

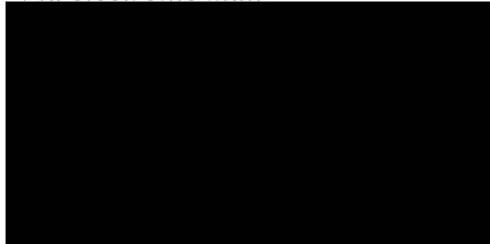


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 1, 2022

Via electronic mail



Via electronic mail

Ms. Leslie Quade Kennedy
Partner
Odelson, Sterk, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, Illinois
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RE: FOIA Request for Review – 2022 PAC 70844

Dear [REDACTED] and Ms. Kennedy:

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 explained below, the Public Access Bureau concludes that the response by Cook County School District 130 (District) to [REDACTED] FOIA request did not violate FOIA.

On January 18, 2022, [REDACTED] on behalf of the Freedom Foundation, submitted a FOIA request to the District seeking "the following information for each Cook County School District 130 employee covered by the collective bargaining agreement with SEIU Local 73:"

- 1) First name
- 2) Middle name
- 3) Last name

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- 4) Age or day of birth
- 5) Job title
- 6) Hire date
- 7) Department name
- 8) Work address
- 9) Work email address.^[1]

On January 26, 2022, the District denied the request, asserting that the request did not reasonably identify a public record and that even if it did, the record would be exempt under sections 7(1)(a) and 7(1)(c) of FOIA (5 ILCS 140/7(1)(a), (1)(c) (West 2020), as amended by Public Acts 102-038, effective June 25, 2021; 102-558, effective August 20, 2021). On March 28, 2022, ██████████ submitted a Request for Review contesting the denial. He argued that section 3(d)(5) of the Illinois Educational Labor Relations Act (IELRA) (115 ILCS 5/3(d)(5) (West 2020)), which the District cited in conjunction with section 7(1)(a), does not apply because his request did not seek union membership information; instead, he claimed, it sought information concerning employees covered by the collective bargaining agreement "regardless of, and not including information about the employees' membership in a labor organization."²

On April 4, 2022, this office sent a copy of the Request for Review to the District and asked it to provide this office with a detailed written explanation of the legal and factual bases for its denial of the request. On May 27, 2022, the District provided a complete version of its response for this office's confidential review and a redacted version for forwarding to ██████████. On June 7, 2022, ██████████ submitted a reply.

DETERMINATION

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

On June 30, 2022, the Public Access Bureau issued a binding opinion against the Freedom Foundation in a closely similar Request for Review. Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, issued June 30, 2022. The one difference is that the FOIA request in that matter asked

¹Letter from ██████████, Outreach Associate, Freedom Foundation, to FOIA Officer, Cook County School District 130 (January 18, 2022).

²Letter from ██████████, Outreach Associate, Freedom Foundation, to Leah Bartelt, Public Access Counselor, Office of the Attorney General (March 28, 2022), at 2.

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for each employee's "[u]nion,"³ while the request in this matter instead asked for each employee's "[a]ge or day of birth."⁴ The other eight items in the requests are the same. Because the former request was submitted to a city rather than a school district, the labor law provisions at issue were sections 6(c-5), 10(a)(8), and 10(a)(9) of the Illinois Public Labor Relations Act (IPLRA).⁵ Section 6(c-5) of the IPLRA is identical to section 3(d) of the IELRA.⁶ Just as section 7.5(zz) of FOIA⁷ exempts from disclosure "[i]nformation prohibited from being disclosed under the Illinois Public Labor Relations Act[.]" section 7.5(yy) of FOIA⁸ exempts from disclosure "[i]nformation prohibited from being disclosed under the Illinois Educational Labor Relations Act."

In the binding opinion, this office explained that the requested information was exempt from disclosure under section 7.5(zz) because:

³Letter from Erin Volz, Policy & Outreach Associate, Freedom Foundation, to City of Berwyn, Margaret M. Paul, City Clerk (January 17, 2022).

⁴Letter from [REDACTED] Outreach Associate, Freedom Foundation, to FOIA Officer, Cook County School District 130 (January 18, 2022).

⁵ILCS 315/6(c-5) (West 2020), as amended by Public Act 102-038, effective June 25, 2021; 5 ILCS 315/10(a)(8), (a)(9) (West 2020), as amended by Public Act 102-596, effective August 27, 2021.

⁶Section 3(d) of the IELRA provides:

No employer shall disclose the following information of any employee: (1) the employee's home address (including ZIP code and county); (2) the employee's date of birth; (3) the employee's home and personal phone number; (4) the employee's personal email address; (5) any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation (including whether employees are members of such organization, the identity of such organization, whether or not employees pay or authorize the payment of any dues or moneys to such organization, and the amounts of such dues or moneys); and (6) emails or other communications between a labor organization and its members.

⁷5 ILCS 140/7.5(zz) (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.

⁸5 ILCS 140/7.5(yy) (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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Confirming that certain specific City employees are within a bargaining unit represented by SEIU Local 73 would necessarily reveal the identity of the organization and information concerning employee membership or membership status; the Foundation would be informed that only these City employees are either members of the union or eligible to be members of the union, and that a majority voted to be represented by the union.^[9]

The same reasoning applies here because the same union membership and membership status information is exempt from disclosure under section 3(d) of the IELRA. Although the request at issue here did not ask for each employee's "union," that change is inconsequential because the request already identified the union as SEIU Local 73. Because compliance with  FOIA request would unavoidably involve identifying the union that represents the bargaining unit for certain specific employees, the District did not violate section 7.5(yy) of FOIA by denying the request.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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Enclosure

⁹ Ill. Att'y Gen. Pub. Acc. Op. No. 22-009, at 10.