



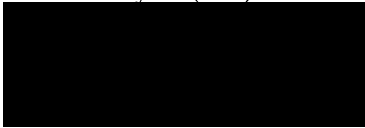
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 11, 2022

Via electronic mail

Mr. Jerry L. (Jed) Earnest



Via electronic mail

Mr. Steven M. Richart
Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
srichart@hlerk.com

RE: FOIA Request for Review – 2022 PAC 69652

Dear Mr. Earnest and Mr. Richart:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons stated below, the Public Access Bureau concludes that Jasper County Community Unit School District No. 1 (District) improperly redacted names from the records responsive to Mr. Jed Earnest's January 18, 2022, FOIA request.

On that date, Mr. Earnest submitted a FOIA request to the District seeking, in relevant part:

1. All "ANONYMOUS DONATIONS" made to [the District] between the dates of July 1, 2017, to the present date (believed to be at least a total of \$46,485 from Sept 1, 2020, to Dec 31, 2021). Please include (but not limited to) date of donation,

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name of donor, what program requested to, and name and address receipt sent to.^[1]

On January 25, 2022, the District provided him with copies of certain responsive records, but denied the request in part as to anonymous donations pursuant to sections 7(1)(b) and 7(1)(c) of FOIA.² On January 28, 2022, Mr. Earnest submitted the above-referenced Request for Review contesting the partial denial as to the identities of purportedly anonymous donors.

On February 2, 2022, this office forwarded a copy of the Request for Review to the District and asked it to provide unredacted copies of the contested records for this office's confidential review, together with a detailed description of the applicability of sections 7(1)(b) and 7(1)(c) of FOIA. On February 14, 2022, the District provided this office with those materials. On March 1, 2022, Mr. Earnest submitted a reply.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2020); *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 (West 2020).

As an initial matter, although Mr. Earnest argued that he has the right to access the records as a member of the District's Board of Education (Board), public officials do not have greater rights than any other requesters under FOIA. Because this Request for Review concerns FOIA rather than a Board member's right to access information about the public body outside the context of FOIA, Mr. Earnest's seat on the Board has no bearing on the resolution of this matter.

Additionally, Mr. Earnest raised ethical complaints concerning the District's outside counsel and other issues outside the scope of FOIA. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2020)). 15 ILCS 205/7(c)(3) (West 2020). Therefore, this letter is

¹E-mail from Jerry L. (Jed) Earnest to FOIA Officer(s), Jasper County Community Unit School District One (January 18, 2022).

²5 ILCS 140/7(1)(b), (1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021.

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limited to reviewing whether the District proved by clear and convincing evidence that the donors' names are exempt from disclosure.

Section 7(1)(b) of FOIA

Section 7(1)(b) of FOIA 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 2020)) defines "private information" as:

[U]nique 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.

Pursuant to this exemption, the District stated that it withheld private information other than the identities of the anonymous donors (which it withheld under section 7(1)(c)). In particular, the District mentioned personal financial information, including bank account numbers, and personal addresses. Because these items fall within the plain language of the definition of "private information," they are exempt from disclosure pursuant to 7(1)(b).

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA exempts from disclosure "[p]ersonal 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." 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[.]" and further provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

A public body's contention that the release of information would constitute an unwarranted invasion of personal privacy is evaluated on a case-by-case basis. *Chicago Journeymen Plumbers' Local Union 130 v. Dep't of Public Health*, 327 Ill. App. 3d

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192, 196 (1st Dist. 2001). The phrase "clearly unwarranted invasion of personal privacy" evinces a strict standard to claim the exemption. *Schessler v. Dep't of Conservation*, 256 Ill. App. 3d 198., 202 (4th Dist. 1994). Illinois courts consider the following factors in determining whether disclosure of information would constitute an unwarranted invasion of personal privacy: "(1) the plaintiffs interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Dep't*, 399 Ill. App. 3d 1, 13 (1st Dist. 2010).

In its response to this office, the District argued that "[t]he disclosure of the identifying information of the donors is clearly objectionable to a reasonable person and the donors' rights to privacy outweigh any legitimate public interest in obtaining the information."³ The District claimed that disclosure of the names of donors who wished to remain anonymous would have a chilling effect on future donations. The District argued that Mr. Earnest's stated public interest in his request—to monitor the District's compliance with Title IX—would not be served by disclosure of the names because compliance with that law concerns the expenditure of funds rather than receipt. The District also argued that the public interest in disclosure of information concerning the receipt of public funds, as embodied by section 2.5 of FOIA (5 ILCS 140/2.5 (West 2020)),⁴ does not apply because the funds received are private funds. Even if section 2.5 does apply to the records, the District additionally argued, section 7(1)(c) still applies, because "the legislature clearly did not intend for Section 2.5 to act as a blanket rule that any person who makes a payment to a public body for any reason must have his or her name disclosed."⁵

As to the donors' privacy interests, the District argued that this matter is comparable to *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 808 N.E.2d 56 (2004), in which the Illinois Appellate Court considered whether the names of FOIA requesters were exempt under section 7(1)(c). Noting that "monitoring a government body's actions without evidence of any wrongdoing by it serves little public interest as government bodies are presumed to act lawfully[.]" the court in that case concluded that the public interest did not weigh in favor of disclosure of the requesters' names. *Chicago Alliance*,

³Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Joshua M. Jones, Deputy Bureau Chief, Office of the Attorney General (February 14, 2022), at 2.

