OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 1, 2023

Via electronic mail
[redacted]

Via electronic mail
Mr. Brandon K. Wright
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter
P.O. Box 80
Monticello, Illinois 61856
bwright@millertracy.com

RE: FOIA Request for Review – 2019 PAC 56359

Dear [redacted] and Mr. Wright:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that Frankfort Community Unit School District No. 168 (District) improperly withheld certain records responsive to [redacted] December 14, 2018, FOIA request.

On that date, [redacted] submitted a FOIA request to the District seeking, in relevant part, "any complaints lodged against [ ] staff member[s] at the high school[ ] [a]s well as employe[e] discipline records[.]"[1] On January 3, 2019, the District denied this portion of [redacted] request pursuant to section 7.5(q) of FOIA (5 ILCS 140/7.5(q) (West 2018)). In its denial letter, the District referenced the Personnel Record Review Act (PRRA) (820 ILCS 40/8 (West 2018)) as its basis for asserting the section 7.5(q) exemption. On January 8, 2019, this office received [redacted] completed Request for Review contesting the District's response.

[1]E-mail from [redacted] to [Matt] Donkin (December 14, 2018).

On January 15, 2019, this office sent a copy of the Request for Review to the District and asked it to provide un-redacted copies of the withheld records for this office's confidential review and a detailed explanation of the legal and factual bases for its assertion of section 7.5(q) of FOIA. On January 25, 2019, the District provided the requested information. On January 28, 2019, this office forwarded the District's answer to [redacted]; he replied the same day.

DETERMINATION

Under FOIA, "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018); *see also Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body that denies a record "has the burden of proving by clear and convincing evidence" that the record is exempt from disclosure. 5 ILCS 140/1.2 (West 2018). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 8 of the PRRA provides: "An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old." Section 7.5(q) of FOIA exempts from disclosure "[i]nformation prohibited from being disclosed by the Personnel Records [*sic*] Review Act." The unambiguous language of section 8 of the PRRA precludes public bodies from using it as a basis to withhold records other than those that document a **disciplinary action.** As the Public Access Bureau has previously determined, to be considered a record of disciplinary action under the PRRA, a record must document the imposition of discipline. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39260, issued February 11, 2016, at 3 (determining that investigatory records relating to citizen complaints did not reflect "disciplinary action"); Ill. Att'y Gen. PAC Req. Rev. Ltr. 18779, issued June 29, 2012, at 6. A record that is merely related to potential discipline does not qualify as a record of "disciplinary action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 56806, issued March 18, 2019, at 3-4.

In *Johnson v. Joliet Police Department*, 2018 IL App (3d) 170726, ¶10, 107 N.E.3d 964, 966 (2018), the Illinois Appellate Court, Third District, reviewed a police department's denial of "'disciplinary reports, letters of reprimand, or other records of disciplinary action'" that were more than four years old at the time of the request. The court held that section 8 of the PRRA prohibits disclosure of such disciplinary records that are more than four years old. *Johnson*, 2018 IL App (3d) 170726, ¶15, 107 N.E.3d at 967. Consistent with the court's decision in *Johnson*, this office has previously determined that records documenting the imposition of discipline that are more than four years old at the time they are requested are exempt from

disclosure under section 7.5(q) of FOIA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 53704, issued March 13, 2019, at 5 (concluding that public body did not improperly withhold records of disciplinary action that were more than four years old under the PRRA, but that it improperly withheld investigatory records that did not reflect disciplinary action).

In its response to this office, the District asserted that the records it withheld were disciplinary records that were more than four years old. This office has reviewed the withheld records and confirmed that some of the documents reflect disciplinary action that occurred more than four years before [redacted] request.[2] The District did not violate FOIA by withholding those records pursuant to section 7.5(q). Certain other withheld records are not responsive to [redacted] request for "discipline records" and complaints.

Other withheld records, while more than 4 years old, do not reflect disciplinary action, but rather complaints against staff members. Because these records are not "disciplinary reports, letters of reprimand, or other records of disciplinary action" contemplated by section 8 of the PRRA, they are not exempt pursuant to section 7.5(q) of FOIA. Accordingly, this office requests that the District disclose pages 14-15 and 32-40 of the withheld records to [redacted].

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at laura.harter@ilag.gov

Very truly yours,

[redacted]

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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[2]Because the District provided the records to this office confidentially, section 9.5(c) of FOIA precludes this office from further identifying the nature of the records. 5 ILCS 140/9.5(c) (West 2018).