

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BETTER GOVERNMENT ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
SCHILLER PARK SCHOOL DISTRICT 81,)
)
Defendant.)

2014CH06047
CALENDAR/ROOM 03
TIME 00:00
General Chancery

COMPLAINT

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by its undersigned attorneys LOEVY & LOEVY, and brings this suit to overturn Defendant SCHILLER PARK SCHOOL DISTRICT 81's willful and intentional violation of the Illinois Freedom of Information Act in refusing to produce non-exempt confidentiality agreements. In support of its Complaint, BETTER GOVERNMENT ASSOCIATION alleges:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, the General Assembly has declared it to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of

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CHANCERY DIVISION

government activity that affect the conduct of government and the lives of any or all of the people.

3. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

4. Under FOIA Section 11(h), "except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."

5. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.

6. Defendant SCHILLER PARK SCHOOL DISTRICT 81 has willfully and intentionally violated FOIA by refusing to produce confidentiality agreements that are not exempt and that every other school district in Cook County having such agreements produced to BETTER GOVERNMENT ASSOCIATION in response to identical FOIA requests.

PARTIES

7. BETTER GOVERNMENT ASSOCIATION ("BGA") is a nonpartisan, Illinois non-profit corporation, whose mission is to educate the public about waste, inefficiencies, and corruption in government by acting as a watchdog agency uncovering and exposing this type of activity; to promote respect for the law; and to support public officials in the rightful performance of their duties. BGA was founded in 1923 to protect the integrity of the political process in Chicago.

8. BGA relies heavily on the Illinois Freedom of Information Act to obtain information from government in furtherance of BGA's mission.

9. SCHILLER PARK SCHOOL DISTRICT 81 ("SCHILLER PARK") is a school district located in Schiller Park, Cook County, Illinois.

BGA'S FOIA REQUEST AND SCHILLER PARK'S DENIAL

10. On February 10, 2014, BGA requested the following information from SCHILLER PARK under FOIA ("the request"): "Any and all confidentiality agreements adopted, approved or signed in calendar years 2011, 2012 and 2013. (Examples include, but are not limited to, lawsuit settlements, or agreements to end a person's employment.)" (Exhibit A). BGA requested other information in the same letter to SCHILLER PARK that is not at issue in this Complaint.

11. BGA made the same request to every school district in Cook County.

12. After extending the time to respond to BGA's request, SCHILLER PARK denied BGA's request on February 25, 2014, stating: "The documents have been withheld to protect 'private information' as that term is defined in Section 2(c-5) of the Illinois Freedom of Information Act, including personal information as permitted under Section 7(1)(b) of the Illinois Freedom of Information Act." (Exhibit B).

13. Under the express language of Section 2(c-5) of FOIA, "private information" means "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person."

14. Upon information and belief, SCHILLER PARK has entered into agreements that fall within the scope of BGA's request that contain information outside the scope of Section 2(c-5), including, for example, the names of the parties to the agreements, the dates, the amounts paid, and other terms of the agreements.

15. Under the express language of FOIA Section 7, "when a request is made to inspect or copy a public record that contains information that is exempt from disclosure under FOIA, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt, but the public body shall make the remaining information available for inspection and copying."

16. Under the express language of FOIA Section 2.20, "all settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure may be redacted."

17. Under the express language of FOIA Section 2.5, "all records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."

18. After receiving SCHILLER PARK'S denial, BGA asked SCHILLER PARK to reconsider its position and informed SCHILLER PARK that it was the only school district in Cook County to deny the request. (Exhibit C).

19. In response to BGA's request that SCHILLER PARK reconsider its position, SCHILLER PARK asserted additional purported exemptions but maintained its refusal to produce the agreements. In its amended denial, SCHILLER PARK further claimed that the agreements were exempt under Section 7(1)(a) as "specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law"; under Section

7(1)(c) as personal information, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"; and under Section 7.5(q) as prohibited from disclosure by the Personnel Records Review Act. (Exhibit D).

20. SCHILLER PARK has not identified any federal or State law or rules or regulations implementing federal or State law that specifically prohibit disclosure of the agreements, as required by Section 7(1)(a).

