att'y Gen. PAC Pre-Auth. al11752, issued August 18, 2011. Mr. Kraft, however, contends that Dr. Breuder's W-2 form must be released pursuant to section 2.5 of FOIA, which provides that "[a]ll records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."

The W-2 form records an individual's wages and other compensation for employment and amounts withheld for taxes. Thus, the W-2 forms sought by Mr. Kraft document both Dr. Breuder's personal financial information and the College's use of public funds for his salary. "When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern. [Citation.] We will also presume that the legislature intended the more recent provision to control." *Abruzzo v. City of Park Ridge*, 231 Ill.2d 324, 346 (2008).

Section 2.5 of FOIA, the section 7(1)(b) exemption, and the definition of "private information" in section 2(c-5) were all enacted by Public Act 96-542, effective January 1, 2010. However, the discrete types of information – including personal financial information – that are

¹Letter from Catherine R. Locallo, to Ms. Tola Sobitan, Assistant Attorney General, Office of the Illinois Attorney General (February 21, 2014).

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exempt from disclosure under section 7(1)(b) are more specific than the general provisions of section 2(c-5), which broadly encompass all records that relate to the obligation, receipt, and use of public funds. Because section 7(1)(b) is the more specific statutory provision, this office concludes that the College did not improperly withhold Dr. Breuder's W-2 forms. However, information about public employees' salaries in the College's budget records or other documents that are not personal to Dr. Breuder do not constitute "personal financial information" that is exempt from disclosure under section 7(1)(b). Therefore, Mr. Kraft may wish to submit another FOIA request to the College for discrete salary information which the College has indicated it will provide in another record.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (312) 814-6437, or via mail at the Chicago address on the first page of this letter. This letter serves to close this file.

Very truly yours,



TOLA SOBITAN
Assistant Attorney General
Public Access Bureau

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