OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 31, 2020

Via electronic mail
Ms. Yvonne Mayer
[redacted]

Via electronic mail
Mr. Steven M. Richart
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
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RE: FOIA Requests for Review – 2014 PAC 32722, 2015 PAC 33233

Dear Ms. Mayer and Mr. Richart:

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 2018)).[1]

2014 PAC 32722

On September 15, 2014, Ms. Yvonne Mayer submitted a FOIA request to Hinsdale Township High School District 86 (District) seeking e-mails to or from any of the members of the District's Board of Education (Board) concerning certain topics. The District extended the time for responding to the request by five business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)). On September 24, 2014, the District notified Ms. Mayer that her FOIA request was unduly burdensome pursuant to section 3(g) (5 ILCS 140/3(g) (West

[1]In issuing this letter, we recognize that it is coming long after the FOIA dispute took place; Ms. Mayer has informed this office that she still wishes to obtain any non-exempt information that was withheld. Further, because the Request for Review raises a number of legal questions that may reoccur, this letter is intended to provide guidance to the requester and public body.

2014)), and invited her to narrow her request. On September 29, 2014, Ms. Mayer narrowed the topics of e-mails she requested, and for one topic, narrowed the correspondents. Ms. Mayer also clarified that she was seeking e-mails concerning these topics that may have been sent to or from personal or business e-mail accounts of the Board members. On October 15, 2014, the District furnished copies of e-mails with redactions pursuant to sections 7(1)(b), 7(1)(c), 7(1)(f), 7(1)(m), and 7(1)(p) (5 ILCS 140/7(1)(b), (1)(c), (1)(f), (1)(m) (West 2014)), and 7.5(r) of FOIA (5 ILCS 140/7.5(r) (West 2014)). The District also asserted that it cross-referenced the results against past FOIA responses and omitted "duplicate copies of the same e-mail where the e-mail is subsumed within a large e-mail chain being produced, and [ ] e-mails previously sent to or from you."[2] On December 12, 2014, this office received Ms. Mayer's Request for Review in which she disputes the redaction of the names and e-mail addresses of community members in the e-mails and the personal and business e-mail addresses of Board members. Ms. Mayer also disputes the completeness of the District's response and the process by which it searched any non-District accounts used by Board members.

On December 22, 2014, this office forwarded a copy of the Request for Review to the District and asked it to provide a detailed explanation of the legal and factual basis for the asserted exemptions, together with unredacted copies of the responsive e-mails for our confidential review. This office also asked the District to describe its search for records. The District responded on January 16, 2015, and Ms. Mayer replied on February 12, 2015.

2015 PAC 33233

On December 16, 2014, Ms. Mayer submitted a new FOIA request to the District seeking e-mails from any of the Board members concerning certain topics, and copies of the District's legal bills received between April 1, 2012, and the date of the request. On December 19, 2014, the District extended the time for responding to the request by five business days pursuant to section 3(e) of FOIA, and on December 22, 2014, notified Ms. Mayer that her FOIA request was voluminous, pursuant to section 3.6 of FOIA (5 ILCS 140/3.6 (West 2014)). The District invited Ms. Mayer to amend her request. On that same day, Ms. Mayer responded to the voluminous request notice by e-mailing the FOIA officer to ask: "Please advise how such a narrow request could generate more than 50 pages? Is it for emails or for the legal records?"[3] On December 29, 2014, the FOIA Officer responded, offering a preliminary estimate that the District would be required to review 300 pages of e-mails and several hundred pages of legal bills. On that same day, Ms. Mayer agreed to withdraw the part of her request for legal bills. On January 6, 2015, the District extended the time for responding to the narrowed request by five business days, and on January 14, 2015, furnished copies of e-mails with redactions pursuant to

[2]Letter from Mary O'Rourke, FOIA Officer, [District 86], to Yvonne Mayer (October 15, 2014).

[3]E-mail from Yvonne Mayer to FOIA Officer, [District 86] (December 22, 2014).

sections 7(1)(b), 7(1)(f), and 7(1)(m) of FOIA (5 ILCS 140/7(1)(b), (1)(f), (1)(m) (West 2014)). On January 19, 2015, this office received Ms. Mayer's Request for Review in which she disputes both the redactions and the designation of her original request as voluminous.

On January 29, 2015, this office forwarded a copy of the Request for Review to the District and asked it to provide a detailed explanation of the legal and factual basis for the asserted exemptions, together with unredacted copies of the responsive e-mails for our confidential review. This office also asked the District to explain its decision to designate the December 16, 2014, FOIA request as voluminous. On February 13, 2015, the District provided this office with copies of the withheld records and its written response. Ms. Mayer replied on March 3, 2015.

DETERMINATION

All public records in the possession or custody of a public body "are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Dept. 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 2014). 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 7(1)(b) of FOIA

Both Requests for Review allege that the District improperly redacted the personal e-mail addresses of Board members from the e-mails provided to Ms. Mayer. She argues that it is impermissible to redact the address for an e-mail account that a member of a public body uses to conduct public business, and that because certain e-mail addresses are redacted, she cannot identify the author of certain e-mails.

Section 7(1)(b) of FOIA exempts from disclosure "private information, unless disclosure is required by another provision of this Act, a state or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2014)) defines "private information" as "unique identifiers, including * * * personal e-mail addresses." In its response to this office in 2014 PAC 32722, the District argued that "FOIA does not distinguish between personal e-mail addresses of community members and personal e-mail addresses of members of the public body.

Rather, FOIA unequivocally provides that personal e-mail addresses are private and exempt from disclosure."[4]

The Public Access Bureau has previously determined that the personal e-mail addresses of public body members contained within public records are exempt as "private information" under the plain language of the definition of that term in section 2(c-5), unless disclosure is otherwise required by law. Ill. Att'y Gen. PAC Req. Rev. Ltr. 36914, issued December 2, 2016, at 4. Ms. Mayer did not cite, and this office is not aware of, any law that requires disclosure of Board members' personal e-mail addresses. Furthermore, the language of section 2(c-5) does not contain an exception for personal e-mail addresses when a public body member or employee uses a personal e-mail account to conduct public business. Therefore, the District did not impermissibly redact the personal e-mail addresses of the Board members from the records it disclosed to Ms. Mayer.

However, it appears from our review of the unredacted copy of the responsive e-mails provided for our review in 2015 PAC 33233 that the District redacted an e-mail address for one Board member that is associated with a business. A business e-mail address is distinguishable from a personal e-mail address and does not constitute "private information" under section 7(1)(b). Ill. Att'y Gen. PAC Req. Rev. Ltr. 19650, issued August 31, 2012, at 3. Accordingly, this office concludes that the District has not sustained its burden of demonstrating that the business e-mail address of its Board member are exempt from disclosure pursuant to section 7(1)(b) of FOIA.

Allegations in 2014 PAC 32722

Section 7(1)(c) of FOIA

In 2014 PAC 32722, Ms. Mayer alleges that the District improperly redacted the names and e-mail addresses of community members who corresponded with Board members regarding the teachers' contract negotiation issues. The District redacted information that would identify those community members pursuant to section 7(1)(c) of FOIA, which permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." "Unwarranted invasion of personal privacy" is defined in section 7(1)(c) as 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."

[4]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Benjamin Reed, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (January 16, 2015), at 3.

Ms. Mayer argues that the District improperly relied on section 7(1)(c) to withhold those names because the Board President repeatedly asserted that the majority of the e-mails to the Board expressed support for the Board's negotiating position with respect to the teachers' contract, and that there is significant public interest in determining whether the Board President's assertions were true. Ms. Mayer also alleges that the District waived the correspondents' right to privacy by disclosing their e-mails to other members of the public. In its response to the Request for Review, the District noted that it furnished Ms. Mayer the e-mails themselves, but with names and contact information redacted, and that there is limited public interest in additional disclosure of the names. The District also disputes the allegation that it disclosed the contact information and names on the e-mails.

In *State Journal-Register v. University of Illinois-Springfield,* 2013 IL App 4th 120881, 994 N.E.2d 705 (4th Dist. 2013), the Illinois Appellate Court examined whether the University of Illinois Springfield properly withheld documents relating to the resignation of university coaches, including an e-mail string relating to a student complaint and correspondence from the parent of an affected student. In determining whether these records were properly withheld under section 7(1)(c) of FOIA, the court stated:

> With respect to the two sets of e-mail correspondence, in balancing the *Lieber* factors, the Journal and public have an interest in the opinions of students and the parents of students with regard to the resignation of the coaches[.] * * * Conversely, the individuals who composed each correspondence have a privacy interest in being able to privately express their opinions and concerns to UIS. * * *
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> * * * The question then becomes whether redaction of the correspondence, consistent with section 7(1) of FOIA, would remedy any personal privacy concerns. *State Journal-Register v. University of Illinois-Springfield,* 2013 IL App 4th 120881, ¶¶ 65-66, 994 N.E.2d at 720.

Ultimately, the court determined that the correspondence from the parent of the UIS student was exempt from disclosure in its entirety, as "redaction is not a potential remedy because the affected student could easily be identified through the context of the letter[.]" *State Journal-Register* 994 N.E. 2d at 720. However, a redacted version of the UIS student's complaint must be disclosed, as "redaction would adequately protect the privacy interests because nothing in the content of the e-mail, other than the student's name, identifies the student." *State Journal-Register* 994 N.E. 2d at 720. Relying on the Appellate Court's holding in *State Journal-Register*, the Public Access Bureau has previously determined that public bodies

can redact, pursuant to section 7(1)(c), information that would identify individuals who sent correspondence to a State agency and school districts offering their opinions on policy matters. Ill. Att'y Gen. PAC. Req. Rev. Ltr. 59063, issued August 7, 2019, at 3; Ill. Att'y Gen. PAC. Req. Rev. Ltr. 38873, issued June 30, 2016, at 4-5; *see also Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 211 (1st Dist. 2004) (quoting *Lakin Law Firm, P.C. v. F.T.C.*, 352 F.3d 1122, 1124 (7th Cir. 2003) ("[T]he core purpose of the FOIA is to expose what the government is doing, not what its private citizens are up to.'").

Similarly, the e-mails between the District and the community members contain the personal opinions of those individuals concerning the collective bargaining process that was ongoing at the time the e-mails were sent. There is a significant and legitimate public interest in the disclosure of information concerning the District's policy. However, information identifying the authors of those opinions is highly personal by its very nature; the authors' rights to privacy outweighs any legitimate public interest in disclosure of the author's identity. Furthermore, there is insufficient evidence to demonstrate that the District waived the applicability of section 7(1)(c) by disclosing the names and e-mail addresses of these individuals pursuant to a FOIA request or requests. Accordingly, this office concludes that the District sustained its burden of demonstrating that the identities of the members of the public who communicated with the Board are exempt from disclosure pursuant to section 7(1)(c).

Completeness of Response

Ms. Mayer also alleged that the District's response to her request violated FOIA because the District neither provided her copies of e-mails already provided to her in response to earlier requests nor provided separate copies of e-mails provided to her as part of an e-mail chain. More specifically, Ms. Mayer argues that "[e]ach FOIA request a public entity receives must be treated individually," that it is unduly burdensome to a person filing a FOIA request to expect him or her to review all previous FOIA requests to determine what documents already in that person's possession might be responsive to a new request, and that "[i]f a responsive public record exists * * * the FOIA requestor must be provided ALL versions of the document, including 'cc's' and blind copies."[5] In its response to the Request for Review, the District points to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2014)), which states that "[r]epeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision."

[5]Letter from Yvonne Mayer to Sarah Pratt, Public Access Counselor, Office of the Attorney General (December 12, 2014), at 12.

We agree with that District that under section 3(g) of FOIA, the District is not obligated to provide a requester with additional copies of records it already provided to her just because those records are responsive to a new FOIA request submitted by that same requester. Section 3(g) states that provision of the "same records" to the "same person" is unduly burdensome; section 3(g) applies even when the new request is worded differently. Ms. Mayer does not allege that the District withheld from her any e-mails responsive to her September 15, 2014, request, but instead that the District neither provided the same records to her again nor identified the records she already possesses that are also responsive to the new request. However, section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) states that a public body "shall make available to any person for inspection or copying all public records," and section 3.3 of FOIA (5 ILCS 140/3.3 (West 2014)) makes clear that FOIA "is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records." To the extent that Ms. Mayer is unclear which records she previously received from the District are also responsive to her subsequent request, she can review those records again and make that determination herself.

Moreover, with respect to e-mails received by a group and e-mails within a chain, this office's review of the records provided to Ms. Mayer indicates that, as stated in its response, the District furnished only one copy of e-mails that were received by multiple members of the Board and employees of the District, and only the "top" e-mails in a chain. FOIA does not require a public body to disclose duplicate copies of the same record. *See Defenders of Wildlife v. U.S. Dep't of Interior*, 314 F. Supp. 2d 1, 9–10 (D.D.C. 2004) (duplicate copies of a responsive record were not improperly withheld because "it would be illogical and wasteful to require an agency to produce multiple copies of the exact same document."). Therefore, there is no basis to find that the District's response was incomplete.

Reasonable Search

Finally, Ms. Mayer alleges that the District has not met its burden of demonstrating that its search for responsive e-mails on non-District accounts was reasonable, asserting that the District's Superintendent stated that he had no way of knowing whether Board members deleted e-mails from personal e-mail accounts. In response, the District explained that it ran keyword searches on District e-mail accounts and then cross-referenced those results with the results of responses to other FOIA requests to ensure it provided a complete response to Ms. Mayer. The District also provided information to this office confidentially describing the method by which it searched for responsive e-mails on the personal e-mail accounts of Board members.

FOIA provides that "all 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 2014). 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. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998); *see also Steinberg v. U.S. Department of Justice*, 23 F.3d 548, 551 (D.C. Cir.1994) ("The question [whether a public body's search was sufficient] is not whether other responsive records may exist, but whether the search itself was adequate."). A public body is not required to "search every record system[,]" but it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. U.S. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

When analyzing a challenge to the sufficiency of a public body's search for responsive records, federal courts[6] have held that a public body may prove the reasonableness of its search "through a declaration by a responsible agency official, so long as the declaration is reasonably detailed and not controverted by contrary evidence or evidence of bad faith." *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). A public body's declarations are afforded "a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." *SafeCard Services, Inc. v. S.E.C.*, 926 F.2d 1197, 1200 (D.C. Cir. 1999); *see also SafeCard*, 926 F.2d at 1201 ("Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them.").

Based on the information provided in both the non-confidential and confidential parts of the District's response to the Request for Review, the District's search measures appear to have been reasonably calculated to locate all records responsive to the request. Ms. Mayer argues that directing the Board members to perform their own searches for responsive e-mails was insufficient. However, the Attorney General has issued a binding opinion acknowledging that FOIA does not specifically prescribe how a public body should search for responsive e-mails maintained on private accounts, and explaining that a public body may satisfy the requirement to conduct a reasonable search by directing the applicable employee or official to turn over any responsive e-mails, provided that no evidence indicates that the employee did not act in good faith. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 16-006 at 10-11.

Ms. Mayer's assertion that the District's Board members may be in possession of additional e-mails is speculative and does not provide this office with any information from which it could conclude that the District did not perform an adequate search. Further, Ms. Mayer's allegation that the Board members may not have retained public records does not indicate that the District's search was not reasonable. "A requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*,

[6]Because Illinois' FOIA statute is based on the federal FOIA statute, decisions construing the latter, while not controlling, may provide helpful and relevant precedents in construing the state Act. *Margolis v. Director, Ill. Department of Revenue*, 180 Ill. App. 3d 1084, 1087 (1st Dist. 1989).

678 F.2d 315, 321 (D.C. Cir. 1982). This office has received no evidence indicating that the Board members deleted e-mails or otherwise did not act in good faith. However, even if correspondence was deleted prior to the District's receipt of the FOIA request, the destruction of public records does not violate FOIA. The Local Records Act (50 ILCS 205/1 *et seq.* (West 2014)) rather than FOIA governs the retention and disposal of public records by local public bodies such as the District. Accordingly, this office is unable to conclude that the District violated the requirements of FOIA by failing to conduct an adequate search.

Allegations in 2015 PAC 33233

Section 7(1)(f) of FOIA

Section 7(1)(f) of FOIA 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." The section 7(1)(f) exemption is equivalent to the deliberative process exemption in the federal FOIA (5 U.S.C. §552(b)(5) (West 2014)), which applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248. However, "[o]nly those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld." *Kalven v. City of Chicago*, 2013 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 748 (2013), quoting *Public Citizen, Inc. v. Office of Management & Budget,* 598 F.3d 865, 876 (D.C. Cir. 2010).

In 2015 PAC 33233, Ms. Mayer questioned whether the redacted information fell within the scope of the exemption, and whether the redactions were proper when they "would allow the [Board] to hide and cover up Open Meetings Act violations."[7] The District responded that the redacted discussions were pre-decisional and deliberative communications that "concerned a Board member's request (Kay Gallo) for the District's attorney to be present at a Board meeting on November 17, 2014, to discuss a threat of litigation made by Ms. Mayer."[8] The District also contested Ms. Mayer's allegation that the e-mails reflect that the Board violated the Open Meetings Act.

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[7]Letter from Yvonne Mayer to Sarah Pratt, Assistant Attorney General, Public Access Counselor, Public Access Bureau, Office of the Attorney General (January 19, 2015), at 6.

[8]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 13, 2015), at 3.

The Public Access Bureau has reviewed unredacted copies of e-mails furnished to Ms. Mayer. As the District's response to this office explained, the majority of the e-mails constitute opinions concerning Ms. Gallo's request to have outside counsel attend a Board meeting and Ms. Mayer's threat to initiate litigation against the District. One e-mail thread, encompassing e-mails sent between November 20, 2014, and November 24, 2014, concerns another matter, but also reflects communications for the purpose of formulating policy. Therefore, the information redacted from the e-mails furnished to Ms. Mayer falls within the scope of section 7(1)(f).

Ms. Mayer asserts that section 7(1)(f) does not apply if the pre-decisional and deliberative information withheld pursuant to that exemption would reveal that the Board may have exchanged correspondence in violation of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)). Although some Federal courts have recognized a narrow basis for waiving the exemption in Federal FOIA that corresponds to section 7(1)(f)[9] when predecisional deliberative material reflects "extreme government wrongdoing[,]"[10] this office was unable to locate a case in which an Illinois reviewing court recognized such an exception. Moreover, this office's review of the records in question revealed no indication of "extreme government misconduct" or a violation of OMA. In order to hold an improper "meeting" by e-mail under the definition of that term in OMA,[11] at least a majority of a quorum of the members of a public body must engage in "contemporaneous interactive communication" pertaining to public business. This office has previously determined that an e-mail sent by one member of a public body to all other members does not constitute a meeting unless it elicits a sufficient number of responses in sufficiently close proximity to constitute contemporaneous interactive communications involving a majority of a quorum of the members. Ill. Att'y Gen. PAC Req. Rev. Ltr. 24827, issued June 8, 2015, at 3. The e-mails that this office reviewed do not involve back and forth exchanges involving a majority of a quorum of Board members, or otherwise indicate that such exchanges occurred.

In the alternative, Ms. Mayer argues that Dr. Skoda waived the applicability of section 7(1)(f) to these e-mails because he "cited and identified these emails in support of his decision to not grant Board member [Kay] Gallo's request that an attorney attend a board meeting."[12] Ms. Mayer alleged that during the Board's December 15, 2014, meeting, Board

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[9]5 U.S.C. § 552(b)(5) (2012).

[10]*Neighborhood Assistance Corp. of America v. United States Dep't of Housing and Urban Development*, 19 F. Supp. 3d 1, 14 (D.D.C. 2013).

[11]Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014).

[12]Letter from Yvonne Mayer to Sarah Pratt, Assistant Attorney General, Public Access Counselor, Public Access Bureau, Office of the Attorney General (January 19, 2015), at 6.

President Skoda stated that he sent an e-mail to the Board members asking if they wanted the District's attorney to attend an upcoming meeting, and also stated that he received an affirmative response from only one member. The District argues that the Board President's mention of two e-mails does not waive the deliberative privilege over the full content of those two e-mails, and that it already disclosed to Ms. Mayer the portions of those e-mails that were publicly cited:

> [T]he relevant portion of Dr. Skoda's e-mail to the Board that he cited to the public was limited to those two pieces of information: (1) that Ms. Gallo wanted the attorney present, and (2) that he was seeking to gauge the support of the other Board members for the attorney's attendance. Those relevant portions of that e-mail have already been disclosed to Ms. Mayer. * * * The remaining redacted content of Dr. Skoda's e-mail is irrelevant to Dr. Skoda's public citation and has, therefore, not been waived pursuant to section 7(1)(f).[13]

The District further asserted that it already disclosed to Ms. Mayer the relevant portion of the second e-mail as well.

