



FOIA AND STUDENT PRIVACY

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INTRODUCTION

TOPIC: This presentation will provide a brief review of the *Freedom of Information Act* and its interplay with student privacy and other confidentiality laws for Illinois school districts.

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Hodges, Loizzi serves over 175 school districts, cooperatives and other educational entities in Illinois

DISCLAIMER: This presentation is made available for educational purposes only as well as to give you general information and a general understanding of the law, **not to provide specific legal advice.**



CONCEPTS

- FOIA 101
- FOIA and Student Records
- Student Directory Information



FOIA 101

- The Illinois *Freedom of Information Act* (5 ILCS 140/1 *et seq.*)





FOIA 101

Purposes

Transparency

Public access to documents

FOIA Officer – annual training on PAC website

Does not require answering questions

Does not require creating new records (w/exceptions – must produce electronic records in format requested, if feasible)



FOIA 101

Definition of Public Records: All recorded information, regardless of form, pertaining to the transaction of public business and having been prepared by or for or having been used, received or possessed or under the control of the public body.

Can Include Board Member Texts and Emails from Personal Accounts If

- Sent/Received During a Meeting OR
- Received By a Majority of the Members of the Public Body

Please use District email account for District Related Communications



FOIA 101

Timeline – 5 business days + 5 more business days with extension letter (more time for commercial/voluminous requests)

General Disclosure Rule: “Public records” must be disclosed unless specifically exempted. Burden on public body to prove exempt (clear/convincing evidence).

Exemptions (there are more than 50):

- Information prohibited from disclosure by federal or State law or corresponding rules and regulations.

Examples: *Illinois School Student Records Act, Americans with Disabilities Act, Personnel Record Review Act*



FOIA 101

Exemptions (there are more than 50) (continued):

- Private information, i.e., unique identifiers including social security numbers, home/personal phone numbers, personal email addresses, etc.
- Personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- Preliminary drafts, notes, recommendations, memoranda, or other records in which opinions are expressed or policies or actions are formulated, except when records are publicly cited and identified (e.g., Superintendent memos to the Board on pending actions)



FOIA 101

Exemptions (there are more than 50) (continued, only partial/miniscule list):

- Closed meeting minutes or recordings protected by the *Open Meetings Act*.
- Communications with an attorney or auditor that would not be subject to discovery in litigation.
- Records related to collective bargaining matters, except for the final contract or agreement which shall be subject to inspection and copying.
- Records related to insurance claims, loss of risk management information, data, advice or communications.
- Records which, if disclosed, would jeopardize the effectiveness of security measures or the safety of personnel or the public.



FOIA 101

What records are prohibited from disclosure by other laws? (partial/miniscule list) (cont'd)

- School Code
 - Superintendent, principal and teacher evaluations and SOHD lists are prohibited from disclosure except as allowed under Article 24A
 - Criminal background check results and employment history check records are prohibited from disclosure
- ANCRA: Prohibits release of reports to DCFS
- Workers Occupational Diseases Act: Prohibits release of worker injury or disability information
- FMLA: Prohibits release of FMLA-related information
- Drug test results
- Illinois Educational Labor Relations Act (IELRA): Prohibits release of employees' date of birth, union dues deduction/membership information and other information AND requires notice to union of any requests for such information



FOIA 101

What other records are prohibited from disclosure by other laws?
(partial/miniscule list) (cont'd) -- Many, many more!!! (FOIA Section 7.5
lists more than 60 laws, and it's not even close to comprehensive!)





FOIA 101

Denials – Must cite exemptions/factual basis, state person(s) responsible, and include notice of rights

Remedies

- Public Access Counselor
- Courts



FOIA AND STUDENT RECORDS





FOIA AND STUDENT RECORDS

Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 et seq.

- Regulations: 23 Ill. Adm. Code Part 375

Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g

- Regulations: 34 C.F.R. Part 99

Illinois Mental Health and Developmental Disabilities Confidentiality Act (MHDDCA), 740 ILCS 110/1 et seq. (covers certain special education records)



FOIA AND STUDENT RECORDS

What Are Student Records that are prohibited from disclosure?

ISSRA Definition: *Any writing or other record concerning an individually-identifiable student maintained by a school or at its direction by a school employee, regardless of how or where the information is stored*

Emails may be student records if they identify a student (even if not by name or initials) and are “maintained” by the school

ISSRA/FERPA entitle parents to access student records and prohibit the release of student records without parental consent.



FOIA AND STUDENT RECORDS

What Are Student Records that are prohibited from disclosure?

No. FERPA regulations prohibit release of information “that, alone or in combination, is linked or linkable to a specific student [and] would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty” as well as any information “requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.”

34 C.F.R. 99.3.



FOIA AND STUDENT RECORDS

What if a parent submits a FOIA request for student records?

- Deny under FOIA
- If desired by parent, process it as a student records request
- Use ISSRA timelines/procedures for providing access to the records
- Final response from Student Records Custodian



FOIA AND STUDENT RECORDS

What is the duty to redact student records under FOIA?

- *Bowie v. Evanston* (1989): District was required to release masked and scrambled test results by race under FOIA where masked scores couldn't be linked to particular students.
- If there were so few students of one race in a class that disclosure of the test records would result in their identification, district must withhold.

Public Access Binding Opinion 12-014: test scores were only available in alphabetical order in hard copy and could not be scrambled; nonetheless, district was required to either cut scores into strips to prevent identification of students or create a Word or Excel document using the data from the paper record.

FOIA AND DIRECTORY INFORMATION





FOIA AND DIRECTORY INFORMATION

Student directory information may be disclosed under ISSRA/FERPA without consent, but requires annual notice to parents and opportunity for parents to opt out of such disclosures

Check District's policies/procedures/annual directory information notice

If designated as directory information, could be required to release class roster under FOIA



FOIA AND DIRECTORY INFORMATION

FERPA regulation: In its public notice to parents and eligible students in attendance at the agency or institution that is described in paragraph (a) of this section, an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice that is described in paragraph (a) of this section.



FOIA AND DIRECTORY INFORMATION

Districts can limit its annual directory information notice to parents to eliminate their ability to provide directory information in response to a FOIA request.

But if they do this, it may restrict their flexibility in releasing directory information in other contexts.



THIS IS INTENDED SOLELY TO PROVIDE GENERAL INFORMATION. IT IS NOT LEGAL ADVICE OR A SUBSTITUTE FOR LEGAL COUNSEL. PLEASE CONSULT WITH LEGAL COUNSEL CONCERNING SPECIFIC FOIA OR STUDENT RECORD REQUESTS.

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