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STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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Abstract **APPROVED**
for Publication

January 31, 2012



Via electronic mail
Ms. Lisa Weitekamp
Freedom of Information Act Officer
Illinois Department of Corrections
1301 Concordia Court, P.O. Box 19277
Springfield, Illinois 62794
LISA.WEITEKAMP@doc.illinois.gov

RE: FOIA Request for Review – 2012 PAC 21239

Dear  and Ms. Weitekamp:

The Public Access Counselor has received a Request for Review submitted by Ms. Lynn Camery pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2011 Supp.)), and the responsive correspondence submitted to this office by the Illinois Department of Corrections (IDOC). For the reasons that follow, IDOC has violated FOIA by withholding the records responsive to  request.

BACKGROUND

On August 3, 2012,  submitted a FOIA request to IDOC seeking a copy of "all documents in response to my grievances filed with the Office of Executive Inspector General, Complaint #11-01330."¹ On August 23, 2012, IDOC informed  that it was denying the FOIA request in its entirety under section 7(1)(d)(v), and section 7(1)(n) of FOIA. Section 7(1)(d)(v) of FOIA (5 ILCS 140/7(1)(d)(v) (West 2011 Supp.)), as amended by Public Act 97-783, effective July 13, 2012; Public Act 97-813, effective July 13, 2012), exempts from

¹Letter from  to Lisa Weitekamp, FOIA Officer, Illinois Department of Corrections (August 3, 2012). It is our understanding that the Office of the Inspector General for the Governor's Agencies declined to pursue the matter and returned the documents to IDOC to conduct the investigation.

██████████
Ms. Lisa Weitekamp

January 31, 2013

Page 2

inspection and copying "information if releasing it would disclose unique or specialized investigative techniques, other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation, or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request." Section 7(1)(n) (5 ILCS 140/7(1)(n) (West 2011 Supp.), as amended by Public Act 97-783, effective July 13, 2012; Public Act 97-813, effective July 13, 2012) exempts from inspection and copying "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed."²

On August 30, 2012, Ms. Camery submitted to the Office of the Public Access Counselor a Request for Review of IDOC's denial of the FOIA request.³ On September 12, 2012, this office forwarded a copy of the Request for Review to IDOC and asked for an explanation of the factual basis for its assertion of section 7(1)(d)(v) and section 7(1)(n).⁴ In a letter dated October 9, 2012, IDOC stated that the records relate to an investigation of "an employee within [IDOC] and determining rather [sic] IDOC rules have been violated. An investigation is the second step toward determining if there is a disciplinary issue at hand."⁵ IDOC's response did not address section 7(1)(d)(v) which was raised in its denial letter to Ms. Camery. IDOC also furnished this office with copies of the investigatory records that are responsive to Ms. Camery's request.

This office forwarded IDOC's response to Ms. Camery on October 10, 2012.⁶ On October 15, 2012, Ms. Camery responded to the letter and informed this office that IDOC had yet to impose any discipline against any employee in the investigation.⁷

²Letter from Lisa Weitekamp, FOIA Officer, Illinois Department of Corrections to Lynn Camery (August 23, 2012).

³Letter from ██████████ to the Public Access Counselor (August 30, 2012).

⁴Letter from Matt Rogina, Assistant Attorney General, Public Access Bureau to Lisa Weitekamp, FOIA Officer, Illinois Department of Corrections (September 12, 2012).

⁵Letter from Lisa Weitekamp, FOIA Officer, Illinois Department of Corrections to Matt Rogina, Assistant Attorney General, Office of the Illinois Attorney General (October 9, 2012).

⁶Letter from Matt Rogina, Assistant Attorney General, Public Access Bureau to ██████████ (October 10, 2012).

⁷Letter from ██████████ to the Public Access Counselor (October 15, 2012).

ANALYSIS

As a preliminary matter, all public records in the possession or custody of a public body are presumed to be open to inspection and copying. 5 ILCS 140/1.2 (West 2011 Supp.). Section 3 of FOIA (5 ILCS 140/3 (West 2011 Supp.)) provides, in pertinent part:

(a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. * * *

(b) Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

A public body "*has the burden of proving by clear and convincing evidence*" that a record is exempt from disclosure. (Emphasis added.) 5 ILCS 140/1.2 (West 2011 Supp.). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997).

Whether grievances are exempt from inspection and copying under section 7(1)(n) necessarily depends upon the meaning of the statutory term "adjudication." *Black's Law Dictionary* defines "adjudication" as meaning "[t]he legal process of resolving a dispute; the process of judicially deciding a case." *Black's Law Dictionary* 47 (9th ed. 2009). Similarly, *Black's* defines an adjudication hearing as an "[a]gency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard." *Black's Law Dictionary* 788 (9th ed. 2009).

Illinois courts have recognized that the adjudicatory function of a public body is separate from other functions that a public body may commence upon receipt of an employee matter. *Board of Education of Community Consolidated School District No. 54 v. Spangler*, 328 Ill. App. 3d 747 (1st Dist. 2002) quoting *Morelli v. Board of Education, Pekin Community High School District No. 303, Tazewell County*, 42 Ill. App. 3d 722 (1976). The Illinois Appellate Court in *Spangler* concluded that the Board of Education's initial determination that grounds existed for the dismissal of a tenured school teacher was part of the Board's investigatory function and therefore, separate from the adjudication. *Spangler*, 328 Ill. App. 3d at 753. The adjudicatory function of the dismissal phase commenced when the teacher requested an administrative hearing under then section 24-12 of the Illinois School Code (105 ILCS 5/24-12)

[REDACTED]
Ms. Lisa Weitekamp
January 31, 2013
Page 4

(West 1998)). *Spangler*, 328 Ill. App. 3d at 753. Therefore, it can reasonably be stated that the adjudicatory phase of an employee grievance or disciplinary matter does not commence unless some type of formal hearing is requested.

Thus, the language of section 7(1)(n) is unambiguous. By its plain language, section 7(1)(n) is applicable only to investigatory records that involve an *arbitration, civil service hearing or other adjudicatory hearing*. Here, IDOC has not explained how the responsive records, which appear to be exclusively investigatory, relate to an adjudication. Nor has IDOC offered any support for its assertion of the section 7(1)(d)(v) exemption. Accordingly, we conclude that IDOC has failed to meet its burden of demonstrating by clear and convincing evidence that these records are exempt from disclosure under section 7(1)(n), and must disclose the records to [REDACTED] upon receipt of this letter, subject to permissible redactions.⁸

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 (312) 814-5383. This correspondence shall serve to close this file.

Very truly yours,

[REDACTED]
MATT ROGINA
Assistant Attorney General
Public Access Bureau

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⁸Section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2011 Supp.), as amended by Public Acts 97-783, effective July 13, 2012; 97-813, effective July 13, 2012; 97-1065, effective August 24, 2012; 97-1129, effective August 28, 2012; 97-847, effective September 22, 2012) exempts from disclosure information that would: "[u]navoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request[.]"