Under the plain language of section 7(1)(f), 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." (Emphasis added.) 5 ILCS 140/7(1)(f) (West 2014). The District redacted portions of a number of e-mails and e-mail chains, and explains that Dr. Skoda's public statement cites only two specific e-mails. Ms. Mayer's Request for Review appears to argue that Dr. Skoda waived the privilege with respect to all portions of all the redacted e-mails provided in response to her request. We disagree. This office has previously determined that "[a] public statement about a particular subject without reference to a specific record does not waive the section 7(1)(f) exemption." Ill. Att'y Gen. PAC Req. Rev. Ltr. 43740, issued April 5, 2017, at 5. In this matter, Dr. Skoda's public statement referenced two specific records—an e-mail he sent about a particular issue and an e-mail he received about that same issue. His statement did not specifically mention any other e-mails, and his statement referencing the two e-mails does not constitute a public citation of all e-mails concerning same subject matter. Therefore, this office concludes that Dr. Skoda's public statement at the December 15, 2014, meeting did not waive the applicability of the section 7(1)(f) exemption to the redacted portions of the majority of the e-mails it disclosed to Ms. Mayer with redactions.

With respect to the two specific e-mails that Dr. Skoda's statement did

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[13]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 13, 2015), at 4.

reference—a November 13, 2014, e-mail sent by Dr. Skoda to the members of the Board, and a November 17, 2014, e-mail from a Board member to Dr. Skoda—the District argues that the portions of the two e-mails that it already disclosed to Ms. Mayer are the only sections to which Dr. Skoda waived the privilege. The District contends that the "portions of a record which are *irrelevant* to the public citation of the head of the public body are *not* subject to waiver of the exemption."[14]

As a general matter, we agree with the District that to the extent only a portion of a record is relevant to the citation made in the public statement, the plain language of section 7(1)(f) provides that the privilege has been waived only with respect to that "relevant portion." Nonetheless, the District has not demonstrated by clear and convincing evidence that the redacted content of Dr. Skoda's e-mail to the Board is irrelevant to his public citation of the e-mail. "Relevant" is defined as "having significant and demonstrable bearing on the matter at hand." Merriam-Webster, *relevant*, http://www.merriam-webster.com/dictionary/relevant (last visited March 19, 2020). As quoted in the Request for Review (and confirmed by this office's review of the video recording of the meeting), Dr. Skoda stated at the meeting:

> [Board member] Kay [Gallo] wanted the attorney to come to see us. I wrote to the whole board, since you wrote to the whole board, if there is majority support for this the attorney will be there. There was not majority Board support. * * * I didn't say no I'm the president. I said for myself I don't think so, but if the majority of the board wants it, I'll do it. And to get specific, I said to the board, if you're interested in that, let me know by Saturday. One person responded to me. You. One. On Monday another person responded to me that says my board site, website, doesn't work. * * * So, therefore, you had a total of two members who out of seven as of right now that wanted to go forward with what you're talking about. [15]

Our review of the unredacted copy of the November 13, 2014, e-mail Dr. Skoda sent to the Board indicates that the District redacted portions of that e-mail that have a significant bearing on Dr. Skoda's public statements that "if there is majority support for this the attorney will be there[;]" "I said for myself I don't think so[;]" "if a majority of the board wants it, I'll do

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[14]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 13, 2015), at 4.

[15]Letter from Yvonne Mayer to Sarah Pratt, Assistant Attorney General, Public Access Counselor, Public Access Bureau, Office of the Attorney General (January 19, 2015), at 6.

it[;]" and "let me know by Saturday." Similarly, the sentences redacted from the November 17, 2014, e-mail received by Dr. Skoda are relevant to his statement that there was a second member of the Board who wanted the attorney present at the meeting. Therefore, because the entire content of both e-mails is relevant to Dr. Skoda's public statements about the e-mails, we disagree that the District has already disclosed to Ms. Mayer the relevant portion of each e-mail.

Alternatively, the District argues that Dr. Skoda's public references to the two identified e-mails did not waive the privilege because his statements did not constitute public citation and identification of those e-mails. More specifically, the District asserted that Dr. Skoda's reference to the November 17, 2014, e-mail he received did not publicly identify its author or reveal its contents, and that with respect to both e-mails:

> [I]t is clear from the context of Dr. Skoda's public comments that not only did he not cite the deliberative content (or attorney-client privileged content) of the two e-mails, but that he also had no intention of citing the e-mails for such a purpose. He cited the e-mails for the purpose of showing that he was not acting as "dictator" in his capacity as Board President. He was seeking input from his fellow Board members regarding their desire, or lack thereof, to have him schedule the District's attorney to be present at a board meeting. Dr. Skoda did not cite the e-mails for the purpose of disclosing their deliberative content, let alone with any intent of exposing the specific opinions of Board members concerning this issue to the very opponent who filed the legal challenge against the District to which those opinions pertained. Accordingly, based on both the actual and intended scope of Mr. Skoda's public citation to the e-mails, the redacted information is exempt under Section 7(1)(f).[16]

In *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, 994 N.E.2d 573 (2013), the Illinois Appellate Court considered whether a public statement made by the head of the public body about a record constituted citation and identification of that record pursuant to section 7(1)(f). The plaintiff alleged that then-Mayor Richard Daley waived the section 7(1)(f) exemption with respect to a study prepared for the Chicago Police Department by an outside consulting firm when he referred to the study during a press conference and in an ensuing press release. *Dumke*, 2013 IL App (1st) 121668, ¶¶16, 17, 994 N.E.2d at 576. At the outset, the court noted that "[s]ection 7(1)(f) does not provide any guidance on how much or how little needs to

[16]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 13, 2015), at 4.

be said or done to constitute an effective waiver. The parties have not advanced or presented any legislative history or citation to any legal authority, nor has our research found any, that assists us in determining what minimum conduct amounts to public citation and identification." *Dumke*, 2013 IL App (1st) 121668, ¶18, 994 N.E.2d at 579. In the absence of authority, the court turned to the plain language of section 7(1)(f) and found it to be unambiguous:

> Both "cite" and "identify" have a plain and ordinary meaning, as well as a common understanding. "Cite" is defined as, "[t]o mention or bring forward as support, illustration, or proof." [Citation.] "Identify" means to "1 a: to cause to be or become identical b: to conceive as united (as in spirit, outlook, or principle) ‹groups that are *identified* with conservation› 2 a: to establish the identity of b: to determine the taxonomic position of (a biological specimen) "establish the identity of: show or prove the sameness of." [Citation.] (Emphasis in original.) *Dumke*, 2013 IL App (1st) 121668, ¶20, 994 N.E.2d at 580.

Employing those definitions, the court determined:

> The mayor cited and identified the report as a "management study requested by Superintendent Weis earlier this year" and its purpose as "the study of police administration staffing." He cited the report and he identified it as support for his reorganization plan. Specifically, he stated that Superintendent Weis requested the management study, and as a result of the study, 130 more police officers would be on the streets keeping the city safe. * * * The mayor identified the individuals and businesses that conducted the study and issued the resulting report. He stated that "the study of police administration staffing" began in 2010 and was conducted *pro bono* by the Civic Consulting Alliance with the assistance of Ryan Faye. Mayor Daley also stated that A.T. Kearney helped with various parts of the review. Mayor Daley not only identified the study and the key players, but personally thanked them. The mayor also indicated that the report "offers many findings and ways that the department will improve its management." There is no question that the mayor cited and identified the report in public given that it occurred during a press conference that was later available on the mayor's YouTube page, a summary of which was released in printed form. *Dumke*, 2013 IL App (1st) 121668, ¶24, 994 N.E.2d at 582.

The court went on to conclude that "the public statements made in this case satisfy the 'publicly cite and identify' threshold necessary to constitute a waiver of the section 7(1)(f) exemption." *Dumke*, 2013 IL App (1st) 121668, ¶28, 994 N.E.2d at 583.

Similarly, it is clear that Dr. Skoda's public statement identified the November 17, 2014, e-mail by explaining it was sent by a Board member who was not Ms. Gallo, was sent on Monday (November 17) in response to his November 13, 2014, e-mail, and that it stated that the sender both had technical difficulties with the e-mail and wanted the attorney to be present at the meeting in question. Furthermore, the District's attempt to distinguish Dr. Skoda's purpose for discussing the e-mails at the meeting from the "deliberative content" of the e-mails is unconvincing. First, Dr. Skoda's public statement specifically disclosed both his opinion on the question of the attorney attending the meeting and the opinion of the sender of the second e-mail. Second, Dr. Skoda explained at the meeting that he did not invite the attorney to attend *because* a majority of the Board had not responded affirmatively to his e-mail. That statement expressly revealed the reason why Dr. Skoda took the particular course of action that was under discussion. Accordingly, because Dr. Skoda cited and identified both the November 13, 2014, e-mail he sent to the Board and the November 17, 2014, e-mail he received from a Board member, and because the portions of those e-mails that the District withheld from Ms. Mayer are relevant to Dr. Skoda's public statement, this office determines that the District has not sustained its burden of demonstrating that the redacted portions of those e-mails are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Section 7(1)(m) of FOIA

The District's response to this office asserted that section 7(1)(m) of FOIA permitted the redaction of several e-mails and e-mail threads. As our determination found that most of the redacted portions of the e-mails are exempt from disclosure pursuant to section 7(1)(f), it is unnecessary to address whether those e-mails were also properly redacted pursuant to section 7(1)(m). Therefore, we will address the District's assertion of section 7(1)(m) with respect to only two e-mails: a November 13, 2014, e-mail sent by Dr. Skoda to outside counsel (which was not addressed above), and the November 13, 2014, e-mail from Dr. Skoda to the Board (for which the section 7(1)(f) privilege was waived).[17]

Section 7(1)(m) of FOIA exempts from disclosure:

Communications between a public body and an attorney

[17]The District has not argued that the November 17, 2014, e-mail received by Dr. Skoda, for which we also determined the 7(1)(f) privilege was waived, is exempt pursuant to section 7(1)(m).

> * * * representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body[.]

Section 7(1)(m) of FOIA exempts from disclosure communications covered by the attorney-client privilege. The attorney-client privilege applies to communications:

> (1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are permanently protected, (7) from disclosure by himself or the legal advisor, (8) except the protection be waived. *Illinois Education Association v. Illinois State Board of Education*, 204 Ill. 2d 456, 467 (2003).

See also In re General Instrument Corp. Securities Litigation, 190 F.R.D. 527, 531 (N.D. Ill., 2000), quoting *U.S. v. Evans*, 113 F.3d 1457, 1461 (7th Cir. 1997) ("To be privileged, the documents must not only exhibit attorney involvement, but must involve 'a legal adviser acting in his capacity as such.'"). The section 7(1)(m) exemption must be narrowly construed to promote transparency "notwithstanding the countervailing policy favoring confidentiality between attorneys and clients." *Illinois Education Association*, 204 Ill. 2d at 470. A public body that withholds records under section 7(1)(m) must provide a supporting factual basis for the application of the exemption, including "some *objective* indicia that the exemption is applicable under the circumstances." (Emphasis in original.) *Illinois Education Association*, 204 Ill. 2d at 470.

Although Dr. Skoda sent one of the November 13, 2014, e-mails to the District's outside counsel, our review indicates that the e-mail does not fall within the scope of section 7(1)(m) because it neither seeks nor describes legal advice rendered. With respect to the e-mail from Dr. Skoda to the Board, the District argued that in the redacted portions of that e-mail, "a Board member directly referred to the substantive issues on which the District's legal counsel had already advised, or was in the process of advising, the Board."[18] Our review of the unredacted copy indicates that one of the redacted paragraphs refers to legal advice Dr. Skoda received from counsel but the remainder of the redacted text does not describe attorney-client communications. Outside counsel was copied on this e-mail; however, the e-mail is not marked

[18]Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 13, 2015), at 5.

as confidential, it was directed to the Board, and it contains no indication in its text that its purpose was to solicit legal advice. Furthermore, the District has not provided any objective indicia from which this office can conclude that Dr. Skoda was soliciting legal advice from outside counsel by copying her on an e-mail directed to his fellow Board members. Accordingly, we conclude that the District impermissibly redacted portions of paragraphs two, three, four, and five of Dr. Skoda's November 13, 2014, e-mail to the Board.

Definition of Voluminous Request

Finally, Ms. Mayer contests the District's designation of her original FOIA request as voluminous. Section 2(h) of FOIA (5 ILCS 140/2(h) (West 2014)) defines a "voluminous request" as:

> a request that: (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. "Single requested record" may include, but is not limited to, one report, form, e-mail, letter, memorandum, book, map, microfilm, tape, or recording.

Ms. Mayer asserted that, after she narrowed her request to exclude the legal bills, she received only 13 responsive e-mail chains. In its response to this office, the District asserts that it designated the request as voluminous on the basis that it required the compilation of more than 500 pages of records. The District described the search terms it used to conduct its search for e-mails and furnished for our confidential review an explanation and records that describe the results of its search process. The District stated that its search yielded "hundreds of pages of e-mails." The District also explained that it estimated that responding to the part of the request seeking copies of the District's legal bills for the prior 31 months would yield as least 200 pages of records.

The District's explanation indicates that it determined that the request was voluminous based, in part, on how many pages of e-mails it would have to review to locate the responsive e-mails, and not how many pages of e-mails it would need to "compil[e]", as section 2(h)(ii) states. The assertion that the District would have to conduct an extensive search to locate responsive records does not, however, establish that Ms. Mayer's request is a "voluminous request" under the definition of that term in FOIA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 57554, at

3-4, issued June 6, 2019. Accordingly, this office finds that the District improperly designated Ms. Mayer's request as voluminous on December 22, 2014.

In accordance with the conclusions expressed in this determination, we request that the District furnish to Ms. Mayer copies of the (1) November 17, 2014, e-mail received by Dr. Skoda from another Board member, (2) November 13, 2014, e-mail from Dr. Skoda to counsel; and (3) Dr. Skoda's November 13, 2014, e-mail to the Board. From Dr. Skoda's e-mail to the Board the District may redact the first paragraph pursuant to section 7(1)(m) and the personal e-mail address pursuant to section 7(1)(b). Finally, we request that the District disclose to Ms. Mayer copies of all e-mails containing business e-mail addresses of Board members with those e-mail addresses unredacted.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (312) 814-6437, or at the Chicago address listed on the first page of this letter.

Very truly yours,

[redacted]

LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 16, 2020

Via electronic mail
Ms. Yvonne Mayer
[redacted]

RE: FOIA Requests for Review – 2014 PAC 32722
2015 PAC 33233

Dear Ms. Mayer:

You submitted the above-referenced Requests for Review challenging the responses by the Hinsdale Township High School District 86 to two Freedom of Information Act requests you sent in 2014 and 2015 seeking copies of certain e-mails. These matters remain open in our system, although this office has not had contact with you for some time. Please let us know if you still wish to challenge the responses that you received by contacting me by February 18, 2020, at (312) 814-6437, lbartelt@atg.state.il.us, or the Chicago mailing address listed below. **If we do not hear from you by that date we will assume that you no longer require our assistance and will close this file.** Thank you.

Very truly yours,

[redacted]

LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

cc: Freedom of Information Officer
Hinsdale Township High School District 86
Administrative Center
5500 South Grant Street
Hinsdale, Illinois 60521

DEC 29 2014

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 22, 2014

Ms. Mary O'Rourke
FOIA Officer
Hinsdale Township High School District
5500 S. Grant Street
Hinsdale, Illinois 60521

RE: FOIA Request for Review – 2014 PAC 32722

Dear Ms. O'Rourke:

Pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2012)), the Public Access Bureau has received a Request for Review of the response by the Hinsdale Township High School District (School District) to a FOIA request submitted by Ms. Yvonne Mayer. Enclosed is a copy of the Request for Review.

On September 29, 2014, Ms. Mayer submitted an amended FOIA request to the School District seeking copies of emails sent to or from a number of email addresses concerning negotiations of a new teacher contract, and emails concerning an investigation into a Facebook post. On October 15, 2014, the School District provided some responsive records, and redacted or withheld certain records pursuant to sections 7(1)(b), 7(1)(c), 7(1)(f), 7(1)(m), 7(1)(p), and 7.5(r) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(f), (1)(m), (1)(p), 7.5(r) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). In her Request for Review, Ms. Mayer disputes the denial of those records which were withheld or redacted.

We have determined that further inquiry is warranted. Please provide unredacted copies of the withheld or redacted records for our confidential review. Please also provide a detailed explanation of the factual and legal bases for the asserted sections of FOIA. In your response, please also provide a detailed description of how the School District searched for responsive records.

As required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2012)), please provide this information to our office within seven (7) business days after receipt of this letter. As we review this matter, we will advise you if we require additional information. If you

believe that other documents or information would help us as we review these issues, you may submit additional records or affidavits with the requested information.

Please note that, under FOIA, we are required to forward a copy of any response from a public body to the requester and provide the requester with an opportunity to reply (5 ILCS 140/9.5(d) (West 2012)). The Act provides, however, that "[t]o the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of [the] Act, the Public Access Counselor shall not further disclose that information." 5 ILCS 140/9.5(c) (West 2012). The Act also requires that we redact "any alleged confidential information to which the request pertains" when providing a copy of your written response to the requester. 5 ILCS 140/9.5(d) (West 2012). **If your response contains information or documents you believe are confidential, you must clearly identify that specific information in your response.**

Please contact me at (217) 782-1699 if you have questions or would like to discuss this matter. Thank you.

Very truly yours,

BENJAMIN REED
Assistant Attorney General
Public Access Bureau

Enclosure

cc: *Via electronic mail*
Ms. Yvonne Mayer (will receive letter only)
[redacted]

32722
RECEIVED
ATTORNEY GENERAL
DEC 12 2014
FOIA/OMA

YVONNE MAYER
[redacted]

FAX TRANSMITTAL SHEET

TO: Assistant Attorney General Sarah Pratt, Public Access Counselor

FAX NUMBER: 217-782-1396

FROM: Yvonne Mayer

DATE: December 12, 2014

RE: Request for Review of Partial Denial of 9/15/14 Freedom of Information Act Request to Hinsdale Township High School District 86 (FOIA-1473 Request)

NUMBER OF PAGES (including cover sheet): 69

Please deliver this Request for Review of the partial denial of 9/15/14 Freedom of Information Act request to Assistant Attorney General Sarah Pratt.

Thank you

[redacted]

YVONNE MAYER
[redacted]

December 12, 2014

Ms. Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706
SUBMITTED VIA EMAIL AND FAX

Re: Request for Review of Partial Denial of a 9/15/14 Freedom of Information Act Request filed with Hinsdale Township High School District 86

Dear Ms. Pratt:

I am a current parent, community member and taxpayer in Hinsdale Township High School District 86 located in Hinsdale, Illinois (hereinafter referred to as "D86"). I am filing a Request for Review of a partial denial of a Freedom of Information Act Request I submitted to D86 on 9/15/14. In response, D86 has produced emails in redacted form, blacking out the names of community members who wrote to or received emails from the D86 Board of Education ("BOE") AND any personal or business email addresses used by the BOE members. It is in the public's interest for D86 and the BOE to disclose this information. For all of the reasons set forth in the following pages, I am respectfully requesting that the Public Access Counselor's Office direct D86 to produce this information.

The 9/15/14 FOIA Request is attached hereto as Exhibit 1. On 10/15/14, after much delay by D86[1], I received a partial response to a narrowed FOIA request I filed on 9/29/14 (see Exhibit 4). (A copy of the 10/15/14 Response is attached hereto as Exhibit 5.) On 10/15/14 I sent an email to the D86 FOIA officer and Superintendent Bruce Law seeking clarification of the 10/15 partial response. (Copy of the 10/15

[1] On 9/15/14, D86 sent me a 5-day ***Extension Notice***. (Copy of the 9/22/14 ***Extension letter*** attached hereto as Exhibit 2.) On 9/24/14, D86 sent me an "***Invitation to Narrow Request.***" (Copy of the 9/24/14 ***Invitation*** attached hereto as Exhibit 3.) On 9/25/14 I spoke with the D86 FOIA officer in an attempt to negotiate a narrowing of my FOIA request. On 9/29/14, I sent a written ***Reply to Invitation to Narrow Request*** to the D86 FOIA officer that included a narrower request. (Copy of the ***Reply to Invitation to Narrow Request*** attached hereto as Exhibit 4.)

Email to D86 FOIA Officer/Superintendent attached hereto as Exhibit 6.) On 10/16/14, I received a response to my email from Dr. Law. (Copy of the 10/16/14 Email attached hereto as Exhibit 7.) On Monday, 12/8/14, I attempted to contact the D86 Counsel by phone to discuss my concerns and explore whether we could resolve this FOIA dispute. To date the D86 Counsel has failed to return my phone call. I am, therefore, left with no choice but to file this Request for Review.

