



Mid-Valley Special Education Cooperative

Dr. Carla Cumblad, Executive Director
1304 Ronzheimer Avenue
St. Charles, IL 60174
Phone: 331-228-4873
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November 5, 2012

VIA E-MAIL: lopuszanski532@comcast.net

Patti Lopuszanski
532 Carriage Way
South Elgin, IL 60177

Dear Ms. Lopuszanski:

This follows my September 21, 2012 correspondence and serves as Mid Valley Special Education Cooperative's (the "Cooperative") response to your narrowed FOIA request, as set forth therein.

I. Procedural Background

The Cooperative received a four-part (with many subparts) FOIA request from you on August 29, 2012. On September 4, 2012, I notified you in writing that the Cooperative was extending the time period for response by an additional five business days. On September 13, 2012, the Cooperative responded to your first, second and fourth requests. Following the Cooperative's preliminary investigation and search for records responsive to your categorical third request, I notified you in writing that based upon the search results, the anticipated examination and evaluation of each responsive record, and preparation of a written response, your third request would be unduly burdensome for the Cooperative to comply with and provided you with an opportunity to narrow your request.

On September 14, 2012, the Cooperative received your proposed narrowed third request. The Cooperative evaluated your proposed narrowed request to determine if compliance would not unduly burden its operations. On September 20, 2012, I sent you a letter seeking confirmation of the Cooperative's understanding of the scope of your proposed narrowed request, and advising you that the Cooperative believed it could comply with your proposed narrowed request if it had 30 business days to respond, and provided rationale for the extension. That same day, you advised me that you would not agree to provide the Cooperative with the requested extension of time for response, clarified a portion of your narrowed request, and submitted a new request. On September 21, 2012, the Cooperative responded to the new request and the clarified portion of your narrowed request. The Cooperative further notified you that rather than deny your proposed narrowed request under FOIA Section 3(g), the Cooperative intended to fulfill its obligations under FOIA by responding to your narrowed request as soon as possible, and no later than November 5, 2012.

The agreed-upon narrowed request is as follows:

E-mails between the following individuals: Carla Cumblad, Susan Caddy, the IEA-NEA Uniserv Director and/or the IEA-NEA legal counsel, any MVSEA union representatives, any Coordinators employed by the Cooperative, the Cooperative's five-member Advisory Board, Sandy Richmond, and/or Karin Alber regarding the following subjects: (1) the grievance you filed in December 2011; (2) the change in your position from bargaining unit member to confidential employee as presented to you in May 2011; (3) any investigation of

the FOIA request you submitted to Summit School; (4) written reprimands issued to you; and (5) allegations of insubordination issued to you.¹

II. Identification of Responsive Records²

The Cooperative has identified a total of 81 pages of records responsive to your narrowed request. The following is a brief description of only the responsive records which the Cooperative believes are exempt from disclosure under FOIA:

1. Coop 01-03.³ October 25, 2011 e-mail chain between Carla Cumblad (“Cumblad”) and Susan Caddy (“Caddy”) which includes a proposed, *draft* response to an e-mail sent by Jackie Robbins (“Robbins”) on October 18, 2011, and their opinions about the *draft* response and proposed course of action.
2. Coop 04. November 21, 2011 e-mail chain between Cumblad and Caddy which contains their opinion/comments about a draft letter of reprimand for an employee.
3. Coop 05-07. November 21, 2011 e-mail between Cumblad and Caddy transmitting a *draft* letter of reprimand and opinion about the next step in the process.
4. Coop 08-11. May 29, 2012 e-mail from Cumblad to Caddy transmitting a *draft* summary of the Cooperative’s investigation of misconduct allegations and proposed next step.
5. Coop 12-16. May 31, 2012 e-mail from Cumblad to Caddy transmitting a revised *draft* summary of the Cooperative’s investigation of misconduct allegations.
6. Coop 17-23. June 1, 2012 e-mail from Caddy to Cumblad forwarding an e-mail between Caddy and the Cooperative’s legal counsel which contains legal advice and attachments from legal counsel with recommended revisions to the Cooperative’s *draft* investigation summary and findings documents.

III. The Cooperative’s Response and Partial Denial of Your Narrowed Request

Responsive Records Which Contain No Exempt Content

Enclosed please find copies of the responsive records which do not contain any exempt content:

- ♣ Exhibit A contains records which the Cooperative believes are responsive to subpart (1) of your narrowed request.

¹ To be clear, the Cooperative’s search and response was limited to e-mails only between the individuals and subjects specifically identified in the narrowed request. For example, the Cooperative did not search for or identify as responsive e-mails that: you may have sent to any of these individuals; these individuals may have sent to you (if no other of the individuals identified were copied on the e-mail); one of these individuals sent to a principal (a principal is not a Coordinator); these individuals may have sent to the Cooperative’s legal counsel (if no other of the individuals identified were copied on the e-mail), etc.

