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District to Pay for Multiple Bites at FOIA Exemption Apple

On October 3, 2012, an Illinois Appellate Court issued a decision which should serve as a warning to public school districts asserting questionable objections under the Illinois Freedom of Information Act (“FOIA”). In *Rock River Times v. Rockford Public School District 205*, the Appellate Court affirmed the trial court’s ruling denying the requestors’ prayer for attorney’s fees in FOIA litigation against District 205, while at the same time upholding the Circuit Court’s imposition of a civil penalty in the amount of \$2,500 against the District. The Appellate Court’s decision makes it clear that if a school district wishes to assert exemptions to document disclosure under the FOIA, it will not be afforded multiple opportunities to do so.

On August 26, 2010, the Rock River Times and its reporter, Joe McGhee, served the Rockford School District with a FOIA request for a letter written by a principal in response to the District Superintendent’s “separation of employment” letter. The

District initially claimed that the letter was exempt from disclosure because it fell within the Act's exemptions for "personal privacy" and the "examination data for qualifications for employment". The State's Freedom of Information Act Public Access Counselor (PAC) initially rejected the District's claim under the "personal privacy" exemption but failed to address the second ground. In a separate ruling, the PAC rejected the District's examination data exemption claim and ordered the District to release the letter.

The District, in a September 29, 2010, letter, "expressed its willingness" to rethink its denial of the request. In a letter dated October 8, 2010, the District acknowledged that the previously claimed exemptions did not prohibit disclosure of the letter. However, instead of releasing the letter, the District asserted a new basis for denying the request—that the letter was exempt because it constituted an adjudication of an employee grievance or a disciplinary case.

The PAC advised the District that it would consider the new claim. However, the newspaper and reporter disagreed with the PAC's decision to consider new exemptions and filed suit alleging that the District willfully and deliberately violated

the FOIA. They asked that the Circuit Court impose monetary penalties and award them attorney's fees based upon the District's conduct. Once the suit was filed, the PAC told the District that it would no longer consider its new grounds for exemption. Prior to any adjudication on the complaint by the Circuit Court, the District relented and turned over the letter alleging that it was doing so based upon a "verbal opinion" it received from the PAC. Notwithstanding the fact that the letter was disclosed, the Circuit Court decided to impose monetary sanctions against the District in the amount of \$2,500 but denied the prayer for attorney's fees. Both sides appealed the Circuit Court's order.

The Appellate Court affirmed the Circuit Court's ruling. It determined that the 2010 amendments to the FOIA made it clear that the recovery of attorney's fees is only permissible when the disclosure of the documents sought is achieved through an order adjudicating the matter in favor of the Plaintiff. In this case, since the Plaintiff received the documents through the voluntary action of the District, an award of attorney's fees was not permissible as a matter of law.

The Appellate Court further determined that the Circuit Court

correctly found that the District willfully and deliberately violated FOIA and, therefore, sanctions were warranted. The Appellate Court seized upon the fact that, after the PAC rejected the District's claims of exemption and directed release of the letter, the District asserted a brand new ground for withholding the letter. The Appellate Court determined that nothing in FOIA permits different exemptions to be raised on numerous occasions by a public body and that the District's attempt to do so was nothing more than an attempt to circumvent the Act. To make matters worse, it agreed with the Circuit Court that the District's contention that it released the letter based upon a "verbal opinion" issued by the PAC was "resoundingly unconvincing." Given all of this, the Appellate Court concluded that the Circuit Court correctly determined that the District deliberately embarked on a course of conduct to avoid disclosure of the letter regardless of its statutory obligation to do so.

The *Rock River Times* decision has two important lessons for school districts, public bodies and their lawyers. First, all claims of exemptions to disclosure must be asserted at one time and within the legally mandated time frame for responding to a

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FOIA request. The courts will frown upon a “moving target” approach to the presentation of exemptions. Second, recipients of FOIA requests should be mindful that when it comes to dealing with the PAC, honesty truly is the best policy. It does not help to misrepresent facts to a court concerning the PAC to justify a violation of the FOIA.

If you have any questions about the case or your obligations under FOIA, please contact our attorneys at (630) 928-1200 (Oak Brook) or (708) 799-6766 (Flossmoor).