Specifically, I am seeking review of the partial denial of the following FOIA Request (see Exhibit 4):

"Request 1: Please provide all emails dated on or between May 1, 2014 and September 16, 2014 that were sent TO OR FROM a D86 Board of Education Member or members that include any mention of:

(i) the negotiations of the new D86 teacher contract currently underway, including the District 86 Negotiations Newsletter 1 that was emailed to D86 community members on July 14, 2016 and also mailed to community members via regular mail on or after that date: OR

(ii) the word "lock-out" or "lock out" or "lockout"

Emails should include those sent to or from the following email addresses that have been used by the Board Members to conduct D86 Board of Education business:
hoe@hinsdale86.org
rskoda@hinsdale86.org
[redacted]
ecorcoran@hinsdale86.org
[redacted]
edward.corcoran@greentechoverseas.com
cmanley@hinsdale86.org
[redacted]
vcasini@hinsdale86.org
[redacted]
kgallo@hinsdale86.org
mkuhn@hinsdale86.org
jplanson@hinsdale86.org
[redacted]

Emails responsive to Request 1 sent from D86 administrative staff to the D86 board member(s) can be excluded."

The 10/15 FOIA Response and 10/16 Email from Dr. Law denied portions of the information I had requested. Specifically,

1. Citing FOIA Sections 7(1)(b) and 7(1)(c), D86 redacted names and email addresses of community members who wrote to the board or who board members wrote to regarding the teachers' contract negotiation issues. Personal and business email addresses used by board members

corresponding with community members or with each other in their capacity as board members were also redacted.

2. D86 also omitted production of copies of any "*duplicate*" emails they asserted were "*subsumed within a larger e-mail chain being produced*" or "*emailed previously sent to or from [me].*" (See Exhibit 5, p. 2) Following my request for clarification on this point, (see Exhibit 6), Dr. Law further clarified that "*nor did we produce emails that responded to another FOIA request.*" (See Exhibit 7, p. 2).
3. The haphazard manner in which D86 produced actual responsive emails or generally referenced their "production" in response to ***other*** FOIA's has made it impossible to determine if BOE members actually produced all responsive emails they maintained on their personal or business email accounts. When asked whether or not all board members had searched and produced responsive emails or perhaps deleted them (See Exhibit 6, question 3), Dr. Law responded that he had asked the board members to conduct a search of their personal and business accounts, but had "*no way of knowing whether Board members deleted anything from their personal accounts.*" (See Exhibit 7, p. 2.)

I am requesting a review of the above referenced partial denial of Request 1 and respectfully requesting that your office:

1. Direct D86 to produce the responsive emails in unredacted form, so that names of community members and all email addresses used by board members in their capacity as board members are disclosed.
2. Ask D86 to provide affidavits from each board member representing whether they searched their personal/business email accounts for responsive documents and/or deleted any responsive emails from these accounts.
3. Direct D86 to produce ALL responsive emails, whether or not they were previously produced in response to other FOIA's,
4. Direct D86 to produce ALL copies of ALL responsive emails they assert were omitted because they were "subsumed within a larger email chain previously produced," in order that it can be determined if any individuals were blind-copied on the emails, and in the case of emails sent to or from board members' private or business email accounts, to determine if the board members have been deleting or destroying these public records in an attempt to avoid open governance laws, and
5. Direct the D86 BOE to participate in additional training on FOIA and appropriate records retention practices to ensure that all public records are properly maintained and accessible by D86 in the event of future FOIA requests.

The following pages set forth the reasons supporting this Request for Review. I am aware that your office has a tremendous log of Requests for Review that you are handling, and while you attempt to do so expeditiously, a determination may take over one year. I would respectfully request that you expedite this Request for Review for the following reasons:

1. The facts I set forth on the following pages establish that the public entity in question – the D86 BOE – has one or more board members who do not believe that the FOIA laws apply to their actions and believe that the BOE can deny information by asserting privacy exceptions in response to formal FOIA requests, while at the same time they can disclose the same information to whomever they want, outside of the FOIA process. The private disclosure of this same information has resulted in the harassment of certain community members by the individuals who have obtained this information outside of the FOIA process.
2. One of the alleged board members in question is the current D86 BOE president, Richard Skoda. He will be running for reelection in the April 2015 election and the D86 voters have a right to know prior to the election whether or not he has complied with the Illinois Open Governance Laws, so they can make an informed decision on which candidates to vote for.

PART 1: FACTUAL BACKGROUND AND ISSUES IDENTIFIED DURING THE RESPONSE PERIOD THAT ESTABLISH THAT THE FOIA PRIVACY EXCEPTIONS DO NOT APPLY OR HAVE BEEN WAIVED

A. Reason Why I filed the FOIA request:

During the summer of 2014 and into the 2014-2015 school year, D86 was involved in a heated teachers' contract negotiation that almost resulted in a strike in October 2014. Two D86 Board of Education Members, President Richard Skoda and Vice President Edward Corcoran, were on the D86 administrative negotiating team. During public Board of Education meetings held throughout the negotiations period, Board President Skoda repeatedly asserted that the majority of community members who were corresponding with the BOE supported the hard line the D86 negotiating team was taking against the teachers. As a concerned taxpayer and district parent who had written the BOE in opposition to their hard line, I reviewed emails the negotiating team had posted on the D86 website negotiations link in order to determine if this was the case. Not all of the emails that I and other community members had sent to the BOE opposing their hard line appeared on the website link, therefore, I next reviewed a FOIA request that a local reporter had filed with D86 in which she too sought production of these emails. (D86 maintains an online FOIA log, and the Reporter's FOIA request can be accessed at http://www.hinsdale86.org/foia/FOIA-1462.pdf) Names and email addresses of community members were redacted from D86's response to the Reporter under FOIA Section 7(1)(b) and 7(1)(c), so it was impossible to determine if the emails the BOE had received were from different individuals, or a smaller group of individuals who may have bombarded the BOE with correspondence. Since I had no standing to file a Request for Review from D86's response to the Reporter's FOIA, I filed a FOIA request myself, knowing that D86 would most likely redact the names/email addresses in their response to me, after which I could appeal the partial denial.

B. The Privacy Exceptions Do Not Apply to My FOIA Request

D86 has asserted that FOIA Sections 7(1)(b) and 7(1)(c) allow for the redaction of names and email addresses on privacy grounds. I assert that the exceptions do not apply, but even if they did, the conduct of one or more D86 board members has resulted in the waiver of this exception.

(i.) Sections 7(1)(b) and 7(1)(c) Do Not Apply

Board Member Email Addresses must be disclosed.

D86 relied upon FOIA Section 7(1)(b) to redact personal and business email addresses of both community members and BOE members. I have no interest in obtaining ***the personal email addresses of community members*** who emailed the BOE members to express their opinions of the ongoing teacher contract negotiations issues. However, redacting the personal or business email addresses of board members falls outside the scope of this exception. The board members cannot assert any expectation of privacy concerning these email addresses if they used them to conduct board business, including responding to emails community members had sent to their D86 email accounts. Rather than respond to these emails from their D86 email addresses, one or more board members chose to respond in their capacity as board members using their personal/business addresses. The recipients of these responsive emails could, therefore, see the personal or business email addresses used by the BOE member(s). By using their personal/business email addresses, the BOE members knew these email addresses had been disclosed to community members. It would be illogical to suggest that Board Members' email addresses could be disclosed to community members who received a response, but should be redacted on privacy grounds in response to a legitimate FOIA request for those public records by other community members.

Moreover, by redacting the personal/business email addresses used by BOE members, it is impossible to determine whether or not all of the emails were produced. Even the D86 Superintendent who I discussed my concerns with could not assure me that board members had not deleted public records from their personal/business email accounts. (See Exhibit 7.) Each BOE member has been given a D86 email account to use to conduct BOE business. Unfortunately, one or more of them, including the BOE president and Vice President, have chosen to use personal and business email accounts instead of the D86 accounts. Not only did they respond to community members from these accounts, but the also used them to communicate with certain fellow board members. Such behavior raises questions of whether or not the BOE members are intentionally using these accounts to avoid Open Governance laws – both FOIA and the Open Meetings Act. Unless the email addresses are disclosed, it will not be possible to identify which board members may be attempting to circumvent the reach of FOIA.

The use of personal and business email accounts to correspond with community members or with fellow board members in their capacity as board members, rather than using a D86 provided email account, is a choice each board member makes. Emails they generated on their D86 account would have been produced with the email addresses disclosed. Board members should have no expectation of privacy with respect to the email addresses they used to conduct board business with fellow board members, especially since this raises the possibility that they used these email accounts to circumvent the Open Meetings Act requirements. Nor should they have an expectation of privacy with respect to the email addresses they used to correspond with community members in their capacity as board members since this raises the possibility that they used these accounts to circumvent the reach of FOIA. For all these FOIA Section 7(1)(b) does not apply to the disclosure of the BOE members' email addresses.

I therefore respectfully request that D86 be directed to disclose the BOE members' email addresses.

Community Members' Names must be disclosed.

D86 relied upon Section 7(1)(c) to assert that disclosure of the names of community members who wrote to the BOE regarding teacher contract negotiation issues would constitute a clearly unwarranted invasion of personal privacy because "*individuals who corresponded with Board of Education expressing their opinions, as these correspondences were written by (or in response to) private citizens expressing their personal thoughts, with no expectation that their communications would be publicly disclosed.*" D86 further asserted that disclosure of the community members' names would have a chilling effect. (See Exhibit 5, p. 2) Such arguments are misplaced. The correspondence produced by D86 clearly establishes that individuals were expressing their opinions on the conduct and positions taken by the BOE during the teachers' contract negotiations. During public board meetings, Board President Skoda repeatedly encouraged community members to contact the BOE with their opinions on the positions the BOE was taking during the teacher negotiations. Some community members expressed their opinions via email, while others did so during board meeting public comments. D86 BOE Policy 2:230 directs community members to identify themselves before making a public comment. (Source: http://www.hinsdale86.org/sb/bp/Policy%20Sections/Section%202/2230%20ADOPTED%203%203%2014.pdf)

Anyone attending a board meeting or watching the videotapes of all board meetings posted on the D86 website will learn the identity of the person(s) expressing their opinions on the teacher contract negotiations issues. The use of one forum versus another should not impact the ability of all community members to learn the names of individuals expressing their opinions to the BOE regarding public matters such as the BOE members' conduct and positions taken during the teacher contract

negotiations. Writing the BOE with one's opinion regarding the negotiations is no different than making a verbal public comment during a board meeting.

Throughout the summer and fall 2014, Board President Skoda repeatedly asserted that the majority of the emails to the BOE expressed support for the BOE majority's teachers' contract negotiations position. Without disclosure of the names of the community members who corresponded with the BOE, it is not possible to determine whether or not a majority of individuals supported the BOE, or whether a smaller group of individuals sent multiple emails to the BOE. This is significant because as the negotiations dragged on, multiple community members made public comments pointing out all of the misinformation that was published by Mr. Skoda and Mr. Corcoran in negotiations newsletters that the BOE sent to the community. Mr. Skoda's representation that the majority of community members supported the hard line the negotiations team was taking against the teacher was cast in doubt after D86 redacted community member names from the emails it posted on the district website, produced in response to the Reporter's FOIA request and in response to my FOIA request. Without seeing the names, there is no way to confirm the accuracy of Mr. Skoda's representations.

The community has a right to know if President Skoda's representations regarding community member support was accurate or another example of misinformation. This is of particular public interest at this moment in time, because President Skoda plans to run for reelection in the April 2015 election. Voters should be able to evaluate his conduct while on the D86 BOE and learn whether or not the Public Access Counselor's office has found D86 to be in violation of FOIA, in order to make an informed decision as to which candidate to vote for.

The public interest in the disclosure of the names of community members who expressed opinions relating to the teacher contract negotiation issues outweighs any privacy expectations D86 has asserted. Accordingly, the names of community members who corresponded with the BOE and appear in the responsive documents should be disclosed, as well as the personal or business emails addresses used by the D86 BOE members.

(ii.) <u>The Conduct of One or More BOE Members has Resulted in the Waiver of the Privacy Exceptions</u>:

Should the Public Access Counselor determine that the FOIA privacy exceptions do allow for redaction of either community members' names and board members' private/business email addresses, I would assert that D86 has waived the exceptions through the conduct of one or more BOE members.

One or more BOE members forwarded emails off of the D86 server.

During the summer and fall 2014, while the teachers' contract negotiations were ongoing and individuals such as the Reporter and I were filing FOIA requests to determine the level of support for and against the BOE's hard line against teachers, one or more board members were playing fast and loose with open governance laws. Private information they were asserting could be withheld under FOIA, was being disseminated and most likely circulated by them off of the D86 server.

Outside of the FOIA process, community members who opposed the hard line of the BOE during the teachers' contract negotiations, circulated email exchanges they had had with individual board members. These community members, including myself, had sent board members emails to the boe@d86.org email address – the general BOE email address maintained by D86 - or to the individual D86 email addresses each board member was given when they took office. These email exchanges showed that at least two board members, Board President Skoda and Vice President Corcoran, were corresponding with community members via either their personal or business email accounts. Rather than respond to community members with their D86 individual email accounts, they were responding from their personal or business email accounts AFTER first forwarding the emails off of the D86 server to their home/business email accounts, all done without first redacting the community members' names or email addresses ([redacted] *edward.corcoran@greentechoverseas.com*). (See Exhibit 4, pp. 10-21.)

The action of forwarding D86 emails off of the district server, either done by the individual board member alone or by the administration at the board member's direction, immediately compromised the ability of D86 to maintain ALL public records generated or received by the Board of Education. Further, by forwarding community members emails off of the district server without first redacting their names or email addresses, any privacy exceptions that could have been asserted in response to a legitimate FOIA request were waived. In Mr. Corcoran's case, one of the email addresses he used was his business email: edward.corcoran@greentechoverseas.com . Because his business emails might be subject to searches or disclosures to his employer or anyone in the company authorized to access his business email, the names and email addresses of community members were compromised and could have be disclosed to third parties outside of the FOIA process.

Furthermore, in the case of Mr. Corcoran, he was also first routing his D86 emails to his home or business email accounts via a ***third*** email account he used in his capacity as the treasurer of a Political Action Committee (PAC) called "Citizens For Clarendon Hills [redacted] which may or may not have been accessible by other members of the PAC. Thus, utilizing multiple emails (including an email address that might be accessible by third parties) to respond to correspondence received on the D86 server, without first redacting community members' names and

email addresses, waived any privacy exceptions that might allow redaction of the names and email addresses.

Mr. Corcoran also emailed at least one community member regarding negotiations issues from his business email address during what was supposed to be a closed D86 BOE executive session on 9/15/14, when he and other BOE negotiating team members were supposed to be discussing the teachers' counter-offer with the full board. (See Exhibit 4, pp. 5-8 and copies of the email exchanges referenced above on pp. 10-21 of Exhibit 4).

Evidence supports a conclusion that at least one board member disclosed "private" information to private third parties outside of the FOIA process.

Worst yet, commencing in early fall, I and other community members who had sent emails to the BOE opposing their "hard line" against teachers, began receiving emails from a third party, private community member who we were not previously acquainted with or socialized with, attempting to engage us regarding positions we had asserted in our emails to the BOE. The emails bordered on harassment and we could not determine how this individual had obtained our names or our email addresses, so one community member sent a letter to the BOE using an email account that she had not previously used and had not used in the past for correspondence purposes.[2] Shortly thereafter, she received an email from the same community member to that address. So it became quite clear that someone on the BOE was sharing these emails, including our names and email addresses outside of the FOIA process, since no names or email addresses had been released in response to earlier FOIA requests filed.

After I received the October 15, 2015 FOIA partial denial from D86, during BOE meeting public comments and in correspondence I sent to the BOE, I attempted to address the obvious contradiction the public entity and one or more of its members had taken on disclosure of names and email addresses. On the one hand, as in the case of the FOIA request at issue, D86 asserted that it must redact names and email addresses from FOIA responses on privacy grounds. On the other hand, it appears that individual board members released the same information outside of the FOIA process to private third parties.

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[2] Please let me know if you would like me to provide you with the names of all of these individuals, in which case I will do so but with a request that you maintain their confidentiality. I am not identifying these individuals at this time, since after one community members complained to the BOE (during public comment at a recent BOE meeting) about the third party emails he had been receiving, he started getting additional harassing emails and phone calls from the third. I do not want to compromise anyone else or set him or her up to be harassed by the community member who somehow obtained his or her names/email addresses.

During the 11/3/14 BOE meeting, Board Member Gallo attempted to have the board discuss this contradictory conduct, as well as concerns she had with email retention issues that might exist if BOE members used their home and business email accounts instead of their D86 accounts to conduct board business. (Video of the 11/3/14 Board meeting can be accessed at:

http://www.hinsdale86.org/sb/Video%20Archive/November%203%202014%20Committee%20of%20the%20Whole.aspx .

Ms. Gallo's comments begin at Counter 3:10:40 of the meeting. In response to Ms. Gallo's concerns, Board President Skoda stated that he is free to do whatever he wants with emails he receives and can share what people say to him with whomever he wants to. He specifically said: *"When you send somebody an email, that email is theirs."* (Counter 3:11:58) Then, obviously referring to emails he had received from pro-teacher supporters, he said, *"If somebody wants to send me a nasty email, not that I recommend doing this, and I want to say 'look what this person said about me,' that's my email."* (Counter 3:12:56) During the BOE meeting's closing comments, I stepped up and called President Skoda out on making this statement, suggesting that his statement was an admission that he may have been the board member who had shared the emails outside of the FOIA process. I argued that such emails are not private but are public records, belong to the public and are governed by FOIA. President Skoda did not deny that he had shared the emails outside of the FOIA process, rather continued to insist that such emails are private and his property. (Counter 3:27:22). No other board member denied sharing the emails with private third parties outside of the FOIA process.

D86's contradictory positions on redacting private information when responding to a FOIA request, but allowing the Board President or other board members to release the same information to select private third parties is unsupported by the legal authority it is relying on.

On 11/4/14, I emailed D86 Superintendent Law to discuss the Board president's statements during the 11/3 BOE meeting. I asked that he speak to the D86 counsel regarding the Board's contradictory positions on the release of the "private information." (Copy of 11/4/14 email attached hereto as Exhibit 8.) On 11/6/14, Dr. Law responded that legal counsel's position was that dissemination of the public records by an individual board member was appropriate, citing *Roehrborn v. Lambert*, 177 Ill. App.3d, 660 N.E.2nd 180, 213 Ill.Dec.923 (1st Dist. App. Ct., 1995. The D86 counsel asserted that under *Roehrborn*, the FOIA privacy exceptions did not require, but allowed, the district to redact names and email addresses in response to a legitimate FOIA request, but it was not an invasion of privacy for an individual board member to disseminate the redacted information to any private third party he/she wanted to outside of the FOIA process. (Copy of 11/4/14 email attached hereto as Exhibit 9.)

On 11/10/14, I replied to Dr. Law and the BOE distinguishing *Roehrborn*. (Copy of 11/10/14 email distinguishing *Roehrborn* attached hereto as Exhibit 10.) I pointed out that *Roehrborn* dealt with the release of a public employee's employment test results to another public entity. In *Roehrborn*, a probation officer wanted to become a police officer and planned to attend a police-training institute. He failed required polygraph and psychological tests, after which the results were sent to the administrator of the police institute, and he was forced to withdraw. He sued, alleging in part a violation of FOIA, asserting that privacy exceptions prohibited the release of the test results to the administrator of the institute. The court disagreed stating that "*[t]he institute had a legitimate interest in knowing that plaintiff failed to pass the []testing and, therefore, disclosure of this information to the [administrator] was not improper...Accordingly, we find that the disclosure of plaintiff's test results did not fall in the exempted category nor violate the Act.*"(Citing to *Roehrborn v. Lambert*, 177 Ill.App.3d, 660 N.E. 2nd 180, 213 Ill.Dec. 923 (1st Dist. App.Ct. 1995). *Roehrborn* does not apply to the issues I raised. Assuming that the FOIA privacy exceptions allowed the district to redact private names and email addresses from public records produced to a private community member, an individual board member had no legitimate public interest in releasing the redacted information to a private, third party community member outside of the FOIA process, in contravention of the position taken by the public entity. *Roehrborn* does not allow the D86 BOE to play both sides of the argument.

My FOIA request is seeking documents from the public entity known as the D86 BOE. The D86 BOE is the public entity that asserted the FOIA privacy exceptions to redact names and email addresses from emails it produced to me. The D86 BOE is comprised of 7 publicly elected officials. The Board President believes that any email he receives is his property to do with as he sees fit. He has not denied disclosing the redacted names and email addresses to private third parties outside of the FOIA process. At least two board members have disseminated emails off of the D86 server without first redacting names and email addresses of community members. At least one board member has used multiple private and business email addresses to respond to emails he received on the D86 server in his capacity as a board member. At least one board member has gone so far as to use his private email addresses to correspond with community members regarding board business during an executive session.

All of the aforementioned examples of D86 BOE member conduct in disseminating and disclosing names and email addresses outside of the FOIA process clearly establish that D86 has waived any argument it could have made that FOIA Sections 7(1)(b) and 7(1)(c) allow for the redaction of community members' names and board member personal and business email addresses. To allow individual board members to avoid the intent of FOIA and pick and choose who to disclose information to flies in the face of the Illinois Open Governance Laws and should not be sanctioned by the Public Access Counselor.

