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Mid Valley Special Education

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 16, 2014

Ms. Patti Lopuszanski
532 Carriage Way
South Elgin, Illinois 60177

Ms. Nancy Sporer
Director of Business & Human Resources
Mid-Valley Special Education Cooperative
1304 Ronzheimer Avenue
St. Charles, Illinois 60134

Ms. Catherine R. Locallo
Robbins Schwartz
55 West Monroe, Suite 800
Chicago, Illinois 60603

RE: FOIA Request for Review – 2014 PAC 28243

Dear Ms. Lopuszanski, Ms. Sporer, and Ms. Locallo:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the response of the Mid-Valley Special Education Cooperative (Cooperative) to Ms. Patti Lopuszanski's FOIA request complied with the requirements of FOIA.

On January 21, 2014, Ms. Lopuszanski submitted a FOIA request to the Cooperative seeking five (5) categories of records including:

1. All copies of text messages saved and deleted and emails saved and deleted for the 2012-2013 school year by and between Carla Cumblad, Paige McNulty and Phaedra McLaughin related to Paige McNulty reporting absences, arriving to work late, leaving work early and entering days off into the

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attendance reporting system established for administrators at Mid-Valley Special Education Cooperative.

* * *

4. List employees that have received additional income or adjustments after entering into the retirement track beyond their base year salary and 6% increase. List the reasons why employees are receiving additional income beyond their base year and when the Mid-Valley Advisory Board approved.¹

On February 4, 2014, the Cooperative provided some responsive records and informed Ms. Lopuszanski that it had no documents responsive to categories 1 and 4 of her request. Ms. Lopuszanski's Request for Review questioned the Cooperative's response to categories 1 and 4 of her FOIA request.

On March 27, 2014, this office forwarded a copy of Ms. Lopuszanski's Request for Review to the Cooperative, and asked it to provide a detailed written summary of the searches conducted and efforts taken to locate all responsive records. On April 9, 2014, the Cooperative responded that a search of its email system using specific search terms related to the request was unsuccessful in locating any emails responsive to category 1 of Ms. Lopuszanski's request. The Cooperative also explained that it consulted with the respective administrators regarding their cell phone records and found no text messages responsive to the request. With regard to category 4 of Ms. Lopuszanski's FOIA request, the Cooperative stated that "none of [its retirement-track] employees have received additional income or adjustment beyond their base year salary and 6% increase."²

Ms. Lopuszanski did not reply to that response.

DETERMINATION

The requirements of FOIA apply to public records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2012). When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998); *see also Yeager v. Drug*

¹Email from Patti Lopuszanski, to Ms. Sporer (January 21, 2014).

²Letter from Catherine R. Locallo, Robbins Schwartz, to Ms. Tola Sobitan, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (April 9, 2014).

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Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982) ("A requester is entitled only to records that an agency has in fact chosen to create and retain.")

The Cooperative's response to this office confirmed that it does not possess records responsive to categories 1 and 4 of Ms. Lopuszanski's January 21, 2014, FOIA request. The Cooperative stated that it searched its e-mail system and reviewed e-mails exchanged by the parties identified in category 1 of the request, but did not locate any responsive documents. The Cooperative also stated that it consulted with Ms. Cumblad and Ms. McNulty, who searched their cell phones but located no responsive text messages. Because Ms. McLaughlin – unlike Ms. McNulty and Ms. Cumblad – was not issued a cell phone by the Cooperative, she is not reasonably likely to possess text messages concerning Ms. McNulty's attendance. The Public Access Bureau has not received any evidence indicating that the Cooperative is withholding responsive records. Accordingly, this office concludes that the Cooperative conducted a reasonable, although unsuccessful, search tailored to the nature of the request.

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, you may contact me at (312) 814-6437, or via mail at the Chicago address on the first page of this letter. This letter serves to close this file.

Very truly yours,



TOLA SOBITAN
Assistant Attorney General
Public Access Bureau

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