21. Under the express language of FOIA Section 7(1)(c), the exemption applies only to "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Moreover, "the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

22. SCHILLER PARK has not explained how the Personnel Records Review Act allegedly applies to the agreements sought in the request. To the extent SCHILLER PARK is relying upon Section 11 of the Personnel Records Review Act, that provision states only that "this Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited."

23. In violation of the express language of FOIA Section 9(a), neither SCHILLER PARK'S original denial nor amended denial include a "detailed factual basis for the application of any exemption claimed."

24. In response to SCHILLER PARK'S amended denial, BGA asked SCHILLER PARK to reconsider. SCHILLER PARK did not respond. (Exhibit E).

CLAIM FOR RELIEF

25. The above paragraphs are incorporated by reference.
26. SCHILLER PARK SCHOOL DISTRICT 81 is a public body under FOIA.
27. The requested records are public records under FOIA.
28. The requested records are not exempt under FOIA.
29. SCHILLER PARK SCHOOL DISTRICT 81 willfully and intentionally failed to comply with FOIA in denying BGA's request.

WHEREFORE, BGA asks that the court:

(1) in accordance with FOIA Section 11(h), afford this case precedence on the court's docket except as to causes the court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;

(2) declare that SCHILLER PARK SCHOOL DISTRICT 81 has violated FOIA;

(3) order SCHILLER PARK SCHOOL DISTRICT 81 to produce the requested records;

(4) enjoin SCHILLER PARK SCHOOL DISTRICT 81 from withholding non-exempt public records;

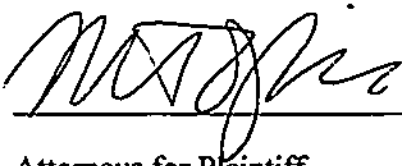
(5) award BGA reasonable attorneys' fees and costs;

(6) declare that SCHILLER PARK SCHOOL DISTRICT 81 willfully and intentionally failed to comply with FOIA and/or otherwise acted in bad faith;

(7) impose upon SCHILLER PARK SCHOOL DISTRICT 81 a civil penalty of not less than \$2500 and not more than \$5000 for each willful and intentional failure of SCHILLER PARK SCHOOL DISTRICT 81 to comply with FOIA and any other act of bad faith; and

(8) award such other relief the court considers appropriate.

RESPECTFULLY SUBMITTED,



Attorneys for Plaintiff

BETTER GOVERNMENT ASSOCIATION

Matthew Topic
Julie Goodwin
LOEVY & LOEVY
312 North May St., Suite 100
Chicago, IL 60607
(312) 243-5900
matt@loevy.com
julie@loevy.com
Atty. No. 41295

April 9, 2014



FOIA Officer

Patrick McCraney <pmccraney@bettergov.org>
To: jdotson@sd81.org, kbrant@sd81.org

Mon, Feb 10, 2014 at 11:48 AM

Dear FOIA officer,

This is Patrick McCraney at the Better Government Association with a request for documents under the Illinois Freedom of Information Act.

Specifically, under FOIA, I am requesting copies of:

- 1.) Any and all current collective bargaining agreements, including but not limited to union contracts with teachers. **(we found these on your website)**
- 2.) Any and all employment/personnel agreements and contracts with current administrators, including but not limited to superintendents.
- 3.) The most recent approved operating and capital budgets. **(found this on your website)**
- 4.) Any and all confidentiality agreements adopted, approved or signed in calendar years 2011, 2012 and 2013. (Examples include, but are not limited to, lawsuit settlements, or agreements to end a person's employment)
- 5.) Documents sufficient to show the names and corresponding job titles and salaries of any and all employees as of today (In other words, the current payroll records that include names, positions and pay of all district employees, not just teachers and administrators. Please provide in Excel or similar format).

I am making this request on behalf of the Better Government Association (BGA). The BGA is a registered-non profit organization in the State of Illinois.

The principal purpose of this request is to access and disseminate information concerning news and current or passing events for articles of opinion or features of interest to the public regarding the health, safety and welfare or the legal rights of the general public. The information sought will not be used for sale, resale, or solicitation or advertisement for sales or services.

This request is not made for commercial or personal purposes. More information about the BGA is available on the BGA website, www.bettergov.org, and on file with the Illinois Secretary of State. I ask that you waive fees as the law allows. I ask that you convey this information electronically via email, to this address: pmccraney@bettergov.org.