RECEIVED 12/12/2014 00:19

Accordingly, I respectfully request that the Public Access Counselor direct D86 and its BOE members to produce ALL responsive emails and disclose the names of community members and email addresses of the BOE members that appear in the responsive documents.

PART 2: ALL RESPONSIVE EMAILS THAT D86 IS "PRODUCING" SHOULD BE IDENTIFIED AND PRODUCED EVEN IF THEY WERE PRODUCED IN RESPONSE TO PRIOR FOIA REQUESTS.

D86 produced emails in response to my FOIA request. Click on the following D86 website link to open the actual documents that were produced: http://www.hinsdale86.org/foia/FOIA1473-COMPLETE.pdf

However, both in and subsequent to its response, D86 declined to produce copies of any email it stated had been produced in response to previous FOIA requests. (See Exhibits 5 and 7.) Each FOIA request a public entity receives must be treated individually and it is unduly burdensome to a person filing a legitimate FOIA request – or any community member who wants to review D86's FOIA response and documents that were produced -- to expect him/her to review all previous FOIA responses available on the D86 FOIA LOG website to try and determine what documents D86 believes are also responsive to the current FOIA request.

At a minimum D86 should have provided me with an itemized list of the specific responsive emails that it previously produced and identify which FOIA request the emails were produced in response to, and which Request in the 9/15/14 FOIA request they were responsive to. This would include the "cc's" that D86 culled out. A public entity should not be allowed to pick and choose what public records to produce out of the group of responsive. If a responsive public record exists (and subject to application of appropriate exceptions), the FOIA requestor must be provided ALL versions of the document, including "cc's" and blind copies.

I would therefore, respectfully request that the Public Access Counselor's Office direct D86 to produce copies of ALL responsive documents or a Log identifying the exact documents (and their location) that it believes have been previously produced in response to other FOIA requests.

PART 3: D86 BOARD MEMBERS SHOULD BE DIRECTED TO PROVIDE AFFIDAVITS ASSERTING WHETHER OR NOT THEY SEARCHED THEIR PERSONAL AND BUSINESS EMAIL ACCOUNTS FOR RESPONSIVE DOCUMENTS AND WHETHER THEY DELETED ANY RESPONSIVE DOCUMENTS FROM THEIR PERSONAL AND BUSINESS EMAIL ACCOUNTS.

It remains unclear whether or not the D86 BOE members who have used their personal or business email accounts to conduct board business searched these accounts for responsive emails. While the Superintendent represented that he had

asked the board members to provide emails on their home/business email accounts and believes the district "met the standard of conducting a reasonable search" he also represents that the D86 had "no way of knowing whether Board members deleted anything from their personal accounts." (See Exhibit 7, p. 2.)

Due to the difficulties some of the board members have caused in ensuring proper retention and availability of public records (for FOIA purposes) due to their forwarding emails off of the D86 server prior to responding to emails from personal and business accounts, I have no confidence that all of the responsive documents were produced and/or properly retained by the board members. I would, therefore, respectfully request that the Public Access Counselor request that each board member provide an affidavit asserting whether or not they searched their personal and business email accounts for responsive documents and whether they deleted any responsive documents from these accounts.

CONCLUSION:

In conclusion, for all of the reasons set forth in this Request for Review, I am respectfully requesting that D86 be directed to:

1. Produce ALL responsive documents,
2. Disclose the names of community members who corresponded with the BOE members regarding teacher contract negotiations issues,
3. Disclose all email addresses used by the D86 BOE members in the responsive emails,
4. Produce affidavits from each board member indicating whether or not he/she searched his/her personal and business email accounts for responsive documents and indicating whether he/she deleted or destroyed any responsive documents, and
5. Have its BOE members participate in additional FOIA training and proper public records retention practices.

Thank you for your consideration.

Respectfully submitted,

[redacted]

Yvonne Mayer

Steven M. Richart

From: Steven M. Richart
Sent: Friday, January 16, 2015 4:48 PM
To: 'Reed, Benjamin (BReed@atg.state.il.us)'
Cc: Therese L. Hodges; 'vmancini@eklwilliams.com'; 'blaw@hinsdale86.org'
Subject: 2014 PAC 32722 (Mayer)
Attachments: CONFIDENTIAL Answer - 2014 PAC 32722.pdf; Redacted Answer - 2014 PAC 32722.pdf

Dear Mr. Reed:

Following our phone conversation on January 8, 2015, concerning an extension, attached is the confidential answer of Hinsdale Township High School District No. 86 in the above matter. Pursuant to FOIA Section 9.5(c), the District requests that you not share it with any other party. Also attached is a redacted copy that can be shared with the complainant. The exhibits listed in this answer will follow by U.S. Mail on a flash drive due to their file size. If you have any questions, please let us know.

Yours truly,

Steven M. Richart, Attorney
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January 16, 2015

Via U.S. Mail and Electronic Mail

Mr. Benjamin Reed
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
100 West Randolph St
Chicago, IL 62901
BReed@atg.state.il.us

Re: FOIA Request for Review – 2014 PAC 32722 (Mayer)

Dear Mr. Reed:

We are writing in response to your request regarding the above-referenced matter, which was received by Hinsdale Township High School District No. 86 ("District") on December 29, 2014. As legal counsel for the District in this matter, we have prepared and submit the requested response.

This matter involves the Request for Review of Yvonne Mayer, a licensed attorney in the State of Illinois (see ARDC website of registered attorneys). Ms. Mayer filed a September 29, 2014 (10:42 pm) amended request for copies of e-mails sent to or from a number of e-mail addresses concerning negotiations of a new teacher contract and e-mails concerning an investigation into a Facebook post. In your letter dated December 22, 2014, you have requested that the District (1) provide unredacted copies of withheld or redacted records, (2) provide a detailed explanation of the factual and legal bases for the asserted FOIA exemptions relied upon by the District in responding to the requests, and (3) provide a detailed description of how the District searched for responsive records. Our response tracks the requests in your letter to the District.

As pertinent background information, Ms. Mayer is a frequent FOIA requester whose FOIA requests have cost the District thousands of dollars in legal fees and countless hours of staff time. *See* Exhibit 1. The request at issue was one of three (3) requests seeking Board member e-mails submitted by Ms. Mayer concurrently in September when Hinsdale's teachers were on the verge of a strike. The District has responded to each of her requests in a timely and complete manner.[1]

[1] Ms. Mayer suggests in a footnote at page 1 of her Request for Review that the District unnecessarily delayed its response to her FOIA request. As the District specified in its September 24, 2014, invitation to Ms. Mayer to narrow her request, the District's initial search for responsive e-mails uncovered at least 2,000 potentially responsive e-mails, which would require over 100 hours of staff and attorney time to analyze and review. Upon receiving the narrowed request, the District responded with nearly 400 pages of responsive documents on October 15, 2014, the date Ms. Mayer specified in her request. The District also responded to her two other concurrent requests for Board member e-mails in a timely manner on October 8 and October 15, respectively. *See* Exhibit 1.

Nevertheless, as evidenced in her submission, Ms. Mayer's arguments are manifold, but her intent is clear - attack and discredit individual members of the Board under the auspices of a FOIA dispute. On numerous occasions, Ms. Mayer references these individual Board members and the upcoming April, 2015 school board election as being some legitimate basis outweighing the District's decision not to release the private email addresses, and as a result, the identities of citizens corresponding with the Board regarding a contentious issue (*i.e.* teacher union negotiations). However, the only legitimate interest offered is Ms. Mayer's desire to track down and investigate the identities of these private citizens for her own personal agenda. Ms. Mayer's personal agenda is not a legitimate public interest which outweighs the privacy rights of both Board members and citizens under 5 ILCS 140/7(1)(b)&(c).

Despite the obvious intent of Ms. Mayer, the District conducted a reasonable search for responsive records, and its stated exemptions were proper. As set forth below, the District complied with its obligations under FOIA, and Ms. Mayer's personal agenda does not establish any violation of the law.

A. Enclosure of Redacted and Unredacted Copies of Withheld or Redacted Records and Other Exhibits

Initially, we note that Ms. Mayer did not include a copy of the documents provided to her by the District on October 15, 2014, in response to her September 29, 2014, request, as required under FOIA Section 9.5(a). For your convenience, those documents are included with this response as Exhibit 2. We have also included as Exhibit 3 the unredacted copies of the withheld or redacted records for your confidential review. The following list itemizes all exhibits included with this response:

Exhibit 1	Summary of Ms. Mayer's requests and the District's responses
Exhibit 2	Redacted records at issue
Exhibit 3	Unredacted/withheld e-mails (CONFIDENTIAL)
Exhibit 4	October 2, 2014, e-mail from Superintendent to Ms. Mayer
Exhibit 5	Examples of individuals not wanting names/e-mails released (CONFIDENTIAL)
Exhibit 6	September 18, 2012, Circuit Court Order (Lake County) re: e-mails and FOIA
Exhibit 7	E-mail exchange with community member (CONFIDENTIAL)
Exhibit 8	Correspondence regarding the search for records on District's server (CONFIDENTIAL)
Exhibit 9	Correspondence regarding the search for Board member personal e-mails (CONFIDENTIAL)

All exhibits marked "CONFIDENTIAL" are exempt and remain confidential pursuant to FOIA Section 9.5(c). The exhibits are further explained below.

B. Explanation of the Factual and Legal Bases for the Asserted FOIA Exemptions Relied Upon by the District in Responding to the Requests

As an initial matter, Ms. Mayer only objects to the District's redaction of personal e-mail addresses of Board members and the names of private citizens who communicated with the Board through e-mail concerning the teacher contract negotiations. The District's remaining exemptions (7(1)(f); 7(1)(m); 7(1)(p); 7.5(r)) are uncontested and proper, as demonstrated by the District's response letter and Exhibit 3, and we do not address them in this letter. Accordingly, our response is limited to the major issues identified by Ms. Mayer in her Request for Review. If you believe that the other exemptions used by the District are also in question by Ms. Mayer, we reserve the right to supplement this Response.

1. Personal E-mail Addresses (7(1)(b))

Ms. Mayer objects to the redaction of personal e-mail addresses of Board members. As the District stated in its response to Ms. Mayer, FOIA expressly exempts "private information" from disclosure, including "personal e-mail addresses." *See* 5 ILCS 140/7(1)(b); *see also* 5 ILCS 140/2(c-5). Contrary to Ms. Mayer's suggestion, FOIA does not distinguish between personal e-mail addresses of community members and personal e-mail addresses of members of the public body. Rather, FOIA unequivocally provides that personal e-mail addresses are private and exempt from disclosure.

Ms. Mayer claims that a Board member's personal e-mail address should not be exempt when the Board member utilizes the e-mail address to conduct public business. *See* Request for Review at p. 5. Ms. Mayer's argument is wholly without legal foundation. First, Board members have not violated any law or Board Policy by using their personal e-mail addresses to correspond with private citizens, as the District has already explained to Ms. Mayer. *See* Exhibit 4. Second, even if Board members somehow violated the law or some policy by using their personal e-mail addresses to correspond with citizens, it would not offset the exemption. *See Competitive Enter. Inst. v. United States Envtl. Prot. Agency, No.* CV 12-1617 (JEB), 2014 WL 308093 (D.D.C. Jan. 29, 2014) ("[T]he Court does not see why an agency official's personal e-mail address—in which he or she would obviously have a powerful privacy interest—would become any less private by dint of the fact that it was used when it should not have been."). The 7(1)(b) exemption for personal e-mail addresses is a straightforward, "bright line" rule that is not subject to any balancing of public versus private interests. Moreover, Ms. Mayer's "waiver" theory is inapplicable here as argued in Subsection 3 below.

In responding to FOIA requests, the District has been consistent in redacting Board members' personal e-mail addresses.[2] Board members may have legitimate reasons for choosing to use their personal e-mail addresses to communicate with a constituent or citizen without intending that their personal e-mail addresses be released to any person who requests them under FOIA. Accordingly, Ms. Mayer's request that the District be directed to provide unredacted records that disclose personal e-mail addresses of Board members should be denied.

2. Names of Private Individuals Corresponding with the Board of Education (7)(1)(c))

Pursuant to FOIA Section 7(1)(c), the District properly redacted the names of parents and other private individuals who contacted the Board of Education to express their opinions through e-mail. FOIA Section 7(1)(c) exempts "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c). The test used to assess this exemption, set forth in *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 207 (1st Dist. 2004), balances: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of alternative means of obtaining the requested information.

With respect to the first prong, Ms. Mayer has no genuine interest in the disclosure of these names. She claims that "[w]ithout disclosure of the names of the community members who corresponded with the BOE, it is not possible to determine whether or not a majority of individuals supported the BOE, or whether a smaller group of individuals sent multiple e-mails to the BOE." *See* Request for Review at p. 7. This is nothing more than a thinly-veiled pretext to allow Ms. Mayer to execute her personal agenda by obtaining the names and identities of her opponents and their supporters in advance of an election.

As Exhibit 2 demonstrates, the Board's redactions do not in any way prevent Ms. Mayer from assuaging her speculative fears. The e-mails were sent by numerous private citizens, as is self-evident from the differing fonts, lengths, content and other characteristics of the e-mails. Nothing suggests that the same person may have sent multiple e-mails to the Board pretending to be different citizens. This is a preposterous and unsubstantiated allegation that is not shared by the Hinsdale community. The bottom line is that "the core purpose of the FOIA is to expose what the government is doing, not what its private citizens are up to." *Chicago Alliance for Neighborhood Safety*, 348 Ill. App. 3d at 211. Thus, Ms. Mayer's claimed public interest in obtaining the identities of these e-mail authors is not legitimate.

Relatedly, and with respect to the second prong, Ms. Mayer claims that "[t]he community has a right to know if [Board] President Skoda's representations regarding community member support

[2] The District's FOIA Log is available for review at: http://www.hinsdale86.org/foia/Forms/FOIA%20View.aspx.

was accurate. . . ." Clearly, Ms. Mayer's sole purpose is to attack a Board member, personally, by undermining those who supported him during these contentious negotiations. Ms. Mayer, however – and the community via the FOIA Log – have been provided redacted copies of the e-mails that include the content of the opinions expressed by community members, which allow her to examine the opinions that were expressed to the Board. She can review the content of the e-mails to determine whether a majority expressed support or opposition to the Board's position. Little else is gained through the disclosure of the individuals' identities other than allowing Ms. Mayer to create a tally of her potential political enemies in support of the Board versus those in opposition to the Board.

As to the third prong of the legal test, Ms. Mayer's stance presents a severe degree of the invasion of privacy. The names of these parents and other private citizens are linked to their impassioned support or criticism of the Board's position during the teacher contract negotiations. The exercise of private citizens' First Amendment rights is at stake, and there is a reasonable probability that the compelled disclosure will subject these citizens or their children to threats, harassment, or reprisals. *See Doe v. Reed*, 130 S. Ct. 2811, 2820 (2010) (stating that the identity of petition signers may be exempt from compelled disclosure under Washington State's Public Records Act upon a showing that "there is a reasonable probability that the signatories ... will be subjected to threats, harassment, and reprisals."). Any threat of retaliation suppresses a citizen's free speech and right to petition government, and as such, the District justifiably sought to protect this fundamental right of every citizen.

The teacher negotiations were a bitter and divisive issue in the Hinsdale community at the time. Indeed, Ms. Mayer herself claims in her Request for Review that community members had been subjected to harassment based on their opinions of the teacher contract negotiations. *See* Request for Review at p. 9. Likewise, individuals in the pro-Board camp could have feared retaliation by the teachers' union for their opinions. *See* Exhibit 5. In fact, Board members did fear and suffer repercussions from the community that led to police involvement. Yet, Ms. Mayer now requests that all individuals' names be disclosed, which will only serve to increase the probability that individuals are harassed or retaliated against for the opinions they expressed.

Although we are not aware of any Attorney General opinions squarely addressing this issue, in a 2012 case in Lake County the circuit court denied the plaintiff's request that the school district be required to release the names of private citizens who communicated with District administrators via e-mail concerning a divisive issue in the community. *See Hauser v. Township High School District No. 113*, 11 CH 1157 (September 18, 2012). A copy of the court's Memorandum Order is attached as Exhibit 6. In that case, the plaintiff claimed she was entitled to the names of private individuals who may have made defamatory or threatening statements against her. In denying the plaintiff's claim, the court stated:

> [P]ersons writing the District could reasonably expect that their messages would be treated as private and confidential. The messages included personal opinions

> on matters touching deeply held beliefs. Disclosing the names of those sending the messages would not simply convey basic identification, it would connect the individuals to intensely personal information that they chose not to disclose in a public forum. Accordingly, the court finds that disclosure of the names of private citizens who sent messages to District employees would result in a significant invasion of their privacy.

Id. at 41.

The concern that individuals may be harassed or retaliated against for the opinions they expressed to the Board is extremely pronounced in this case. Many of the individuals who contacted the Board via e-mail are parents of students in the District whose teachers are union members. They may legitimately fear that disclosure of their identities could subject their children to possible retaliation by their teachers or subject themselves to retaliation by the teachers' union or others (such as Ms. Mayer). Some citizens in fact contacted the Board and expressed precisely these concerns. *See* Exhibit 5. Conversely, disclosing the names of parents who voiced support for the teachers could lead to their being "harassed" in the manner of which Ms. Mayer herself complains. These interests weigh strongly against disclosure of the identities of individuals who contacted the Board in this case. As in *Chicago Alliance for Neighborhood Safety*, the disclosure of this information would have a "chilling effect" on the willingness of individuals to contact the District with their concerns. 348 Ill. App. 3d at 209. Clearly, here the privacy interests outweigh any public interest in disclosure and the private citizens' names should not be disclosed.

3. The District Did Not Waive Privacy Exemptions

Ms. Mayer contends that the Board somehow waived the privacy exemptions that protect disclosure of personal e-mail addresses and the names of private citizens who expressed their opinions to the Board by disclosing such information to third parties. Ms. Mayer, however, fails to identify a single third party who received e-mails from the Board in unredacted form. Thus, she places the District in the difficult position of proving a negative.

Ms. Mayer once again speculates that the Board President disclosed e-mails he received from community members to some unknown third party. *See* Request for Review at p. 9. Ms. Mayer claims that she and other community members began receiving e-mails from an unknown party that "bordered on harassment." From this, Ms. Mayer speculates that someone on the Board of Education must have disclosed other e-mails sent to the Board. She asserts that "one community member sent a letter to the BOE using an e-mail account that she had not previously used and had not used in the past for correspondence purposes." *Id.* According to Ms. Mayer, this community member then received an e-mail from the unknown person and then concludes that the only way this person could have known the community member's e-mail address was if someone on the Board of Education forwarded the e-mail to the unknown person.

First, the only e-mail exchange of which the District is aware is attached as Exhibit 7. In that correspondence, the Superintendent and the Board President were carbon copied on an e-mail exchange between two citizens in late September, 2014. In the e-mail string, a community member states: "This is a brand new e-mail account used only once. Yes, it was used last night to send a response e-mail to Dr. Skoda. He is the ONLY person that ever received correspondence from this e-mail address! Until of course today, when I received your note. You indicated that you 'noticed my name and e-mail mentioned via the web' FYI, not possible!" However, the other individual responds that he obtained the e-mail address from the District's FOIA Log on the District's website. In fact, the e-mail address of the community member is associated with five (5) FOIA requests submitted in April and May, 2014. *See* FOIA Log online (*e.g.*, response to FOIA 14-041). Therefore, Ms. Mayer's speculation that the Board President or another Board member must have disclosed the e-mail address to a third party is entirely baseless and belied by the facts.

Second, the speculative, anecdotal and second-hand nature of this argument makes it very difficult, if not impossible, to address in a meaningful way. Regardless of the veracity of her claims, Ms. Mayer propounds a theory that a Board member can never share information contained in an e-mail to the Board with a third party without forever waiving the District's right to exempt that communication from a FOIA request under 5 ILCS 140/7(1)(b)&(c). The District is aware of no such legal precedent supporting this ridiculous assertion. For example, a Board member who discusses the subject matter of a communication with her spouse does not forever waive the private nature of that communication as it relates to the Board.

Ms. Mayer also asserts that some Board members forward e-mails they receive on their District accounts to their personal and business e-mail addresses. Ms. Mayer again engages in wild speculation that some third party may be able to gain access to the forwarded e-mails through the Board members' personal and business e-mail accounts, thereby destroying the confidential nature of that e-mail. Not only is this theoretical, hypothetical possibility not supported by any evidence, but it again fails to demonstrate how the Board member's forwarding an e-mail from a Board member's District e-mail account constitutes the District's waiver of FOIA's exemptions.

