



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 24, 2022

Via electronic mail
Ms. Diane Benjamin
blnnews@yahoo.com

Via electronic mail
Mr. Michael Cornale
Chief Financial & Facilities Officer
Bloomington Public Schools District No. 87
300 East Monroe Street
Bloomington, Illinois 61701
cornalem@district87.org

RE: FOIA Request for Review – 2022 PAC 69918

Dear Ms. Benjamin and Mr. Cornale:

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 that follow, the Public Access Bureau concludes that the Bloomington Public Schools District No. 87 (School District) did not improperly withhold records responsive to Ms. Diane Benjamin's January 10, 2022, FOIA request.

On that date, Ms. Benjamin submitted a FOIA request to the School District seeking a copy of the results of a Panorama survey, among other records. On January 18, 2022, the School District denied that request, citing section 7.1(r) of FOIA; it clarified the next day that it denied the request pursuant to section 7.5(r) of FOIA.¹ Section 7.5(r) of FOIA exempts from inspection and copying "[i]nformation prohibited from being disclosed by the Illinois School Student Records Act." On February 15, 2022, this office received Ms. Benjamin's Request for Review contesting the withholding of the survey results.

¹ 5 ILCS 140/7.5(r) (West 2020), as amended by Public Acts 102-036, effective June 25, 2021; 102-237, effective January 1, 2022; 102-292, effective January 1, 2022; 102-520, effective August 20, 2021; 102-559, effective August 20, 2021.

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On February 18, 2022, this office forwarded a copy of the Request for Review to the School District and asked it to provide copies of the withheld records, together with a detailed explanation of the factual and legal bases for the applicability of the asserted exemption. On February 24, 2022, this office received the requested materials. On February 28, 2022, this office forwarded a copy of the School District's response to Ms. Benjamin; she replied that same day. Ms. Benjamin maintained that the School District improperly denied her request and that she did not seek individual responses.

In a March 29, 2022, telephone conversation, an Assistant Attorney General in the Public Access Bureau spoke with the School District's FOIA Officer, Michael Cornale, concerning the survey at issue and requested additional information regarding it. Later that day, this office received a supplemental response from the School District in which it asserted that the survey results are also exempt from disclosure pursuant to section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021). On March 31, 2022, this office forwarded a copy of the supplemental response to Ms. Benjamin; she replied that same day.

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 Department of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body that withholds records "has the burden of proving by clear and convincing evidence" that the records are exempt from disclosure. 5 ILCS 140/1.2 (West 2020). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 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). The exemption 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.

In its response to this office, the School District maintained that the survey results are exempt from disclosure pursuant to section 7.5(r), asserting that the results reveal information by which students may be individually identified. The School District further

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asserted in its supplemental response that the results also fall within the scope of section 7(1)(f) because "individual student opinions are expressed."² In reply to that answer, Ms. Benjamin contended that she did not seek preliminary drafts or notes. She stated that she instead sought a compilation of the survey results.

The Public Access Bureau has previously concluded that survey responses generated and used by a school district as part of a deliberative process are exempt from disclosure under section 7(1)(f) of FOIA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 70166, issued March 8, 2022 (school district did not improperly deny request for aggregate answers to student wellbeing survey pursuant to section 7(1)(f)); Ill. Att'y Gen. PAC Req. Rev. Ltr. 50257, issued December 6, 2017 (determining that school climate survey responses contained the type of opinion information within the scope of the 7(1)(f) exemption); Ill. Att'y Gen. PAC Req. Rev. Ltr. 44309 44311, issued March 28, 2017 (survey responses used by a school district in its decision-making process concerning proposed extended day kindergarten fell within scope of section 7(1)(f)). *See also Times Journal Co. v. Department of Air Force*, 793 F. Supp. 1, 4 (D.D.C. 1991) (exemption in Federal FOIA that corresponds to section 7(1)(f) applied to employee survey results because disclosure would thwart "the ability to elicit candid and frank responses from Air Force personnel to survey questions[] * * * and frustrate the decisionmaking process by making it impossible for Department policymakers to acquire needed information.").

Based on this office's review, the results consist of responses from individual students who completed the Panorama survey, which sought feedback on matters relevant to the School District's deliberative process. Specifically, based on the documents provided to Ms. Benjamin in response to her request, the Panorama survey appeared to seek students' opinions on the topics of diversity and inclusion, cultural awareness and action, and sense of belonging.³ In the March 29, 2022, telephone conversation with an Assistant Attorney General, Mr. Cornale explained that the survey was part of a pilot program that the School District was testing, and that the School District had not made any decisions in connection with the survey. Mr. Cornale clarified that the School District has not distilled the survey results or compiled the responses from students into a summary form. As discussed above, survey responses from students or staff used by a school district in its deliberations concerning school matters fall within the scope of the 7(1)(f) exemption, including results that are in an aggregate format. There is no indication that the head of the School District publicly cited and identified the survey results. Accordingly, this

²Letter from Michael Cornale, FOIA Officer, Bloomington Public Schools District 87, to Teresa Lim, Public Access Bureau (March 29, 2022).

³Panorama Education, Student Survey Topics.

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office concludes that the Panorama survey results are exempt from disclosure pursuant to section 7(1)(f) of FOIA.⁴

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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⁴Because this determination concludes that the records at issue are exempt from disclosure pursuant to section 7(1)(f), we decline to address the applicability of section 7.5(r) of FOIA.