⁴Section 2.5 provides: "All 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."

⁵Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Joshua M. Jones, Deputy Bureau Chief, Office of the Attorney General (February 14, 2022), at 5.

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348 Ill. App. 3d at 210, 808 N.E.2d at 73. The District further argued that "information regarding personal finances has long been recognized as highly personal[,]"⁶ citing *Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 19 (1st Dist. 1997). In *Gibson*, the court held that the receipt of financial aid or scholarships is "intensely 'confidential' and 'private,'" and thus the names were exempt under a previous version of section 7(1)(c)⁷ that specifically exempted "files and personal information maintained with respect to * * * students or other individuals receiving * * * educational [or] financial * * * care or services directly or indirectly from federal agencies or public bodies." *Gibson*, 288 Ill. App. 3d at 19. Lastly, the District acknowledged that Mr. Earnest may not have alternative means of obtaining the names at issue, but noted that the court in *Chicago Alliance* explained that this factor is not dispositive. *Chicago Alliance*, 348 Ill. App. 3d at 212, 808 N.E.2d at 75.

In his reply, Mr. Earnest maintained that many of the donations marked "anonymous" should not be kept anonymous.

This office's review of the responsive records found that the donors do not have a right to privacy that outweighs any legitimate public interest in disclosure of their names. As the District noted, Mr. Earnest's stated purpose of examining Title IX compliance does not suggest a public interest in disclosure because the receipt of funds does not appear to shed light on that subject in the same manner as expenditures. Nonetheless, there is a clear public interest in monitoring a school district's funding sources, including donations designated for certain purposes (i.e. an athletic team). Courts in other jurisdictions have recognized this interest in finding that the names of individuals who donated funds to public bodies are not exempt from disclosure under state open records acts. In *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 823-24 (Ky. 2008), the Kentucky Supreme Court held that disclosure of the names of donors to a foundation acting as a state university's fundraising arm did not constitute a clearly unwarranted invasion of personal privacy under Kentucky's Open Records Act, except for a limited set of donors who requested anonymity and believed at the time of the request that the donation was being made to a private entity. The court acknowledged the personal nature of the information, but ruled it was outweighed by the public interest in disclosure given the potential for large donors to exert influence over public policy: "Donors, particularly those making substantial gifts, may wish to influence the University's decisions and policies, or to have some type of benefit conferred upon them by the University. * * * [W]e agree that the public's interest is particularly piqued by large donations from anonymous donors, and that a legitimate question of influence is raised by such circumstances."

⁶Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Joshua M. Jones, Deputy Bureau Chief, Office of the Attorney General (February 14, 2022), at 4.

⁷5 ILCS 140/7(1)(b)(i) (West 1994).

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Cape Publications, 260 S.W.3d at 823; *see also Bitterman v. Vill. of Oakley*, 309 Mich. App. 53, 63, 868 N.W.2d 642, 649 (Mich. Ct. App. 2015) (names of donors to village's police fund were not information of a personal nature and thus not exempt from disclosure under the privacy exemption of Michigan's FOIA); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St. 3d 258, 265-66, 602 N.E.2d 1159, 1164-65 (Ohio 1992) (names of donors to a foundation acting as the gift-receiving arm of a public university constituted public records and did not fall within any of the asserted exemptions, including Ohio's common-law privacy right).

Further, the donations become public funds when they enter the district's coffers, and section 2.5 of FOIA upholds the public interest in records involving the receipt of public funds. Weighed against that public interest, the District did not demonstrate that disclosure of the donors' names would cause a significant invasion of personal privacy. While this office is not at liberty to reveal the confidential information this office has reviewed concerning the donors' identities, the nature of the primary donor diminishes any potential invasion of personal privacy. Still, the other donor's privacy interests are not so substantial that they outweigh the legitimate public interest in disclosure. In contrast to *Chicago Alliance*, the donors in this case were not merely seeking information but giving money to the District to fund particular programming or causes. *Gibson* is also inapt because a student's receipt of financial aid is significantly more personal than donating money. Further, the District acknowledged that there may be no alternative public means to ascertain the donors' identities. Under these circumstances, this office concludes that the District improperly redacted the donors' identities under section 7(1)(c), and asks the District to provide Mr. Earnest with new copies of the records without those redactions.

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, please contact me at joshua.jones@ilag.gov. This letter serves to close this file.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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