The District, moreover, has been consistent in redacting personal e-mail addresses and the names of private individuals in its responses to FOIA requests. In particular, Ms. Mayer notes in her Request for Review that one of the reasons she submitted the FOIA request to the District was because the District had redacted personal e-mail addresses and names of private citizens in its response to a similar request from a local reporter. *See* Request for Review at p. 4. The District routinely redacts such private information from its responses to encourage its constituents to feel at liberty to contact the Board. Additionally, even if the District had released personal e-mail addresses and the names of private citizens on some other occasion, such disclosure would not preclude the District from asserting the FOIA exemptions in response to Ms. Mayer's FOIA request or constitute a waiver. *See Chicago Alliance for Neighborhood Safety*, 348 Ill. App. 3d at

202. ("The waiver rule must not be mechanically applied whenever there is disclosure of information but, rather, requires consideration of the circumstances related to the disclosure, including the purpose and extent of the disclosure as well as the confidentiality surrounding the disclosure.").

In a final and futile attempt to argue the District somehow waived the applicable privacy exemptions, Ms. Mayer misconstrues the District's citation to the decision in *Roehrborn v. Lambert*, 177 Ill.App.3d 181 (1st Dist. 1995). Ms. Mayer contends that the District relies on *Roehrborn* for the proposition that a public body may withhold exempt documents but is not required to do so. *See* Request for Review at p. 10. Ms. Mayer claims that the Board President stated during a Board meeting that he is free to disclose e-mails he receives from private citizens if he so desires. Ms. Mayer does not claim that the Board President stated that he actually disclosed anyone's private e-mails. In fact, the Board President specifically stated that he did not advocate such an approach. Following the Board meeting, Ms. Mayer e-mailed the Superintendent to seek clarification of the Board President's statement. *See* Exhibit 7 to Ms. Mayer's Request for Review. In response, the Superintendent informed Ms. Mayer that under *Roehrborn*, FOIA's exemptions do not prohibit the disclosure of information, but instead are instances in which disclosure is not required. *See* Exhibit 8 to Request for Review. Now, Ms. Mayer misconstrues the District's reference to *Roehrborn* to claim that the District is inconsistently applying FOIA exemptions. However, she presents no evidence to support her claims beyond mere speculation.

Personal e-mail addresses and the names of private citizens who expressed their opinion to the Board through e-mail are exempt from disclosure, and the Board has not waived its right to assert the exemptions in response to Ms. Mayer's request. Therefore, Ms. Mayer's request that the District be directed to disclose personal e-mails addresses and the identities of private individuals who contacted the Board should be denied.

C. The District Conducted a Reasonable Search for Responsive Records, and No Affidavits Are Required

Although FOIA does not describe the extent of the search a public body must conduct in response to a FOIA request, the Attorney General's office, relying on federal case law, has held that public bodies have a duty to conduct a search reasonably tailored to the nature of the request that is reasonably calculated to lead to the identification of all responsive documents. *See* Public Access Opinion 14-007 at 6 (citing *Campbell v. United States Dep't of Justice,* 164 F.3d 20, 28 (D.C. Cir. 1998); *Weisberg v. Department of Justice,* 705 F.2d 1344, 1351 (D.C. Cir. 1983)). While a public body is not required to "search every record system[,]" it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (C.A.D.C. 1990).

In this case, the nature of the request pertained to e-mails maintained on the District's network and e-mails maintained by individual Board members off the District's network. As detailed below, the District reasonably searched its network for responsive e-mails [redacted]

With respect to e-mails maintained on the District's network, the District attempted to run keyword searches for e-mails sent to and from the e-mail addresses identified by Ms. Mayer based on keywords in her FOIA request. Initially, the District experienced some technical difficulties formulating an appropriate keyword search for documents responsive to the request. Searches were taking up to nine hours in some cases but only producing a few responsive documents. The District's legal counsel worked closely with the District's technology personnel to identify problems in the search parameters and to develop search parameters that produced responsive documents. *See* Exhibit 8. Dr. Bruce Law, the District's Superintendent, spoke with Ms. Mayer about these issues the week of October 6, 2014. Following this conversation, the District formulated a keyword search for e-mails and even provided a copy of the search parameters to Ms. Mayer in the FOIA response. *See* Exhibit 2 at 1. She has not cited any particular problems with this search. The District also cross-referenced the e-mails it recovered through this search against similar FOIA requests it had received in the past to ensure it provided a complete response to Ms. Mayer. Based on the correspondence shown in Exhibit 8, the District's search clearly was reasonable and was reasonably calculated to lead to the identification of all responsive documents.

Moreover, the District also conducted a reasonable search for e-mails located on any individual Board member's personal accounts. [redacted]

It is important to note that Ms. Mayer had three (3) concurrent requests pending, and the District was searching for records to respond to the separate FOIA requests during the same window of time. As Ms. Mayer well knew, her requests came at the height of collective bargaining tensions when the teachers were threatening to go on strike and the administration and Board were already working practically around the clock. (Indeed, Ms. Mayer's 21-page request appears to have been calculated to impose the greatest possible burden on the District's administration and Board. *See* Exhibit 4 to Request for Review.) Yet the District responded to all three (3) of her pending requests in a timely and complete manner. As part of its response to Ms. Mayer's September 29, 2014, amended request, the District reasonably notified Ms. Mayer that it was not providing duplicates of documents that it had already provided in response to one of her other

two pending FOIA requests at that time. To the extent that Ms. Mayer contends that the District is required to provide duplicate documents in response to separate requests, FOIA Section 3(g) makes clear that repeated requests for documents that have already been provided to the requestor "shall be deemed unduly burdensome. . . ." 5 ILCS 140/3(g).

In short, there are no facts suggesting that the District's search here was anything less than reasonable. The enclosed documents demonstrate this fact. Affidavits from Board members, therefore, are unnecessary, and Ms. Mayer is not entitled to such affidavits simply because she wants them. The District's search for responsive documents and response to Ms. Mayer, which included almost 400 pages of e-mails in response to the September 29, 2014, request alone, and an additional 100 pages in response to the other two (2) FOIA requests, was clearly reasonable.

Conclusion

As set forth above, the District's FOIA response was proper. The personal e-mail addresses of Board members and the identities of private individuals who contacted the Board through e-mail are exempt under Section 7(1)(b) and 7(1)(c) of FOIA. Furthermore, the District's search for responsive records was clearly reasonable.

For these reasons, the District respectfully requests you uphold its decision to deny the release of the redacted information and find that the District did not violate FOIA in this case. If you have any further questions or require further information, please do not hesitate to contact us.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP

[redacted]

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Enclosures

cc: Dr. Bruce Law, Superintendent

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 21, 2015

Ms. Yvonne Mayer
[redacted]

RE: FOIA Request for Review – 2014 PAC 32722

Dear Ms. Mayer:

The Public Access Bureau has received the enclosed response to your Request for Review from the Attorneys for the Hinsdale Township High School District No. 86. Additional confidential materials provided to the Public Access Bureau have been withheld.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). Please send a copy of your reply to the District, as well.

If you have questions about this matter, please contact me at (217) 782-1699.

Very truly yours,

[redacted]

BENJAMIN J. REED
Assistant Attorney General
Public Access Bureau

Enclosure

cc: Mr. Terry Hodges, Esq.
Hodges, Loizzi, Eisenhammer, Rodick & Kohn
3030 Salt Creek Lane, Suite 202
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Hodges Loizzi
Eisenhammer Rodick & Kohn LLP

Terry L. Hodges
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January 16, 2015

Via U.S. Mail and Electronic Mail

Mr. Benjamin Reed
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
100 West Randolph St
Chicago, IL 62901
BReed@atg.state.il.us

Re: FOIA Request for Review – 2014 PAC 32722 (Mayer)

Dear Mr. Reed:

We are writing in response to your request regarding the above-referenced matter, which was received by Hinsdale Township High School District No. 86 ("District") on December 29, 2014. As legal counsel for the District in this matter, we have prepared and submit the requested response.

This matter involves the Request for Review of Yvonne Mayer, a licensed attorney in the State of Illinois (see ARDC website of registered attorneys). Ms. Mayer filed a September 29, 2014 (10:42 pm) amended request for copies of e-mails sent to or from a number of e-mail addresses concerning negotiations of a new teacher contract and e-mails concerning an investigation into a Facebook post. In your letter dated December 22, 2014, you have requested that the District (1) provide unredacted copies of withheld or redacted records, (2) provide a detailed explanation of the factual and legal bases for the asserted FOIA exemptions relied upon by the District in responding to the requests, and (3) provide a detailed description of how the District searched for responsive records. Our response tracks the requests in your letter to the District.

As pertinent background information, Ms. Mayer is a frequent FOIA requester whose FOIA requests have cost the District thousands of dollars in legal fees and countless hours of staff time. *See* Exhibit 1. The request at issue was one of three (3) requests seeking Board member e-mails submitted by Ms. Mayer concurrently in September when Hinsdale's teachers were on the verge of a strike. The District has responded to each of her requests in a timely and complete manner.[1]

[1] Ms. Mayer suggests in a footnote at page 1 of her Request for Review that the District unnecessarily delayed its response to her FOIA request. As the District specified in its September 24, 2014, invitation to Ms. Mayer to narrow her request, the District's initial search for responsive e-mails uncovered at least 2,000 potentially responsive e-mails, which would require over 100 hours of staff and attorney time to analyze and review. Upon receiving the narrowed request, the District responded with nearly 400 pages of responsive documents on October 15, 2014, the date Ms. Mayer specified in her request. The District also responded to her two other concurrent requests for Board member e-mails in a timely manner on October 8 and October 15, respectively. *See* Exhibit 1.

Nevertheless, as evidenced in her submission, Ms. Mayer's arguments are manifold, but her intent is clear - attack and discredit individual members of the Board under the auspices of a FOIA dispute. On numerous occasions, Ms. Mayer references these individual Board members and the upcoming April, 2015 school board election as being some legitimate basis outweighing the District's decision not to release the private email addresses, and as a result, the identities of citizens corresponding with the Board regarding a contentious issue (*i.e.* teacher union negotiations). However, the only legitimate interest offered is Ms. Mayer's desire to track down and investigate the identities of these private citizens for her own personal agenda. Ms. Mayer's personal agenda is not a legitimate public interest which outweighs the privacy rights of both Board members and citizens under 5 ILCS 140/7(1)(b)&(c).

Despite the obvious intent of Ms. Mayer, the District conducted a reasonable search for responsive records, and its stated exemptions were proper. As set forth below, the District complied with its obligations under FOIA, and Ms. Mayer's personal agenda does not establish any violation of the law.

A. Enclosure of Redacted and Unredacted Copies of Withheld or Redacted Records and Other Exhibits

Initially, we note that Ms. Mayer did not include a copy of the documents provided to her by the District on October 15, 2014, in response to her September 29, 2014, request, as required under FOIA Section 9.5(a). For your convenience, those documents are included with this response as Exhibit 2. We have also included as Exhibit 3 the unredacted copies of the withheld or redacted records for your confidential review. The following list itemizes all exhibits included with this response:

Exhibit 1	Summary of Ms. Mayer's requests and the District's responses
Exhibit 2	Redacted records at issue
Exhibit 3	Unredacted/withheld e-mails (CONFIDENTIAL)
Exhibit 4	October 2, 2014, e-mail from Superintendent to Ms. Mayer
Exhibit 5	Examples of individuals not wanting names/e-mails released (CONFIDENTIAL)
Exhibit 6	September 18, 2012, Circuit Court Order (Lake County) re: e-mails and FOIA
Exhibit 7	E-mail exchange with community member (CONFIDENTIAL)
Exhibit 8	Correspondence regarding the search for records on District's server (CONFIDENTIAL)
Exhibit 9	Correspondence regarding the search for Board member personal e-mails (CONFIDENTIAL)

All exhibits marked "CONFIDENTIAL" are exempt and remain confidential pursuant to FOIA Section 9.5(c). The exhibits are further explained below.

B. Explanation of the Factual and Legal Bases for the Asserted FOIA Exemptions Relied Upon by the District in Responding to the Requests

As an initial matter, Ms. Mayer only objects to the District's redaction of personal e-mail addresses of Board members and the names of private citizens who communicated with the Board through e-mail concerning the teacher contract negotiations. The District's remaining exemptions (7(1)(f); 7(1)(m); 7(1)(p); 7.5(r)) are uncontested and proper, as demonstrated by the District's response letter and Exhibit 3, and we do not address them in this letter. Accordingly, our response is limited to the major issues identified by Ms. Mayer in her Request for Review. If you believe that the other exemptions used by the District are also in question by Ms. Mayer, we reserve the right to supplement this Response.

1. Personal E-mail Addresses (7(1)(b))

Ms. Mayer objects to the redaction of personal e-mail addresses of Board members. As the District stated in its response to Ms. Mayer, FOIA expressly exempts "private information" from disclosure, including "personal e-mail addresses." *See* 5 ILCS 140/7(1)(b); *see also* 5 ILCS 140/2(c-5). Contrary to Ms. Mayer's suggestion, FOIA does not distinguish between personal e-mail addresses of community members and personal e-mail addresses of members of the public body. Rather, FOIA unequivocally provides that personal e-mail addresses are private and exempt from disclosure.

Ms. Mayer claims that a Board member's personal e-mail address should not be exempt when the Board member utilizes the e-mail address to conduct public business. *See* Request for Review at p. 5. Ms. Mayer's argument is wholly without legal foundation. First, Board members have not violated any law or Board Policy by using their personal e-mail addresses to correspond with private citizens, as the District has already explained to Ms. Mayer. *See* Exhibit 4. Second, even if Board members somehow violated the law or some policy by using their personal e-mail addresses to correspond with citizens, it would not offset the exemption. *See Competitive Enter. Inst. v. United States Envtl. Prot. Agency, No.* CV 12-1617 (JEB), 2014 WL 308093 (D.D.C. Jan. 29, 2014) ("[T]he Court does not see why an agency official's personal e-mail address—in which he or she would obviously have a powerful privacy interest—would become any less private by dint of the fact that it was used when it should not have been."). The 7(1)(b) exemption for personal e-mail addresses is a straightforward, "bright line" rule that is not subject to any balancing of public versus private interests. Moreover, Ms. Mayer's "waiver" theory is inapplicable here as argued in Subsection 3 below.

In responding to FOIA requests, the District has been consistent in redacting Board members' personal e-mail addresses.[2] Board members may have legitimate reasons for choosing to use their personal e-mail addresses to communicate with a constituent or citizen without intending that their personal e-mail addresses be released to any person who requests them under FOIA. Accordingly, Ms. Mayer's request that the District be directed to provide unredacted records that disclose personal e-mail addresses of Board members should be denied.

2. Names of Private Individuals Corresponding with the Board of Education (7)(1)(c))

Pursuant to FOIA Section 7(1)(c), the District properly redacted the names of parents and other private individuals who contacted the Board of Education to express their opinions through e-mail. FOIA Section 7(1)(c) exempts "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c). The test used to assess this exemption, set forth in *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 207 (1st Dist. 2004), balances: (1) the plaintiff's interest in disclosure; (2) the public interest in disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of alternative means of obtaining the requested information.

With respect to the first prong, Ms. Mayer has no genuine interest in the disclosure of these names. She claims that "[w]ithout disclosure of the names of the community members who corresponded with the BOE, it is not possible to determine whether or not a majority of individuals supported the BOE, or whether a smaller group of individuals sent multiple e-mails to the BOE." *See* Request for Review at p. 7. This is nothing more than a thinly-veiled pretext to allow Ms. Mayer to execute her personal agenda by obtaining the names and identities of her opponents and their supporters in advance of an election.

As Exhibit 2 demonstrates, the Board's redactions do not in any way prevent Ms. Mayer from assuaging her speculative fears. The e-mails were sent by numerous private citizens, as is self-evident from the differing fonts, lengths, content and other characteristics of the e-mails. Nothing suggests that the same person may have sent multiple e-mails to the Board pretending to be different citizens. This is a preposterous and unsubstantiated allegation that is not shared by the Hinsdale community. The bottom line is that "the core purpose of the FOIA is to expose what the government is doing, not what its private citizens are up to." *Chicago Alliance for Neighborhood Safety*, 348 Ill. App. 3d at 211. Thus, Ms. Mayer's claimed public interest in obtaining the identities of these e-mail authors is not legitimate.

Relatedly, and with respect to the second prong, Ms. Mayer claims that "[t]he community has a right to know if [Board] President Skoda's representations regarding community member support

[2] The District's FOIA Log is available for review at: http://www.hinsdale86.org/foia/Forms/FOIA%20View.aspx.

was accurate. . . ." Clearly, Ms. Mayer's sole purpose is to attack a Board member, personally, by undermining those who supported him during these contentious negotiations. Ms. Mayer, however – and the community via the FOIA Log – have been provided redacted copies of the e-mails that include the content of the opinions expressed by community members, which allow her to examine the opinions that were expressed to the Board. She can review the content of the e-mails to determine whether a majority expressed support or opposition to the Board's position. Little else is gained through the disclosure of the individuals' identities other than allowing Ms. Mayer to create a tally of her potential political enemies in support of the Board versus those in opposition to the Board.

As to the third prong of the legal test, Ms. Mayer's stance presents a severe degree of the invasion of privacy. The names of these parents and other private citizens are linked to their impassioned support or criticism of the Board's position during the teacher contract negotiations. The exercise of private citizens' First Amendment rights is at stake, and there is a reasonable probability that the compelled disclosure will subject these citizens or their children to threats, harassment, or reprisals. *See Doe v. Reed*, 130 S. Ct. 2811, 2820 (2010) (stating that the identity of petition signers may be exempt from compelled disclosure under Washington State's Public Records Act upon a showing that "there is a reasonable probability that the signatories ... will be subjected to threats, harassment, and reprisals."). Any threat of retaliation suppresses a citizen's free speech and right to petition government, and as such, the District justifiably sought to protect this fundamental right of every citizen.

The teacher negotiations were a bitter and divisive issue in the Hinsdale community at the time. Indeed, Ms. Mayer herself claims in her Request for Review that community members had been subjected to harassment based on their opinions of the teacher contract negotiations. *See* Request for Review at p. 9. Likewise, individuals in the pro-Board camp could have feared retaliation by the teachers' union for their opinions. *See* Exhibit 5. In fact, Board members did fear and suffer repercussions from the community that led to police involvement. Yet, Ms. Mayer now requests that all individuals' names be disclosed, which will only serve to increase the probability that individuals are harassed or retaliated against for the opinions they expressed.

Although we are not aware of any Attorney General opinions squarely addressing this issue, in a 2012 case in Lake County the circuit court denied the plaintiff's request that the school district be required to release the names of private citizens who communicated with District administrators via e-mail concerning a divisive issue in the community. *See Hauser v. Township High School District No. 113*, 11 CH 1157 (September 18, 2012). A copy of the court's Memorandum Order is attached as Exhibit 6. In that case, the plaintiff claimed she was entitled to the names of private individuals who may have made defamatory or threatening statements against her. In denying the plaintiff's claim, the court stated:

> [P]ersons writing the District could reasonably expect that their messages would be treated as private and confidential. The messages included personal opinions

> on matters touching deeply held beliefs. Disclosing the names of those sending the messages would not simply convey basic identification, it would connect the individuals to intensely personal information that they chose not to disclose in a public forum. Accordingly, the court finds that disclosure of the names of private citizens who sent messages to District employees would result in a significant invasion of their privacy.

Id. at 41.

The concern that individuals may be harassed or retaliated against for the opinions they expressed to the Board is extremely pronounced in this case. Many of the individuals who contacted the Board via e-mail are parents of students in the District whose teachers are union members. They may legitimately fear that disclosure of their identities could subject their children to possible retaliation by their teachers or subject themselves to retaliation by the teachers' union or others (such as Ms. Mayer). Some citizens in fact contacted the Board and expressed precisely these concerns. *See* Exhibit 5. Conversely, disclosing the names of parents who voiced support for the teachers could lead to their being "harassed" in the manner of which Ms. Mayer herself complains. These interests weigh strongly against disclosure of the identities of individuals who contacted the Board in this case. As in *Chicago Alliance for Neighborhood Safety*, the disclosure of this information would have a "chilling effect" on the willingness of individuals to contact the District with their concerns. 348 Ill. App. 3d at 209. Clearly, here the privacy interests outweigh any public interest in disclosure and the private citizens' names should not be disclosed.

3. The District Did Not Waive Privacy Exemptions

Ms. Mayer contends that the Board somehow waived the privacy exemptions that protect disclosure of personal e-mail addresses and the names of private citizens who expressed their opinions to the Board by disclosing such information to third parties. Ms. Mayer, however, fails to identify a single third party who received e-mails from the Board in unredacted form. Thus, she places the District in the difficult position of proving a negative.

Ms. Mayer once again speculates that the Board President disclosed e-mails he received from community members to some unknown third party. *See* Request for Review at p. 9. Ms. Mayer claims that she and other community members began receiving e-mails from an unknown party that "bordered on harassment." From this, Ms. Mayer speculates that someone on the Board of Education must have disclosed other e-mails sent to the Board. She asserts that "one community member sent a letter to the BOE using an e-mail account that she had not previously used and had not used in the past for correspondence purposes." *Id.* According to Ms. Mayer, this community member then received an e-mail from the unknown person and then concludes that the only way this person could have known the community member's e-mail address was if someone on the Board of Education forwarded the e-mail to the unknown person.