Please call or email with any questions. I look forward to your response within five business days as required by law.

Thanks,

—
Patrick McCraney
Investigator - Better Government Association
223 W. Jackson Blvd. #900 - Chicago, IL 60606
Cell: 815-483-1612
www.bettergov.org

Exhibit A



**SCHILLER PARK
SCHOOL DISTRICT 81**

9760 Soreng Avenue
Schiller Park, Illinois 60176
(847) 671-1816 FAX (847) 671-1872
www.sd81.org

February 25, 2014

VIA EMAIL: pmccraney@bettergov.org
Mr. Patrick McCraney
Investigator – Better Government Association
223 W. Jackson Blvd #900
Chicago, IL 60606

Re: FOIA requested received February 10, 2014

Dear Mr. Patrick McCraney:

The following is School District 81's response to your Freedom of Information Act request dated February 10, 2014:

- 1.) Any and all current collective bargaining agreements, including but not limited to union contracts with teachers. **(we found these on your website)**
Response: The information is provided herewithin.
- 2.) Any and all employment/personnel agreements and contracts with current administrators, including but not limited to superintendents.
Response: The information is provided herewithin. Please note that private information has been redacted to the extent necessary to protect "private information" as that term is defined in Section 2(c-5) of the Illinois Freedom of Information Act, including personal information as permitted under Section 7(1)(b) of the Illinois Freedom of Information Act.
- 3.) The most recent approved operating and capital budgets. **(found this on your website).**
Response: The information is provided herewithin.
- 4.) Any and all confidentiality agreements adopted, approved or signed in calendar years 2011, 2012 and 2013. **(Examples include, but are not limited to, lawsuit settlements, or agreements to end a person's employment)**
Response: This request is denied. The documents have been withheld to protect "private information" as that term is defined in Section 2(c-5) of the Illinois Freedom of Information Act, including personal information as permitted under Section 7(1)(b) of the Illinois Freedom of Information Act.
- 5.) Documents sufficient to show the names and corresponding job titles and salaries of any and all employees as of today **(In other words, the current payroll records that include names, positions and pay of all district employees, not just teachers and administrators. Please provide in Excel or similar format).**
Response: The information is provided herewithin.

Exhibit B

To the extent that we have denied certain requests, as specified above, you have a right to review by the Illinois Public Access Counselor. You may contact the Public Access Counselor at:

Sarah Pratt
Acting Public Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706
Phone: 1-877-299-FOIA
Fax (217) 782-1396

You also have the right to judicial review under Section 11 of the Freedom of Information Act.

Jeremy Dotson
Freedom of Information Act Officer
Schiller Park School District NO. 81

Lincoln Middle School
9750 Soreng Avenue
Schiller Park, IL 60176
Telephone (847) 678-2916
Fax (847) 678-4059

George Washington School
4835 Michigan Avenue
Schiller Park, IL 60176
Telephone (847) 671-1922
Fax (847) 671-1972

John F. Kennedy School
3945 Wehrman Avenue
Schiller Park, IL 60176
Telephone (847) 671-0250
Fax (847) 671-0256



Re: FOIA

Patrick McCraney <pmccraney@bettergov.org>
To: Jeremy Dotson <jdotson@sd81.org>

Tue, Feb 25, 2014 at 4:40 PM

Hi Jeremy,

Thanks for your help. That was very nicely organized.

On the denial of #4: I strongly urge you to reconsider. You are the only district in Cook County to deny these. In most confidentiality agreements involving governments, there's a clause that states the document is confidential except in the case of FOIA or subpoena. Could you do me a favor and read your district's agreements to see if that clause exists in yours?

Thanks again,

Patrick

On Tue, Feb 25, 2014 at 4:24 PM, Jeremy Dotson <jdotson@sd81.org> wrote:
Very good.

Patrick McCraney <pmccraney@bettergov.org> writes:

I have all 7. Looking through them now....

On Tue, Feb 25, 2014 at 4:09 PM, Jeremy Dotson <jdotson@sd81.org> wrote:

The original e-mail was too large. Let me know when you have received 7 of 7 e-mails.
Thanks.

