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MORE PUBLIC ACCESS GUIDANCE: SPEAKER ADDRESSES, EMPLOYEE PHOTOS, LATE RESPONSES, AND STUDENT RECORDS

We periodically provide updates on recent legal opinions from the Illinois Attorney General's Public Access Counselor ("PAC") regarding the Open Meetings Act ("OMA") and the Freedom of Information Act ("FOIA"). Here are summaries of recent PAC opinions of interest to school districts.

OMA – PAC Binding Opinion 14-009: Speaker Addresses

The Attorney General's Office released a binding opinion stating it is a violation of the OMA for a public body to require an individual to state their home address before making a comment before the Board. A municipal village board requested a woman to state her address before making a public comment because it was the board's typical custom and practice. However, the board did not have a specific rule in place that



required an individual to state their address before speaking to the board during the public comment period.

Although OMA allows a board to establish rules governing the public comment period during a meeting, these rules must be reasonable time, place, and manner restrictions aimed at furthering the a significant government interest in operating an orderly meeting. The PAC determined that requiring an individual to state their address before addressing the board, regardless of whether it is an established rule of a board or just a general custom, exceeds the scope of the rules created to govern public comment. Requiring individuals to state their address may deter individuals from commenting during meetings. Thus, requiring individuals to state their address before publicly addressing a board violates the OMA.

While this opinion is not binding on all public bodies at this point, school boards should consider eliminating any rules or customary practices that require members of the public to state their addresses before commenting at any public meetings.

FOIA – PAC Binding Opinion 14-008: Employee Photos

A newspaper reporter submitted a FOIA request to a sheriff's office requesting photographs of a deputy. The sheriff's office denied this request under the private information exemption which includes biometric identifiers. The sheriff's office argued that photographs are biometric identifiers because they can be used to identify biological attributes. However, the PAC disagreed.

Although FOIA does not define biometric identifiers, the PAC determined biometric identifiers are commonly used to describe an individual's fingerprints or voice pattern. The Illinois Biometric Information Privacy Act defines biometric information to include fingerprints, voice patterns, plus retina, hand, and face scans. However, that Act specifically excludes photographs from that definition.

The PAC also pointed out that other sections of FOIA reference photographs. If the General Assembly had intended photographs to be exempt, it would have specifically included photographs in its definition of private information. Since it did not, photographs are not biometric information prohibited from disclosure under a private information FOIA exemption. The sheriff's office, therefore, violated FOIA when it failed to

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produce the requested photographs and must disclose the photographs pursuant to the request.

School districts should be aware that they may have to disclose photographs pursuant to a FOIA request, but they also should first determine whether there are any other FOIA exemptions which would apply to permit the withholding of the applicable information.

FOIA – PAC Binding Opinion 14-007: Late Response

A newspaper reporter submitted a FOIA request to the Chicago Public Schools for all records showing ticket proceeds from athletic events during the previous school year. The PAC determined that the Chicago Public Schools violated FOIA when it failed either to timely respond to this request within five business days, or to properly ask for an extension of time to answer.

The PAC also determined the Chicago Public Schools violated FOIA by failing to properly search for the requested records and explain these search procedures in its denial response to the requester. The Chicago Public Schools failed to

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explain if it had any records that contained the requested information or why it could not extract portions of the requested information from other more comprehensive records if they existed. The Chicago Public Schools' response indicated that it had some information responsive to the request at individual schools but failed to indicate that it had attempted to collect these records from these schools. Since the Chicago Public Schools failed to take or explain why it did not take any of these measures, it violated FOIA.

Furthermore, the Chicago Public Schools failed to inform the requester that the request may be unduly burdensome within the required FOIA timeframe in order to invoke this exemption. Since the Chicago Public Schools failed to state the request was unduly burdensome in its initial response, it was prohibited from relying on this exemption to support why it did not comply with the request later. Additionally, even if the Chicago Public Schools had properly responded within the required time frame that this request was unduly burdensome, it still would have violated FOIA because it did not give the requester an opportunity to narrow its request to a manageable proportion or state why the request was unduly burdensome to the



Chicago Public Schools operations.

This opinion again demonstrates how important it is to timely respond to FOIA inquiries and to thoroughly explain all reasoning behind searches undertaken and any request denials. A dilatory or incomplete response limits options later on. The failure to engage a requester regarding narrowing the request may undermine a legitimate argument that the request is unduly burdensome.

FOIA – PAC Non-Binding Opinion 2014 PAC 29212: Student Records

In a matter for which Sraga Hauser represented the school district, a parent of a student submitted a FOIA request to the district to receive copies of her sons' student records that are stored electronically and to receive a list of her sons' student records that are stored in non-electronic format. The district denied the request because FOIA specifically exempts disclosure of school student records under the School Student Records Act and informed the requester that it did not have a list containing the student records that are stored non-electronically.

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The requester alleged that she had been unable to obtain copies of her sons' student records, despite her requests, pursuant to the School Student Records Act. However, the school district maintained that it had given the parent opportunities to receive copies of these records in accordance with the School Student Records Act procedures but that she had failed to comply with these procedures. The Public Access Counselor determined the school district did not violate FOIA because the district did not have to produce these records under the School Student Records Act FOIA exemption.

Although this is a non-binding opinion, it demonstrates that a parent cannot circumvent the School Student Records Act requirements and procedures by bringing a request for student records pursuant to FOIA.

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Should you have any questions, please contact one of our attorneys at our Flossmoor Office at 708-799-6766.

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