First, the only e-mail exchange of which the District is aware is attached as Exhibit 7. In that correspondence, the Superintendent and the Board President were carbon copied on an e-mail exchange between two citizens in late September, 2014. In the e-mail string, a community member states: "This is a brand new e-mail account used only once. Yes, it was used last night to send a response e-mail to Dr. Skoda. He is the ONLY person that ever received correspondence from this e-mail address! Until of course today, when I received your note. You indicated that you 'noticed my name and e-mail mentioned via the web' FYI, not possible!" However, the other individual responds that he obtained the e-mail address from the District's FOIA Log on the District's website. In fact, the e-mail address of the community member is associated with five (5) FOIA requests submitted in April and May, 2014. *See* FOIA Log online (*e.g.*, response to FOIA 14-041). Therefore, Ms. Mayer's speculation that the Board President or another Board member must have disclosed the e-mail address to a third party is entirely baseless and belied by the facts.

Second, the speculative, anecdotal and second-hand nature of this argument makes it very difficult, if not impossible, to address in a meaningful way. Regardless of the veracity of her claims, Ms. Mayer propounds a theory that a Board member can never share information contained in an e-mail to the Board with a third party without forever waiving the District's right to exempt that communication from a FOIA request under 5 ILCS 140/7(1)(b)&(c). The District is aware of no such legal precedent supporting this ridiculous assertion. For example, a Board member who discusses the subject matter of a communication with her spouse does not forever waive the private nature of that communication as it relates to the Board.

Ms. Mayer also asserts that some Board members forward e-mails they receive on their District accounts to their personal and business e-mail addresses. Ms. Mayer again engages in wild speculation that some third party may be able to gain access to the forwarded e-mails through the Board members' personal and business e-mail accounts, thereby destroying the confidential nature of that e-mail. Not only is this theoretical, hypothetical possibility not supported by any evidence, but it again fails to demonstrate how the Board member's forwarding an e-mail from a Board member's District e-mail account constitutes the District's waiver of FOIA's exemptions.

The District, moreover, has been consistent in redacting personal e-mail addresses and the names of private individuals in its responses to FOIA requests. In particular, Ms. Mayer notes in her Request for Review that one of the reasons she submitted the FOIA request to the District was because the District had redacted personal e-mail addresses and names of private citizens in its response to a similar request from a local reporter. *See* Request for Review at p. 4. The District routinely redacts such private information from its responses to encourage its constituents to feel at liberty to contact the Board. Additionally, even if the District had released personal e-mail addresses and the names of private citizens on some other occasion, such disclosure would not preclude the District from asserting the FOIA exemptions in response to Ms. Mayer's FOIA request or constitute a waiver. *See Chicago Alliance for Neighborhood Safety*, 348 Ill. App. 3d at

202. ("The waiver rule must not be mechanically applied whenever there is disclosure of information but, rather, requires consideration of the circumstances related to the disclosure, including the purpose and extent of the disclosure as well as the confidentiality surrounding the disclosure.").

In a final and futile attempt to argue the District somehow waived the applicable privacy exemptions, Ms. Mayer misconstrues the District's citation to the decision in *Roehrborn v. Lambert*, 177 Ill.App.3d 181 (1st Dist. 1995). Ms. Mayer contends that the District relies on *Roehrborn* for the proposition that a public body may withhold exempt documents but is not required to do so. *See* Request for Review at p. 10. Ms. Mayer claims that the Board President stated during a Board meeting that he is free to disclose e-mails he receives from private citizens if he so desires. Ms. Mayer does not claim that the Board President stated that he actually disclosed anyone's private e-mails. In fact, the Board President specifically stated that he did not advocate such an approach. Following the Board meeting, Ms. Mayer e-mailed the Superintendent to seek clarification of the Board President's statement. *See* Exhibit 7 to Ms. Mayer's Request for Review. In response, the Superintendent informed Ms. Mayer that under *Roehrborn*, FOIA's exemptions do not prohibit the disclosure of information, but instead are instances in which disclosure is not required. *See* Exhibit 8 to Request for Review. Now, Ms. Mayer misconstrues the District's reference to *Roehrborn* to claim that the District is inconsistently applying FOIA exemptions. However, she presents no evidence to support her claims beyond mere speculation.

Personal e-mail addresses and the names of private citizens who expressed their opinion to the Board through e-mail are exempt from disclosure, and the Board has not waived its right to assert the exemptions in response to Ms. Mayer's request. Therefore, Ms. Mayer's request that the District be directed to disclose personal e-mails addresses and the identities of private individuals who contacted the Board should be denied.

C. The District Conducted a Reasonable Search for Responsive Records, and No Affidavits Are Required

Although FOIA does not describe the extent of the search a public body must conduct in response to a FOIA request, the Attorney General's office, relying on federal case law, has held that public bodies have a duty to conduct a search reasonably tailored to the nature of the request that is reasonably calculated to lead to the identification of all responsive documents. *See* Public Access Opinion 14-007 at 6 (citing *Campbell v. United States Dep't of Justice,* 164 F.3d 20, 28 (D.C. Cir. 1998); *Weisberg v. Department of Justice,* 705 F.2d 1344, 1351 (D.C. Cir. 1983)). While a public body is not required to "search every record system[,]" it "cannot limit its search to only one record system if there are others that are likely to turn up the requested information." *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (C.A.D.C. 1990).

In this case, the nature of the request pertained to e-mails maintained on the District's network and e-mails maintained by individual Board members off the District's network. As detailed below, the District reasonably searched its network for responsive e-mails [redacted]

With respect to e-mails maintained on the District's network, the District attempted to run keyword searches for e-mails sent to and from the e-mail addresses identified by Ms. Mayer based on keywords in her FOIA request. Initially, the District experienced some technical difficulties formulating an appropriate keyword search for documents responsive to the request. Searches were taking up to nine hours in some cases but only producing a few responsive documents. The District's legal counsel worked closely with the District's technology personnel to identify problems in the search parameters and to develop search parameters that produced responsive documents. *See* Exhibit 8. Dr. Bruce Law, the District's Superintendent, spoke with Ms. Mayer about these issues the week of October 6, 2014. Following this conversation, the District formulated a keyword search for e-mails and even provided a copy of the search parameters to Ms. Mayer in the FOIA response. *See* Exhibit 2 at 1. She has not cited any particular problems with this search. The District also cross-referenced the e-mails it recovered through this search against similar FOIA requests it had received in the past to ensure it provided a complete response to Ms. Mayer. Based on the correspondence shown in Exhibit 8, the District's search clearly was reasonable and was reasonably calculated to lead to the identification of all responsive documents.

Moreover, the District also conducted a reasonable search for e-mails located on any individual Board member's personal accounts. [redacted]

It is important to note that Ms. Mayer had three (3) concurrent requests pending, and the District was searching for records to respond to the separate FOIA requests during the same window of time. As Ms. Mayer well knew, her requests came at the height of collective bargaining tensions when the teachers were threatening to go on strike and the administration and Board were already working practically around the clock. (Indeed, Ms. Mayer's 21-page request appears to have been calculated to impose the greatest possible burden on the District's administration and Board. *See* Exhibit 4 to Request for Review.) Yet the District responded to all three (3) of her pending requests in a timely and complete manner. As part of its response to Ms. Mayer's September 29, 2014, amended request, the District reasonably notified Ms. Mayer that it was not providing duplicates of documents that it had already provided in response to one of her other

two pending FOIA requests at that time. To the extent that Ms. Mayer contends that the District is required to provide duplicate documents in response to separate requests, FOIA Section 3(g) makes clear that repeated requests for documents that have already been provided to the requestor "shall be deemed unduly burdensome. . . ." 5 ILCS 140/3(g).

In short, there are no facts suggesting that the District's search here was anything less than reasonable. The enclosed documents demonstrate this fact. Affidavits from Board members, therefore, are unnecessary, and Ms. Mayer is not entitled to such affidavits simply because she wants them. The District's search for responsive documents and response to Ms. Mayer, which included almost 400 pages of e-mails in response to the September 29, 2014, request alone, and an additional 100 pages in response to the other two (2) FOIA requests, was clearly reasonable.

Conclusion

As set forth above, the District's FOIA response was proper. The personal e-mail addresses of Board members and the identities of private individuals who contacted the Board through e-mail are exempt under Section 7(1)(b) and 7(1)(c) of FOIA. Furthermore, the District's search for responsive records was clearly reasonable.

For these reasons, the District respectfully requests you uphold its decision to deny the release of the redacted information and find that the District did not violate FOIA in this case. If you have any further questions or require further information, please do not hesitate to contact us.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP

[redacted]

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Enclosures

cc: Dr. Bruce Law, Superintendent

YVONNE MAYER

[redacted]

January 12, 2015

Mr. Benjamin Reed
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
100 West Randolph Street
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RE: FOIA Request for Review – 2014 PAC 32722

Dear Mr. Reed:

I am writing in reply to the response you received from Hinsdale Township High School District 86 ("D86") dated January 16, 2015 to the Request for Review I submitted on December 12, 2014 – 2014 PAC 32722. This letter serves as my reply. As we previously discussed by phone, I requested additional time to submit the reply on or before January 12 (see attached Exhibit 1) and you indicated that you would consider my reply if filed on or before today.

Illinois, it's no secret, is in a crisis as for years unethical politicians have used the government as a personal plaything, spending money to benefit cronies, intimidating citizens, accepting secret benefits and hiding, as much as possible, these actions. D86 suffers from these very ailments; secretive politicians control our BOE engaging in uncontrolled spending on witch-hunts against students, former board members and administrators while at the same time pursuing an anti-teacher agenda. Just in the past year, members of the Board of Education ("BOE") have brought unfounded police charges against teachers, accepted political donations (to be used for their re-election campaign) from groups with an anti-teacher agenda, used their personal emails to avoid FOIA law, had their supporters reach out and threaten individuals with lawsuits, and attempted to mock and humiliate board members and members of the public who disagree with them. The only weapon the public has to stop such egregious conduct is the truth, and the truth depends on the transparency guaranteed by Illinois law through the freedom of information act and the open meetings act.

As if to prove that they are exactly the type of politicians that have dragged Illinois into a fiscal and moral gutter, they have hired not one, but two law firms to attack me personally, a housewife and mother who last practiced law in the 1990's, all in their "defense" of the open governance violations I have alleged in 2014 PAC 32722.

As if they were "Goliath" and I "David," they have brought in the "big guns" to "take me out" -- all paid for with taxpayer dollars, including taxes I have paid to D86. Yet even the action of hiring a second law firm to serve as Co-Counsel for D86 was done in violation of the Open Meetings Act.[1] The public is very concerned that Mr. Skoda and company are heirs to a long line of out of control Illinois politicians that are unable to manage finances, pay their own taxes, control their own campaigns, or even their own tempers.

Well, I will not be silenced, nor will I allow a public school district to launch a personal attack against me or any other member of the public whose only purpose in filing legitimate FOIA requests is to discover the truthfulness or lies of statements made by an elected official, namely BOE President Richard Skoda, and to discover if some of the BOE elected officials, such as Skoda and Ed Corcoran have used personal and business emails to circumvent the Illinois Open Governance Laws.

PART I: THE 2 LAW FIRMS D86 HAS HIRED HAVE FILED A RESPONSE FILLED WITH RED HERRINGS AND MISREPRESENTATIONS.

D86's Response to my Request for Review is frontloaded with a series of red herring statements filled with misrepresentations. I will address their red herring tactic first.

Red Herring #1: Right out of the gate in paragraph 1, page 1 of their response, the D86 attorneys inform you that I am a licensed attorney in the state of Illinois. It is true. So what? After graduating from law school, I practiced law at Schiff Hardin and Waite in Chicago before teaching at the University of Michigan Law School until 1994. Then I stopped practicing law to become a stay at home mother of 4. I have maintained my license and have kept current with my continuing legal education requirements. None of this is relevant, however, to my filing this Request for Review. I filed the Request for Review as a member of the public, a resident, tax-paying parent of D86 students. It wouldn't matter if I were a lawyer, plumber, minister, teacher, garbage collector or any other myriad of professions. Yet because D86 has felt obligated to hire TWO law firms to fight my Request for Review, they want to "level" the playing field and assert my professional background. I guess I should be flattered, but again, who cares. You should not. My professional background plays no role in my decision to file the Request for Review and unlike them, I am not being paid hundreds of dollars per hour to represent anyone.

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[1] On February 3, 2015 I was left with no choice but to file a Request for Review alleging that the BOE violated the OMA when it hired Attorney Vincent Mancini from Eck Williams & Provenzale LLC to serve as Co-Counsel for D86 in connection with this Request for Review -- 2014 PAC 32722. On 2/11/15, I received notification that your office assigned the OMA Request for Review to Assistant Attorney General Joshua Jones – 2015 PAC 33490 and began its investigation. In addition, during the D86 2/9/15 BOE meeting, BOE member Kay Gallo stated that she too has filed a Request for Review with your office alleging a violation of the OMA by certain members of the D86 BOE in hiring Mr. Mancini and the Ekl firm.

Red Herrings #2 and #3: Next, D86's Counsels state that "as pertinent background information, Ms. Mayer is a frequent FOIA requestor whose FOIA requests have cost the District thousands of dollars in legal fees and countless hours of staff time." (Paragraph 3, page 1). This is not only a misrepresentation but also fails to disclose all of the facts. First of all, the Freedom of Information Act defines what a frequent, or shall we use the official statutory term -- ***recurrent*** – FOIA filer is. Section 2(g) specifically states:

"***Recurrent requestor,*** *as used in Section 3.2 of this Act, means a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period.* " (5 ILCS 140/2(g)

Since I have only filed a grand total of 9 FOIA requests EVER with D86, with the most being 5 in a 30-day period, it is quite the misrepresentation for the TWO D86 law firms to assert that I am a recurrent FOIA filer. (Source: D86 FOIA Log that can be accessed at http://www.hinsdale86.org/foia/Forms/FOIA%20View.aspx)

Further, their assertion that my FOIA requests have cost D86 thousands of dollars is actually quite humorous, considering that D86 chose – no one forced it -- to hire not ONE, but TWO law firms, to try and stop me and others from accessing public records. The two law firms, whose partners charge between $250 and $285 per hour on municipal matters, have no shame. Nor do they disclose that in the period of time since I filed my very first FOIA request with D86 (9/10/14 until today), there have been a total of 51 FOIA requests filed by over 25 individuals and that D86 has incurred over $35,000 in legal fees in connection with these requests in one six month period alone (June through December 2014). (Source: D86 FOIA log -- see above link – and **Exhibit 2**, 1/29/15 News article published in the Hinsdale Doings newspaper.) It appears that the law firms D86 has hired to handle FOIA requests are the real winners in the public records "battles" D86 has chosen to wage, making out like bandits, all at the tax payers' expense. But again, the amount of money they have been paid is not relevant to the legal issues raised by this Request for Review.

Red Herring #4: D86's Counsels further assert on page 9 of their response that my "*21 page request appears to have been calculated to impose the greatest possible burden on the District's administration and Board*" and cites to Exhibit 4 of the Request for Review. Once again they have blatantly misrepresented the facts. Exhibit 4 is actually an email and letter dated 9/29/14 in which I was responding to the D86 FOIA officer's "**Invitation to Narrow**" my 9/15/14 FOIA request. The actual NARROWED FOIA request is found at the bottom of page 1 of my letter to the FOIA officer and is less than 1 ½ pages long, most of which is a long list of the email addresses the D86 board members had used to conduct board business, which I asked be searched for responsive documents. The actual requests were quite short and narrow in time frame and scope. The remainder of the letter responds to 5

questions ***THE DISTRICT'S FOIA OFFICER*** asked me to answer in order to clarify my earlier FOIA request. I thoughtfully and thoroughly responded to the District's questions, including attachments as Exhibits to explain why I was asking the Board members to produce emails originating from or which they had sent to their personal and business email accounts. To somehow suggest that Exhibit 4 is a 21 page FOIA request is just another example of how the TWO law firms D86 hired to fight my Request for Review will twist and manipulate facts to divert attention away from the legal issues.

Red Herring #5: Scattered throughout D86's response, its two law firms "go political" on me, accusing me of filing my FOIA request:

- Intending to "attack and discredit individual members of the BOE under the auspices of a FOIA dispute" (p. 2 of D86's response),
- having a "personal agenda" (p. 2),
- having a "thinly veiled pretext to allow Ms. Mayer to execute her personal agenda by obtaining the names and identities of her opponents and their supporters in advance of an election." (p. 4)
- "allowing Ms. Mayer to create a tally of her potential enemies in support of the Board versus those in opposition to the Board."

MY *"personal agenda*?" A pretext by ***ME*** to obtain the names and identities of ***MY*** *"opponents*?" ***MY*** creating a tally of ***MY*** *"potential enemies*?" What are the 2 law firms talking about? I am NOT running for political office. I am not running for the D86 BOE. Believe me, I have no desire to. I already served 4 years on elementary/middle school feeder District 181's BOE (2009-2013) and I am quite happy seeing others run for the high school board of education. It is ludicrous to suggest that the FOIA request that I filed in September 2014 was intended to uncover my political "***opponents***" and "***enemies***." Are D86's law firms really engaging in mud slinging political tactics to deflect attention away from the open governance violations of the D86 BOE? It appears so, and that is disgraceful.

The REALITY is that I filed the 9/15/14 FOIA request for the legitimate purpose of determining the truthfulness, or lack thereof, of representations made during public board meetings by a PUBLICLY ELECTED OFFICIAL -- D86 Board President, Mr. Richard Skoda. He publicly stated during board meetings that he wanted to hear from community members what they wanted the BOE to do in connection with settling the teachers' contract issues. He further asserted that the majority of the community (which sought to limit teacher raises and pension contributions) supported the BOE's majority position,[2] as evidenced from the emails the BOE was receiving. I sought public records to determine if his statements were true or not. .

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[2] The BOE president and vice presidents, Richard Skoda and Edward Corcoran, were the original lead negotiators for the board of education in the teachers' contract negotiations, and their anti-teacher, anti-raise, anti-pension position was initially supported by the BOE majority, making it very difficult to settle the contract.

A publicly elected official's truthfulness about public business matters he is engaged in is an appropriate area for the public to inquire about -- in this case by requesting public records that would show if he was telling the truth. As I argued in my Request for Review and will further discuss below, it was not possible for any community member to evaluate the truth of his statements with the names of people who contacted the BOE redacted from the emails.

Further, in looking at emails I and other community members received, I observed that rather than use their D86 assigned email addresses, the board majority members – Mr. Skoda, Mr. Corcoran, Ms. Manley and Mr. Cassini -- were sending emails they had received from community members on the D86 server -- off of the district server and/or corresponding via their personal and business email accounts with each other and with community members regarding board business. Seeking the truth behind the statements and actions of the publicly elected officials was done using FOIA, the open governance avenue available to me as a member of the public, and not for any personal reasons or gain as suggested by D86's Counsels.

The tone and personal attacks launched against me by D86's two law firms are nothing more than a frivolous attempt to deflect attention away from the truth of certain BOE members' actions, and the real legal issues, which I will now address.

PART II: BOE EMAIL ADDRESSES AND NAMES OF COMMUNITY MEMBERS CORRESPONDING WITH THE BOE ON HOW THE BOE SHOULD VOTE ON TEACHERS' CONTRACT NEGOTIATIONS ISSUES MUST BE DISCLOSED

D86's Counsels assert that I am wrong to argue that under Illinois open governance laws, D86 should disclose the personal and business email addresses certain BOE members used to conduct board business, as well as names of community members who corresponded with the BOE members concerning the position the BOE should take during the teachers' contract negotiations. They assert that FOIA Exception 7(1)(b) precludes production of the BOE's email addresses and Exception 7(1)(c) precludes release of community members' names. I respectfully disagree. Application of these exceptions to the instant case would allow the D86 BOE to circumvent the purpose of the Freedom of Information Act that states in Section 1:

"Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared 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 this Act. ***Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.***

The General Assembly hereby declares that ***it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government.*** *It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act."*
5 ILCS 140/(1) (from Ch.116, par.201)

1. Board Members' Email Addresses Must Be Disclosed.

No doubt, the Illinois legislature did not intend to allow public entities to twist FOIA exceptions to enable public bodies to conduct public business outside of the light of open governance laws. As I have already argued in the Request for Review, in the instant case D86 board members are each assigned a D86 email account to use to conduct board business. While some of the D86 board members properly used their D86 assigned email addresses to conduct board business, there is no legitimate reason why others transferred emails they received off the district server -- to a personal or business email account— before they responded. Nor is there any legitimate reason for some of the board members to have used their personal or business email addresses to correspond with fellow D86 board members on D86 board business.

Their very action of first transferring emails that deal with D86 business off of the district server raises the specter of intent to avoid the Freedom of Information Act, since what other public purpose is served in doing so? Why move the public records off the server before responding? Why communicate with fellow board members using personal and business email accounts rather than with the accounts they were assigned to use by the public body?