Patrick McCraney <pmccraney@bettergov.org> writes:

I'm not seeing any documents attached to this email. Were they sent in another email?

Patrick

On Tue, Feb 25, 2014 at 3:58 PM, Jeremy Dotson <jdotson@sd81.org> wrote:

Exhibit C



Re: FOIA

Jeremy Dotson <jdotson@sd81.org>
To: pmccraney@bettergov.org
Cc: Katherine Brant <kbrant@sd81.org>

Thu, Feb 27, 2014 at 8:44 AM

Mr. McCraney:

Good morning. We have reviewed your FOIA point number 4 along with the requested documents with the District's attorneys. Please see the District's response below in reconsideration of your FOIA request, point number 4.

Your request #4 for confidentiality agreements is denied because the agreements are protected under various exemptions of the Illinois Freedom of Information Act, including the following: Section 7(1)(a) that protect records that are prohibited from disclosure under federal or state law, rule, or regulation; the requested records contain "private information" protected by Section 7(1)(b); the requested records constitute personal information," the disclosure of which would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c); and the requested records are exempt under the Personnel Records Review Act. § 7.5(q)

Let me know if you have any further questions. Thanks.

Jeremy Dotson
Chief School Business Official
Schiller Park School District 81

Patrick McCraney <pmccraney@bettergov.org> writes:

Hi Jeremy,

Thanks for your help. That was very nicely organized.

On the denial of #4: I strongly urge you to reconsider. You are the only district in Cook County to deny these. In most confidentiality agreements involving governments, there's a clause that states the document is confidential except in the case of FOIA or subpoena. Could you do me a favor and read your district's agreements to see if that clause exists in yours?

Thanks again,

Dotson



We have sent you the FOIA documents as requested. Please let me know if you experience any issues viewing the documents . Thank you.

Jeremy Dotson
Chief School Business Official
Schiller Park School District 81

Jeremy Dotson writes:
Hi Patrick,

We are on track. I will contact once your FOIA is complete. Thanks.

Jeremy Dotson
Chief School Business Official
Schiller Park School District 81

Patrick McCraney <pmccraney@bettergov.org> writes:

Hi Jeremy,

I have today as the deadline for my FOIA request. Just making sure you're still on track.

Thanks for your help!

—
Patrick McCraney

Investigator - Better Government Association
223 W. Jackson Blvd. #900 - Chicago, IL 60606
Cell: 815-483-1612

www.bettergov.org



Re: FOIA

Patrick McCraney <pmccraney@bettergov.org>
To: Jeremy Dotson <jdotson@sd81.org>
Cc: Katherine Brant <kbrant@sd81.org>

Thu, Feb 27, 2014 at 1:03 PM

So, to be clear, we are looking for any and all confidential agreements signed in calendar years 2011, 2012 or 2013. Generally, other districts have provided lawsuit settlements, agreements to end a person's employment, or settlements after an employee felt they were wrongfully fired, and filed a complaint with the state. One district provided an agreement to expel a student, where the student's name and information was redacted. However, we're generally less interested in issues involving students, and more interested in issues involving lawsuits, employees, etc.

In nearly all cases, the agreements we're looking for will contain a clause that says something to this extent: "this document is confidential except under subpoena or FOIA."

We sent FOIA requests to every school district in Cook County. Many said they had no responsive documents, but yours is the only district that denied this request.

As I said before, everything else we asked for looked great, and we thank you for that.

Patrick

On Thu, Feb 27, 2014 at 8:44 AM, Jeremy Dotson <jdotson@sd81.org> wrote:
Mr. McCraney:

Good morning. We have reviewed your FOIA point number 4 along with the requested documents with the District's attorneys. Please see the District's response below in reconsideration of your FOIA request, point number 4.

Your request #4 for confidentiality agreements is denied because the agreements are protected under various exemptions of the Illinois Freedom of Information Act, including the following: Section 7(1)(a) that protect records that are prohibited from disclosure under federal or state law, rule, or regulation; the requested records contain "private information" protected by Section 7(1)(b); the requested records constitute personal information," the disclosure of which would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c); and the requested records are exempt under the Personnel Records Review Act. § 7.5(q)

Let me know if you have any further questions. Thanks.

Jeremy Dotson
Chief School Business Official
Schiller Park School District 81