² In accordance with its obligations under FOIA, the Cooperative diligently searched for e-mails responsive to your narrowed request. While the Cooperative is confident in its search efforts and has no reason to believe that any responsive e-mails were not identified as part of its search, the Cooperative reserves the right to identify and produce any e-mails requested in another forum which may have been inadvertently omitted from this FOIA response.

³ A copy of the non-exempt portion of this e-mail chain (Coop 02-03 – 10/18/11, 8:11 p.m. e-mail from Jackie Robbins) is being provided to you and is included with the records attached hereto as Exhibit D.

- ♣ Exhibit B contains records which the Cooperative believes are responsive to subpart (2) of your narrowed request.
- ♣ Exhibit C contains records which the Cooperative believes are responsive to subparts (3), (4), and (5) of your narrowed request.
- ♣ Exhibit D contains records which the Cooperative believes are responsive to subparts (1), (4), and (5).

Records Subject to Section 7(1)(f) Exemption

FOIA Section 7(1)(f) exempts from disclosure:

“[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.”

Drafts

A plain reading of the above Section establishes that records in draft form are exempt from disclosure under FOIA, unless publicly cited and identified by the public body. Additionally, there are numerous pre-authorization decisions issued by the PAC affirming that records in draft form are exempt from disclosure under FOIA. As such, the records marked Coop 01, 05-07, 08-11, 12-16, and 19-23 are *per se* exempt from disclosure under FOIA, and copies of these records are not being provided.

Deliberative Process

The Illinois Attorney General’s Public Access Counselor has relied upon the decision in *Harwood v. McDonough* in granting or denying pre-authorization requests under Section 7(1)(f) (during the time when pre-authorization was required under the law). This decision interprets the parallel provision in the federal *Freedom of Information Act*, on which Section 7(1)(f) of the Illinois FOIA was patterned. The appellate court in *Harwood v. McDonough* noted that the deliberative process exemption of the federal statute “...is intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made”. *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150-51, 95 S.Ct. 504, 44 L.Ed.2d 29 (1975). Case law construing the exemption has explained that it “protects pre-decisional, deliberative communications that are part of an agency’s decision-making process.” *Parmelee v. Campanone*, No. 93 C 7362, 1998 WL 704181 (N.D.Ill. Oct. 1, 1998). *Harwood*, 344 Ill.App.3d at 248, 799 N.E.2d at 864.

In following *Harwood*, the PAC has previously granted numerous Section 7(1)(f) pre-authorization requests by public bodies as to certain types of records, which are similar to the records responsive to the instant request. For example:

2010-6680: E-mail correspondence in which opinions are expressed re: matters of the public body.

2010-7015: Internal memoranda in which opinions are expressed.

2010-7032: Certain e-mail correspondence in which government employees express opinions, provide recommendations, and evaluated actions to be taken.

2010-7154: E-mail communications between Office of Attorney General staff which express opinions as part of an effort to formulate policy.

2010-7873: Internal notes and discussions to aid in making final decision on regulatory matters.

2010-8070 and 2010-8017: Certain staff communications expressing opinions on a matter because the records were used to formulate a course of action and have not been publicly cited.

2010-8180: Certain e-mails and other communications which contain the impressions, opinions and recommendations of individuals which were used in the formulation of final decisions regarding disciplinary action and performance evaluation of certain employees.

2010-8586: Internal e-mails amongst township officials and employees where strategy was discussed and deliberated and courses of action formulated.

2010-6621: E-mail correspondence between employees and comments by employees on customer service request logs, in which employees express opinions that have not been publicly cited by the head of the public body.

Relying on the decisions cited above, the Cooperative asserts that the e-mails marked Coop 01, 04-05, and 08 are exempt from disclosure under FOIA Section 7(1)(f), and copies of these records are not being provided.

Records Subject to Section 7(1)(m) Exemption

FOIA Section 7(1)(m) exempts from disclosure, in part: “[c]ommunications between a public body and any attorney representing the public body that would not be subject to discovery in litigation, and material prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of any attorney advising the public body...”. As such, the Cooperative is denying your request for the records identified above as Coop 18-19 under FOIA Section 7(1)(m), as these records represent attorney-client privileged communications between the Cooperative and Robbins, Schwartz, Nicolas, Lifton and Taylor, Ltd., its legal counsel.

IV. Notice Regarding Partial Denial of Your Request

For the reasons set forth above, the Cooperative has partially denied your narrowed request. As such, you may ask the Illinois Attorney General’s Public Access Counselor (“PAC”) to review this decision concerning part of your records request, by submitting a Request for Review to the PAC by electronic mail or U.S. Mail within 60 days after your receipt of this partial denial of your request. A Request for Review by the PAC should be directed to:

Public Access Bureau
Office of the Attorney General
500 S. 2nd St.
Springfield, IL 62706
publicaccess@atg.state.il.us
(217) 558-0486

You also have the right to review by a court of law pursuant to FOIA Section 11.

Sincerely,

Susan J. Caddy
Director of Business & Human Services/FOIA Officer
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