Unless a community member, such as myself, files a FOIA request and specifically requests that board members' personal and business emails be reviewed for responsive public records, no one would ever know such records exist. It would, therefore, be very easy for some board members to take the next step and begin violating the Open Meetings Act by communicating with each other, deliberating on board matters that should only be discussed with the full board during a properly noticed board meeting.

The D86 attorneys state that "***board members have not violated any law by using their personal e-mail addresses to correspond with private citizens***" and that "***board members may have legitimate reasons for choosing to use their personal e-mail addresses without intending that their personal e-mail addresses be released to any person who requests them under FOIA.***" (D86 Response, p. 4) It is irrelevant that corresponding with private citizens with their personal and business emails accounts would not per se violate any laws. What the D86 lawyers ***fail*** to address is that board members use of personal and business emails to conduct board business ***could*** violate a law -- the Open Meetings Act. In fact I have

already filed two Requests for Review with your office alleging OMA violations by certain members of the D86 BOE that may have involved improper deliberation by emails.[3] So the possibility of abuse by BOE members using their personal email addresses to circumvent FOIA is very real.

The bottom line is that rather than use their PUBLICLY assigned D86 email accounts to conduct all board business, some board members ***chose*** not to and the D86 attorneys fail to offer any legitimate reasons why. Simply saying reasons may exist doesn't mean they actually do.

Further, as I pointed out, the board members who chose to use their personal and business email addresses, rather than their D86 assigned email addresses, knew that the recipients would see the email addresses they were using. They clearly had no expectation of privacy that the public would not learn what their personal email addresses were. Had they had a legitimate expectation of privacy, they would never have used their personal accounts to conduct board business, never intentionally diverted their board business related emails OFF OF the D86 server. Thus, it remains my contention that D86 has waived any argument that the BOE members intended their personal and business email address remain private under FOIA Section 7(1)(b), even when used to conduct public business.

Finally, Illinois FOIA ***does not require*** a public body to withhold public records if they arguably fall within an exception. The exemption cited by D86 are permissive, not mandatory. Section 7(1) provides instead that: "*When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body* ***may*** *elect to redact the information that is exempt.*"

The question then becomes why are the D86 board members who chose to use their personal and business email accounts to conduct board business, rather than use the D86 assigned email addresses, protesting so loudly the disclosure of these email

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[3] On 1/29/15, your office closed 2015 PAC 33220 after concluding that the OMA violation Request for Review was not filed within the statutory deadline of 60 days. That OMA violation specifically alleged improper use of emails by the Board President to conduct board business outside of a properly noticed board meeting. It was not timely filed because D86 delayed production of Emails I had FOIA'd (that would have proved the OMA violation) until 62 days had elapsed from the date of the alleged violation (a date I did not know until redacted public records were finally produced to me). Since the discovery rule does not apply to the FOIA statute of limitations, the Request for Review was dismissed (although without a finding of whether or not the D86 BOE had violated the OMA). While the OMA allegation was dismissed, your office has accepted a concurrent Request for Review I filed for improper redaction of the emails that could prove the OMA violation – emails in which the personal email addresses of board members were once again redacted – 2015 PAC 33233. In addition, as discussed in Footnote 1, your office has accepted for review 2015 PAC 33490, which investigation by your office may reveal improper communications by email in violation of the OMA.

addresses that appear on the public records that ***they*** created by first board emails off the D86 server before replying with a non-D86 email address? Why not be fully transparent and disclose to the public the fact that they are using their personal and business email accounts, rather than their D86 assigned email accounts to conduct board business?

The actions of D86 board members in voluntarily choosing to use personal and business email accounts to conduct board business, and then redacting the addresses from the public records on "privacy grounds" is nonsensical and contradictory to the stated intent of the Freedom of Information Act to ensure "transparency" and "accountability" of public bodies. The use of personal and business emails, rather than those assigned to them by a public body, lends itself to abuse of Illinois open governance laws by elected officials. Only through full disclosure of the content of the documents, including which email addresses were used by the public officials to conduct board business, can abuses be discovered. A requirement of full disclosure and transparency by the BOE public officials is the only way that the public can effectively monitor government behavior to ensure that it is being conducted in the public interest.

I, therefore, respectfully request that D86 be directed to disclose the BOE member's email addresses they used to conduct board business on the responsive public records they have produced.

2. Community Members' Names Must be Disclosed.
    a. FOIA Section 7(1)(c) does not apply.

The D86 Counsels assert that FOIA Section 7(1)(c) allows for the redaction of the community members' names from emails they sent to the BOE discussing the Teacher Contract negotiations that took place during the summer and fall of 2014. As I have already stated, my intention in seeking disclosure of the names of the individuals who wrote to the board expressing their desired outcome of the negotiations, was strictly to determine the veracity of the Board President's public representations during board meetings that that majority of the emails supported the board majority's contract negotiations position.

As stated in Section 1 of the Freedom of Information Act, access to full and complete information is necessary to enable the people "***to make informed political judgments.***" Political judgments include the public's right to determine if an elected official is honest and tells the truth. Seeking public records to determine if an elected official is lying is a perfectly permissible use of the Freedom of Information Act.

In the instant case, the teachers' contract negotiations last year were, as the D86 attorneys point out "***bitter and divisive.***" (D86 Response, p. 5). There was tremendous fear and anxiety in the community that the BOE negotiators' actions and hard line position would result in a teachers' strike. This divisiveness was, in

great part, provoked by the hostility shown by the BOE majority toward the teachers' association. In addition, fueling the fire were misrepresentations the BOE negotiators made in "informational negotiations flyers" (paid for with tax dollars) they mailed to residents. Community members who researched the information on the flyers found multiple misrepresentations and repeatedly came to board meetings to call out the board majority for not telling the truth.

In addition, in an attempt to calm parents' fears that the schools would close in the event of a strike, Board President Skoda misrepresented during a public meeting that a Contingency Plan was ready to roll out that would keep the schools open. That too proved to be a misrepresentation. As a concerned parent of 2 students attending Hinsdale Central High School, I filed my very first FOIA request with D86 -- seeking production of the Contingency Plan. D86 flat out denied it.[4] I then filed a FOIA request with the Illinois State Board of Education (ISBE), the agency D86 had to file the plan with, and that public body immediately produced the document to me. It showed that no contingency plan was ready to keep the schools open in the event of a strike, a fact that the D86 Superintendent was forced to admit during a subsequent public board meeting. The fact that Dr. Skoda attempted to mislead the community and misrepresent the existence of a contingency plan that would keep D86 schools open was extremely concerning to me as a member of the public. Compounded with the misrepresentations the BOE negotiators had made in their "informational negotiations flyers," I no longer believed anything Mr. Skoda was stating in public about the negotiations issues.

Therefore, the 9/15/14 FOIA request I filed to determine the veracity of Mr. Skoda's statements that the emails the board was receiving showed that the majority of the community supported the Board majority's negotiation position, was intended as another "check" on government action and conduct that Illinois open governance laws provide to allow the public to "monitor" whether or not the public body – in this case to monitor whether the D86 BOE and its individual members were being open and honest.

Mere production of emails with names redacted does not enable the public to determine if Mr. Skoda's statements were truthful. Without seeing the names of people writing to the BOE, there is no way to determine how many *different* people actually supported or were opposed to the board majority's negotiation position. Contrary to what the D86 attorneys suggest, at no time did I suggest that "*the same person may have sent multiple e-mails to the Board* ***pretending*** *to be different citizens.*" (D86 Response, p. 4.) In fact what I suggested was that individuals could write multiple times to the BOE using their actual name, but should only be counted ONCE in Dr. Skoda's tally of who was supporting or opposing the board majority's negotiations position.

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[4] The FOIA request I filed for the Contingency Plan, and the District's denial can be accessed on the D86 FOIA log – Request #1472 – at www.hinsdale86.org/foia/FOIA-1472COMPLETE.pdf .

As I already argued in the Request for Review, the community has a right to know if Mr. Skoda is telling the truth. Making this determination will allow community members, such as myself, to monitor the actions of public officials as intended by the Freedom of Information Act and make political judgments about whether or not publicly elected officials are being open, transparent and truthful. Release of the names is the only way that the public will be able to evaluate the veracity of his statements and form political judgments as to his trustworthiness to serve as our elected official on the D86 Board of Education.

Yes, it is true that this is important especially now that Mr. Skoda is running for re-election. But the purpose of seeking production of names is not so that I or anyone else can identify ***who*** his political supporters. It is simpler than that. It is to determine if ***he*** was telling the truth. It may well be that he was, in which case I and others will use that knowledge in our political judgment of Mr. Skoda's conduct as an elected official. But it may also be the case that his statements misrepresented the public's desired outcome of the teachers' contract negotiations and if that is the case, the community has a right to know that.

I have met the 4 part test court's have used to assess the application of the privacy exemption. Contrary to the D86 attorneys' claims I had no "personal interest in disclosure", no "personal agenda" to obtain names and identities of ***MY*** opponents and ***THEIR*** supporters in advance of an election. The emails sent to the BOE had nothing to do with me, I am not running and never planned to run for the D86 BOE. All I am seeking to determine – as is the right of every single member of the public -- is whether or not Dr. Skoda, a publicly elected official, made misrepresentations to the community during board meetings. That is a legitimate ***public interest.***

The names and identifies of individuals who wrote to the BOE are relevant in that their production is the only way the public can determine the veracity of Dr. Skoda's statements. It is not about learning ***WHO*** his actual supporters are, rather whether or not his statement about the numbers of people supporting the board majority's position are true. The public has a legitimate interest in determining whether a publicly elected official makes accurate public statements. The only way to determine the truth of Dr. Skoda's statements is to determine the actual numbers of individuals who wrote to the BOE. Since individuals could have written more than one letter to the BOE on negotiations issues, the only way to do determine the actual number of unique individuals who did write to the BOE either in support or opposition to the BOE negotiators' hard line position is by seeing the names on each email sent to the BOE and keeping a tally. There is not alternative means of obtaining the requested information (unless of course board members on their own have released such information to the public outside of FOIA).

Finally to assert that disclosure of the names presents a severe degree of invasion of privacy to them is simply untrue. In this case, Mr. Skoda repeatedly solicited the public to contact him and other board members with their opinions on the position

the board should take to settle the contract negotiations. He repeatedly said he would take into consideration the will of the community. Many community members gave their opinions during public board meetings. They were required to identify themselves prior to starting their public comment. Everyone in the audience learned who they were. Others wrote the board. At no time did Mr. Skoda state that if they wrote to the board on matters of board policy and their desired board actions, that their identities would be protected.

The D86 attorneys assert that if the names are released, "there is a reasonable probability that the compelled disclosure will subject these citizens or their children to threats, harassment or reprisals." They suggest that release of these names could subject community members to "retaliation" by the teachers if they supported the BOE majority's position. Such a suggestion is offensive, not based on anything factual and, in fact, is another example of misrepresentations made by the board members. (D86 Response, p. 5). As an example of the "probable" retaliation, the D86 attorneys state that "board members did fear and suffer repercussions from the community that led to police involvement." This is false.

They provide absolutely no factual basis or substantiation for such a provocative statement. Perhaps what they are referring to is the infamous "Facebook" investigation D86 launched after teachers "liked" a newspaper article dealing with the negotiations.[5] When the article posted on Facebook, it inadvertently included a photo of an "axe through a windshield." The teachers had not added the photo. The photo had inadvertently attached to the Facebook post by the online newspaper responsible for the post and was a photo taken at a car accident site elsewhere in the country that had absolutely nothing to do with the negotiations. Certain board majority members reported the photo to the police claiming that the teachers were threatening the safety of the board majority. Despite the news reporter attending a board meeting and assuming full responsibility for the inadvertent attachment of the photo to the Facebook article, the BOE majority pushed the administration to conduct an "investigation" into each and every teacher who had "liked" the post. It was only after the community demanded to know whether the administration or the BOE was behind the "investigation" that the D86 superintendent put a halt to it.

There is and never was any evidence to support the D86 Counsel's contention that there are legitimate fears that teachers would retaliate against community members or their children who may have supported the BOE negotiators' positions. (D86 Response, p. 6.) There is absolutely no evidence to support such an offensive allegation. Further, the D86 Counsels state that ***my*** allegations that community members who opposed the negotiators positions were, in fact, harassed proves that the privacy right outweighs the public's interest in accessing the names. Once again, the lawyers are "twisting" the facts and my argument to suit their own purpose. My contention is that certain ***board members*** – public officials -- used the names and

[5] The FOIA request that is the subject of this Request for Review included a request for emails that discussed the Facebook Investigation.

email that appeared on the emails in a ***private, political capacity*** to harass opponents. There is credible evidence (discussed in the next session) to support this allegation. The remedy is the transparency the law requires. It cannot be the case that individual board members (who do not control the records as individuals) can use private names and email addresses, while the public does not have the right to even see them, and then argue that their "harassment" is the very reason the public should not be afforded that right.

Application of the 4 part test clearly establishes that the public interests outweigh the privacy interests in disclosure and the private community members' names should be disclosed.

b. <u>To the Extent the Privacy Exception does apply, D86 has waived it.</u>

There is credible evidence to support my allegation that Board members may have intentionally released the names being withheld under FOIA to private community members who then went on to harass their perceived opponents. It is true, I do not have physical proof establishing unequivocally a board member's "forwarding" of emails with unredacted information to private community members. However, as evidenced below, I am not engaging in wild speculation. I am using logical inferences – connecting the dots, to use laymen's terminology – to reach my conclusions based upon emails that the perceived Board majority opponents wrote and then received.

While D86 did not provide me with copies of its Exhibit 7, I have been able to deduce the sender and recipient of the "chain" referenced and obtain the chain myself from the community member who received the harassing emails. (See attached **Exhibit 3**.) What is fascinating as a first observation is how ***the District*** obtained this chain. Which of the 2 individuals did the attorneys or a board member contact? The perceived "opponent" or the person doing the harassing? You may want to inquire since none of the emails were sent through the District server.

Second, since I do not have a copy of Exhibit 7, I do not know if you are in receipt of the email that Community Member Pircon sent to Dr. Skoda ONLY, just ½ day before she began receiving the harassing emails I have attached that email as **Exhibit 4**. Ms. Pircon's email was mailed to Dr. Skoda on 9/24, 14 at 10:00:42 p.m. The subject was "D86" and as you can read its content clearly establishes Ms. Pircon as an opponent of the board and a supporter of the teachers. Less than 15 hours later, on 9/25/14 at 2:32:02 p.m., she began receiving harassing emails.

D86 claims that I was wrong in stating that the email address Ms. Pircon used was not used solely to communicate with Dr. Skoda since it was used by Ms. Pircon (and her husband) to file FOIA requests with D86 in April and May 2014, 4 months earlier. Apparently, this was a dormant email address that Ms. Pircon chose to use on September 29. 2015 and did not use on regular basis. Perhaps D86 could argue that the email chain does not prove improper release of community member names

and addresses by Dr. Skoda, BUT FOR the existence of another email chain that shows a pattern of such conduct.

Attached as **Exhibit 5** is an email I sent to the BOE on 9/18/14 demanding that the BOE release the Strike Contingency Plan to the public. The content of my email to the board clearly establishes that I was not a supporter but an opponent. The email is time stamped on 9/18/14 at 1:18 a.m. Less than 8 hours later, at 7:11 p.m. I received an email from the same person who less than one week later contacted Ms. Pircon. That email, along with a series of emails I had with that individual are attached as **Exhibit 6.** When I asked how this individual got my email address, his initial response was a one liner stating "*I don't recall.*" It was only later that he sent me a second email suggesting that he had seen my name in a newspaper article and "uncovered" my address "on the internet." Despite my asking this individual NOT to contact me again, he did anyway, on 9/24/15.[6]

Could it be a coincidence that within one day of me sending a scathing email to the D86 BOE this individual contacted me? Could it be a coincidence that within one day of Ms. Pircon sending a scathing email to Dr. Skoda, the same individual contacted her? Could it be that he could not "recall" how he got my email address but then after I called him out he claimed he had conducted an internet search for it? Could it be a coincidence that this same individual began contacting other individuals by email who had spoken out against the BOE negotiations team and BOE majority's negotiation position. I think not. It is too coincidental! Under established legal principals, temporal proximity allows for reasonable inferences of causation. Logical inferences can be made without actual physical evidence that the short time period between "opponents" corresponding with Dr. Skoda or the full BOE and the commencement of harassing emails from a private community member are linked and that names and email addresses were released outside of the FOIA process.

There is an old saying that says the "lady doth protest too much." That is exactly what has happened here. When confronted with a public accusation that a board member had released names and email addresses of community members outside of the FOIA process, while the official D86 position was to redact the same information from public records it produced, D86 went "nuclear." Rather than simply deny doing so, they utilized their attorneys (again at taxpayer expense) to try and justify that such inconsistent action was permissible under FOIA. I will not repeat all of the arguments I already made on this at pp. 10-12 of the Request for

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[6] You will note that once again I am not identifying the "individual by name" because of threats he has made against individuals who have tried to determine if Dr. Skoda or another BOE member gave him community names and addresses of board "opponents." Nor am I providing a copy of Exhibits 3 and 6 to the D86 attorneys out of fear that they will provide copies to board members who may then disclose them to others. I would request that you treat Exhibits 3 and 6 as confidential and not share them with D86 either. (See p. 9 and 10 of the original Request for Review.)

Review, other than to reiterate that FOIA was intended to allow withholding of public documents from some people while allowing public officials to pick and choose who to release information to.

The D86 attorneys suggest I have misconstrued the case of *Roehrborn v. Lambert* that the district asserted would allow such inconsistent behavior, but a close reading of my Request for Review establishes just the opposite. That is exactly what the district relied on this case to assert and the very fact that legal counsel was sought at all to respond to the allegations is yet another "dot" that establishes that this is exactly what happened.

Final proof that a board member released the names and email addresses outside of the FOIA process was Dr. Skoda's statements made at the 11/3/14 board meeting. (See p. 10 of the Request for Review.) In addition to stating that he could do whatever he wanted with emails he received because "*that's my email,* " Dr. Skoda's lack of denial that he had not done so is telling. Why didn't he simply say "I didn't do it?" Saying that he did not "advocate such an approach" (see D86's Response, p. 8) is NOT a denial.

The disclosure/release of names and email addresses outside of the FOIA process constitutes a waiver of any argument D86 could have made under 7(1)(b) and (c) to allow for redaction of community members' names and email addresses. To allow individual board members to avoid the intent of FOIA and pick and choose who to disclose information to flies in the face of the Illinois Open Governance laws and should not be sanctioned by the Attorney General's office.

PART III: AFFIDAVITS FROM EACH BOARD MEMBER WHO USED HIS OR HER PERSONAL OR BUSINESS EMAIL ACCOUNTS TO CONDUCT BOARD BUSINESS ARE NEEDED TO ENSURE FOIA COMPLIANCE.

The D86 attorneys essentially argue that you should believe that the Board members did turn over all responsive emails since a "reasonable search" was conducted to locate them. Why should I or you believe them? Each board member should have been tasked with searching their personal and business email accounts for potentially responsive public records, either by the D86 FOIA officer or the D86 attorneys. But even if they were asked to do so, why should anyne believe that they actually did, or that they didn't withhold some emails? I know this suggestion is harsh and may be perceived as offensive, but the reality is that the BOE majority has made so many misrepresentations in the past – on fliers, regarding the contingency plan, during board meetings – and is currently facing OMA violation charges that include the potential deliberation of board business by email. Certain BOE members who used their personal or business email accounts rather than their D86 assigned accounts, cannot, in my opinion, be trusted. Seeking affidavits in which they are sworn to tell the truth is an easy step to ensure that they have not violated their responsibilities to maintain public records and turn them over – all of them – when a FOIA request is submitted.

I would therefore request that each board member provide an affidavit indicating whether or not he/she searched his/her personal and business email accounts for responsive documents and indicating whether or not he/she deleted or destroyed any responsive documents.

PART IV: ALL RESPONSIVE EMAILS SHOULD BE IDENTIFIED AND PRODUCED EVEN IF THEY WERE PRODUCED IN RESPONSE TO OTHER FOIA REQUESTS.

D86's lawyers assert that the district need not produce duplicates of emails that were produced in response to other FOIA's on the grounds that this request is unduly burdensome. (D86 Response, pp. 9-10) There is no burden in producing these duplicates, since the records have already been identified and pulled by the District. An undue burden, however, is placed on me in so far as I have absolutely no idea what specific emails they are referring to. Each FOIA I filed with D86 asked for specific and different categories of documents. To the extent that inadvertent overlap existed that would result in one email being responsive to more than one request, how would I know that or be in a position to sift through all of the documents previously produced in order to try and identify the document(s). D86 is intentionally asking me to search for the needle(s) in a haystack, rather than either produce all of the emails or provide me with a list of the email(s) they believe are duplicate with a reference to the FOIA response in which they produced the email(s).

I would, therefore, respectfully request that D86 be directed to either produce copies of ALL responsive documents or a LOG identifying the exact email and its location that it believes have been previously produced in response to other FOIA requests.

CONCLUSION:

As set forth above, my Request for Review – 2014 PAC 32722 – should be granted and D86 directed to produce ALL responsive documents, disclose the names of community members, disclose all email addresses used by D86 BOE members to conduct board business in the responsive emails, produce affidavits ensuring compliance of FOIA and if deemed appropriate, require the D86 BOE to participate in additional FOIA training and proper public records retention practices.

Respectfully submitted,

[redacted]

Yvonne Mayer

Cc: Ms. Terry Hodges (via email)(without Exhibits 3,6)
Mr. Vincent Mancini (via email)(without Exhibits 3,6)
Ms. Mary O'Rourke, D86 FOIA Officer (via email)(without Exhibits 3,6)

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 29, 2015

Ms. Mary O'Rourke
FOIA Officer
Hinsdale Township High School District No. 86
5500 South Grant Street
Hinsdale, Illinois 60521

RE: FOIA Request for Review – 2015 PAC 33233

Dear Ms. O'Rourke:

Pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014), the Public Access Bureau has received a Request for Review of the response by the Hinsdale Township High School District ("District") to a FOIA request submitted by Ms. Yvonne Mayer. Enclosed is a copy of the Request for Review.

On December 16, 2014, Ms. Mayer sent a FOIA request to the District seeking any e-mails sent or received by members of the District's Board of Education dated after September 1, 2014, concerning four enumerated topics, and copies of District legal bills. The District sought a five-day extension to respond, and on December 22, 2014, notified Mr. Mayer that it would treat her request as a voluminous request pursuant to Section 3.6 of FOIA (5 ILCS 140/3.6 (new) added by Public Act 98-1129, effective December 3, 2014). The District invited Ms. Mayer to amend the request in such a way that the District would no longer treat it as voluminous. Ms. Mayer responded, and amended her request by notifying the District she was no longer seeking copies of legal bills. On January 14, 2015, after notifying Ms. Mayer that it was extending its response time by five business days pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014), the District produced records but redacted certain information pursuant to sections 7(1)(b), 7(1)(f), and 7(1)(m) of FOIA (5 ILCS 140/7(1)(b), (1)(f), (1)(m) (West 2013 Supp.), as amended by Public Act 98-695, effective July 3, 2014). Ms. Mayer's Request for Review disputes the denial of those records that were redacted and the handling of her request by the District.

We have determined that further inquiry is warranted. Please provide unredacted copies of the records for our confidential review. Additionally, please provide a detailed explanation of the factual and legal bases for the assertion of sections 7(1)(b), 7(1)(f), and 7(1)(m) of FOIA. Finally, please provide a written explanation of your decision to designate Ms. Mayer's December 16, 2014, FOIA request as a voluminous request.

As required under section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014), please provide this information to our office within seven (7) business days after receipt of this letter. As we review this matter, we will advise you if we require additional information. If you believe that other documents or information would help us as we review these issues, you may submit additional records or affidavits with the requested information.

Please note that, under FOIA, we are required to forward a copy of any response from a public body to the requester and provide the requester with an opportunity to reply. 5 ILCS 140/9.5(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. The Act provides, however, that "[t]o the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of [the] Act, the Public Access Counselor shall not further disclose that information." 5 ILCS 140/9.5(c) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. The Act also requires that we redact "any alleged confidential information to which the request pertains" when providing a copy of your written response to the requester. 5 ILCS 140/9.5(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. **If your response contains information or documents you believe are confidential, you must clearly identify that specific information in your response.**

Please contact me at (312) 814-6437 or lbartelt@atg.state.il.us if you have questions or would like to discuss this matter. Thank you.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

Enclosure

cc: Ms. Yvonne Mayer (will receive letter only)

[redacted]

YVONNE MAYER
[redacted]

FAX TRANSMITTAL SHEET

TO: Assistant Attorney General Sarah Pratt, Public Access Counselor

FAX NUMBER: 217-782-1396

33220

FROM: Yvonne Mayer

DATE: January 19, 2015

RE: Request for Review of an Alleged Open Meetings Act Violation by the Hinsdale Township High School District 86 Board of Education and Request for Review of Partial Denial of a 12/16/14 FOIA Request in Connection with the Alleged OMA Violation

NUMBER OF PAGES (Including cover sheet): 87

Please deliver this Request for Review to Assistant Attorney General Sarah Pratt.

Thank
[redacted]
Yvonne Mayer

33233

YVONNE MAYER
[redacted]

January 19, 2015

Ms. Sarah Pratt, Assistant Attorney General
Public Access Counselor, Public Access Bureau
Office of the Attorney General
500 S. Second Street
Springfield, IL 62706
SUBMITTED BY FAX

RE: Request for Review of an Alleged Open Meetings Act Violation by the Hinsdale Township High School District 86 Board of Education and Request for Review of Partial Denial of a 12/16/14 Freedom of Information Act Request in connection with the Alleged Open Meetings Act Violation

Dear Ms. Pratt:

I am a current parent, community member and taxpayer in Hinsdale Township High School District 86 ("D86") located in Hinsdale, Illinois. I am writing to file a two part Request for Review by your office against D86 and its Board of Education ("BOE") for an alleged violation of the Open Meetings Act ("OMA") and for a wrongful partial denial of a Freedom of Information Act ("FOIA") request that I filed in connection with the alleged OMA violation. As set forth in detail below, I am alleging that the BOE has violated the OMA by conducting board business via email, outside of a publicly noticed open or closed meeting as required by the OMA. I am further alleging that once I became aware of the OMA violation as a result of statements the BOE President, Richard Skoda, made during a public, open board meeting on 12/15/14, I filed a FOIA request seeking production of the relevant emails and the BOE and D86 deliberately attempted to thwart the public's (and my) right to bring this Request for Review in a timely manner by intentionally withholding production of the emails that establish the OMA violation until the 62nd day after the alleged violation. D86/BOE and further wrongfully redacted the content of the emails that proved the OMA violation. I am respectfully requesting that you direct the BOE and D86 to produce the emails without redactions, find the BOE in violation of the OMA and direct them to participate in public training on compliance with the OMA and FOIA.

In the interest of full transparency, I am advising your office that this is the second Request for Review I have filed asserting open governance violations by D86 and its BOE. The first Request for Review was assigned case number 2014 PAC 32722 and is being handled by Assistant Attorney General Benjamin Reed. The OMA violation described below relates to the events described in 2014 PAC 32722.

BACKGROUND AND CHRONOLOGY OF EVENTS

12/12/14:

On 12/12/14, I filed a Request for Review alleging a violation of FOIA by D86 in redacting names from emails of community members who had corresponded with the BOE regarding teachers' contract negotiations. I argued in part that the BOE had waived any privacy exceptions that might apply because at least one BOE member – possibly Board President Richard Skoda – may have released the names that were withheld in response to FOIA requests to persons outside of the FOIA process, one of whom then contacted community members whose names he had been given. Prior to filing that Request for Review,

I made public comments during board meetings arguing that the attorney advising the BOE was asserting contradictory legal positions by directing the board to withhold community members names in response to formal FOIA requests while asserting that it was permissible for individual board members to disclose the redacted information to anyone they wanted to outside of the formal FOIA process.

12/15/14:

At the December 15, 2014, public D86 BOE meeting, during New Business, the BOE had a brief discussion regarding FOIA compliance after Board Member Kay Gallo raised concerns regarding the amount of money the district was spending on lawyers handling FOIA matters. The BOE meetings are all videotaped and the videotapes are available on the district website.

The videotape for the 12/15/14 meeting can be accessed at:

http://www.hinsdale86.org/sb/Video%20Archive/December%2015%202014%20Regular%20Action%20Meeting.aspx

The discussion regarding FOIA begins at Counter 3:35:54. During the discussion, Dr. Skoda – without disclosing the dates – stated that he had contacted the board via email to seek consensus from the board majority on Board Member Gallo's request to have the attorney attend a board meeting to discuss FOIA issues. Conducting business by email, seeking consensus from the board and making a decision as a result of the BOE's consensus, outside of a publicly noticed meeting, is a violation of the Open Meetings Act.

Specifically, during the 12/15/14 BOE meeting, the following discussion took place starting at Counter 3:44:13:

Dr. Skoda: "*For the audiences' sake, something needs to be clarified. Kay wanted the attorney to come to see us. I wrote to the whole board, since you wrote to the whole board, if there is majority support for this the attorney will be there. There was not majority board support.*"

Ms. Gallo: "*Where in the policy does it state that it needs to be..it...The attorney can be called only by the president or superintendent. Not by the majority of the board. There's no policy that states that.*"

Dr. Skoda: "*I went one step further because I'm not a dictator. I didn't say no I'm the president. I said for myself I don't think so, but if the majority of the board wants it, I'll do it. And to get specific, I said to the board, if you're interested in that, let me know by Saturday. One person responded to me. You. One. On Monday another person responded to me that says my board site, website, doesn't work. And of course we all know that to be the case. But we get criticized for using personal emails. So, therefore, you had a total of two board members who out of seven as of right now that wanted to go forward with what you're talking about.*"

Ms. Gallo: "*Thank you for that clarification.*"

12/16/14:

On 12/16/14 I immediately filed a FOIA request with D86 seeking production of the emails that Dr. Skoda had referenced during the 12/15/14 BOE meeting. I also asked for production of legal bills. **(12/16/14 FOIA request attached hereto as Exhibit 1.)** I wanted to obtain the emails to determine if Dr. Skoda had violated the OMA as described by him during the 12/15 meeting. The FOIA request stated in relevant part (note: Request 1 references a 12/12/14 board meeting, however, the actual date was 12/15/14.):

Request 1. During the December 12, 2014 Board of Education ("BOE") Meeting, Board President Skoda referenced a request that Board Member Kay Gallo made earlier this year that the attorney for the district attend a BOE Executive Session. He further stated that he had asked the other board members by email if they wanted the attorney present. Please produce the following public records:
Any and all emails dated on or after 9/1/14 to or from any of the BOE members (see below for the complete list of email addresses that should be searched) in which any of the following topics are discussed:
A. Kay Gallo's request that an attorney for D86 attend a BOE executive session.
B. Kay Gallo's request that the BOE discuss either Freedom of Information Act ("FOIA") requests received by D86 or D86's responses to those FOIA requests.
C. Kay Gallo's request that the BOE discuss Yvonne Mayer's request that the BOE conduct an investigation into the alleged release – outside of the FOIA process -- by one or more BOE members of the names and/or email addresses of community members who emailed any of the BOE members.
D. Richard Skoda's request that the BOE members inform him whether or not they agreed to Ms. Gallo's request that the attorney for D86 attend an executive session.
...

Request 2. All legal bills submitted to D86 on or after April 1, 2012 by any law firm retained by D86. Please redact attorney client protected information only. Names of attorneys, hourly rates charged by servicing attorneys, dates of service, nonconfidential description of legal services and fees charged to D86 should not be redacted.

Pursuant to the Freedom of Information Act, D86 had five business days to respond to the request and could extend the initial deadline by an additional five business days. D86 failed to produce the responsive documents for 30 days, until January 14, 2015 at 4:27 p.m. (by email delivery). It is my contention that D86 and the BOE deliberately and improperly withheld production until January 14, 62 days after the emails Dr. Skoda referenced were written – November 14, 2014 – that evidence an OMA violation.

12/19/14:

On 12/19/14 at 1:22 p.m. I received a 5-Day Extension Notice until 12/22 from D86 asserting that my FOIA request was categorical in nature would unduly burden the district. **(12/19/14 Extension Letter attached hereto as Exhibit 2.)**

12/22/14:

Rather than produce the responsive documents, on 12/22/14, D86 emailed me a Voluminous Request Notice **(attached hereto as Exhibit 3)** at 3:30 p.m. asserting that my FOIA request "*requires the compilation of more than 500 pages of records.*" The letter then invited me to "*amend the request in such a way that the District will no longer treat it as a voluminous request.*"

Less than 20 minutes after the District sent me the Voluminous Request Notice, at 3:59 p.m., I emailed the FOIA officer and asked her to "*please advise how such a narrow request could generate more than 50 pages? Is it for emails or for the legal records?*" **(12/22/14 email attached hereto as Exhibit 4.)**

12/26/14:

I did not receive a response from the D86 FOIA officer to the email I sent on 12/22, despite the fact that the D86 offices were open until 4 p.m. that day and open on 12/23/14. Therefore, on 12/26 I sent a second email asking for a timely response to my question. **(12/26/14 email attached hereto as Exhibit 5.)**

12/29/14:

The D86 FOIA officer did not respond to my emails for one full week, until 12/29 12:05 p.m., at which time she stated that she had been "out for the holiday. With respect to the emails I was seeking, she stated "*We do not know exactly how many emails there are at this time, although our preliminary estimate is that we will need to review 300 pages. In addition, there will be several hundred pages of legal bills.*" **(12/29/14 email attached hereto as Exhibit 6.)**

Within 10 minutes I responded to her email informing her that I did not believe there would be that many emails and asking her to send me the search parameters D86 was using to search for the responsive emails. I then narrowed my 12/16/14 FOIA request by stating: "*In the interest of expediting this FOIA request, at this time I will withdraw the portion of the request asking for the legal bills and only request the emails. Please promptly confirm that this will eliminate your claim that my FOIA request is VOLUMINOUS.*" **(12/29 Email from Y. Mayer attached hereto as Exhibit 7.)**

12/30/14:

On 12/30/14 at 10:39 a.m., the D86 FOIA officer emailed me that the "*request for emails alone would not be considered voluminous. As we understand the due date is January 6 but will likely need to extend to January 13, 2015.*" **(12/30/14 email attached hereto as Exhibit 8.)** Following receipt of this email, I contacted the FOIA officer by telephone and told her that I would not agree to an extension of time until January 13 and that the delay in producing the emails was unacceptable. I told her that I would be willing to extend the time by one or two days but preferred receiving the documents by January 7, 2015.

1/6/15:

On January 6, 2015, rather than produce the responsive emails, the D86 FOIA officer sent me by email a second 5-Day Extension Notice. **(1/6/15 Letter attached hereto as Exhibit 9.)** The letter claimed that the date I amended my request (which as noted above was simply amended to STRIKE one of two categories of requested documents – no substantive changes were made) – December 29 – was the "starting point for the applicable FOIA timelines." Of course, the D86 FOIA officer neglected to mention that I had been unable to amend my request until 12/29 because she had failed to respond to my email responses to her 12/22/14 Voluminous Request Notice for one full week. The letter then once again asserted that the FOIA request was categorical in nature, required collection of a substantial number of documents, required examination by an attorney and would unduly burden the district. Therefore, it extended the response time by another 5 days, until January 14, 2014.

Following receipt of this email, I sent an email reply to the FOIA officer summarizing the disappointing delaying tactics, also asking for the dates that the BOE members had been asked to search their personal email accounts (which many use to conduct board business) and the official dates the D86 offices were closed for the holidays. **(1/6/15 letter to the BOE attached hereto as Exhibit 10.)**

I also spoke with the FOIA officer by phone, after which I sent her a confirming email (**attached hereto as Exhibit 11**). During our phone conversation, I asked for the legal authority that allowed the district to restart the FOIA clock on the 12/16 /14 FOIA request. Her response was that she had spoken with the D86 attorney and needed until 1/14/15 to respond because there would be over 120 emails for the attorney to review. She refused to provide me with the search parameters used. She refused to tell me on what date the board members had actually been asked to search their personal email accounts. I further stated that I was not agreeing to the extension of time until 1/14/15 and set forth 5 questions I wanted her to answer regarding the delaying tactics.

I never received a response to my questions.

1/14/15:

On January 14, 2015, at 3:47 p.m. the D86 FOIA officer emailed me the D86/BOE's response to my FOIA request seeking the emails requested on December 15, 2014. (**FOIA Response and Documents attached hereto as Exhibit 12.**)

The Cover Letter notified me that the FOIA response was being denied in part, with portions of the responsive emails being redacted pursuant to FOIA Sections 7(1)(b), 7(1)(f) and 7(1)(m).

Attached to the Cover Letter were 32 pages of redacted emails. The 32 pages were comprised of only 13 emails chains (with many duplicate emails, not 300 as was asserted back on December 29, 2014. There are actually 6 emails that are potentially relevant or establish the OMA violation described by Dr. Skoda during the 12/15/14 board meeting. (**I have attached duplicate copies as Exhibit 13.**)

The first is dated 11/13/14 in which Board Member Gallo writes:
"Dr. Skoda: I am requesting that our attorney be present on Monday in order to discuss this issue." (Exhibit 13A.)

The second is dated 11/13/14 from Board President Skoda to the BOE. The majority of the text is redacted, however, the portion that is not redacted seems to disclose the email Dr. Skoda discussed during the 12/1514 board meeting in which he polled the board on whether or not to have the attorney attend a board meeting as requested by Ms. Gallo. He states, ***"Hello Board, Member Gallo has requested that counsel be present Monday nite to address the Mayer demand……(REDACTION)…….We have all heard from member Gallo that she would like counsel present. We have all heard from …… (REDACTION)…..Thank you for your attention to this. Rick"*** (Exhibit 13B)

Dr. Skoda's email attaches a third one (no date) from Mr. Corcoran (Exhibit 13C) to Ms. Gallo and another person whose email address is blacked out – most likely Dr. Skoda who uses personal emails to conduct board b one (no date) from Mr. Corcoran to Ms. Gallo and another person whose email address is blacked out – most likely Dr. Skoda who uses personal emails to conduct board business – and then Ms. Gallo's response to Mr. Corcoran (Exhibit 13D). Both Corcoran and Gallo's emails are completely redacted except for a couple of words in Ms. Gallo's email.

A fifth email is dated 11/17/14 from Board Member Planson in which she **"would like to state my direction"** to Dr. Skoda's request polling the Board members on whether or not to allow the attorney to attend a board meeting. (Exhibit 13E.)

A sixth email is dated 11/17/14 and is Dr. Skoda's response to Ms. Planson. The substance of his reply is blacked out. (Exhibit 13F.)

These six emails seems to be directly related to what Dr. Skoda discussed during the 12/15/14 board meeting. There are additional emails that have been produced with almost all content redacted, so it is not clear which of the 2 substantive "exceptions" the D86 BOE has asserted (7(1)(f) or (m)) may apply.

REQUEST FOR REVIEW OF PARTIAL DENIAL OF THE FOIA REQUEST

For purposes of this Request for Review, I am not appealing the redactions of attorney client privileged information under FOIA Section 7(1)(m) although I am asking that you direct the D86 BOE to turn over all of the emails to your office without redactions in order that you can inspect them and determine if anything they have redacted on the grounds of attorney client privilege does in fact qualify under that exception.

FOIA Section 7(1)(b) does not apply.

I am, however, appealing the redaction of personal email addresses and the content of any email by and between the BOARD MEMBERS in which Dr. Skoda attempts to poll the full board on whether or not he should grant Board Member Gallo's request that an attorney be present at a board meeting to discuss her questions. It is nonsensical for the BOE to redact the addresses of any email account a board member uses to conduct board business. By doing so, their names are also blacked out and it is impossible for the public to see who is participating in the email discussions. For example, Exhibit 13C from Board Member Corcoran has the second recipient's name blacked out. I am assuming what has been blacked out is Board President Skoda's name and address, otherwise how else would Dr. Skoda have a copy of it, however, I cannot be sure since the content of the email is completely redacted. If board members use their personal or business email addresses to conduct board business, they lose the right to keep those email addresses private. In my Request for Review 2014 PAC 32722, I asserted that Section 7(1)(b) does not apply to board member personal and business email addresses. I request that the arguments I made in that Request for Review -- at pages 5-6 -- be incorporated by reference into this Request for Review. **(Pages 5 and 6 of the 12/12/14 Request for Review are attached hereto as Exhibit 14.)** For all the reasons set forth, I request that you direct D86/BOE to produce the emails without redaction of any Board Member email addresses.

FOIA Section 7(1)(f) does not apply.

D86/BOE asserts that portions of the emails they produced can be redacted under FOIA Section 7(1)(f) on the grounds that the content is "*preliminary drafts and pre-decisional communications used by a public body in its deliberative process, unless the document has been publicly cited and identified in support of a final action or policy.*" This FOIA exception does not apply because it would allow the BOE to hide and cover up Open Meetings Act violations and further, the D86 Board President personally cited and identified these emails in support of his decision to not grant Board Member Gallo's request that an attorney attend a board meeting, therefore this exception (to the extent it would apply) has been waived.

During the 12/15/14 Board Meeting, Dr. Skoda personally described the content of the emails, stating" "***Kay wanted the attorney to come to see us. I wrote to the whole board, since you wrote to the whole board, if there is majority support for this the attorney will be there. There was not majority board support...I didn't say no I'm the president. I said for myself I don't think so, but if the majority of the board wants it, I'll do it. And to get specific, I said to the board, if you're interested in that, let me know by Saturday. One person responded to me. You. One. On Monday another person responded to me that says my board site, website, doesn't work. And of course we all know that to be the case. But we get criticized for using personal emails. So, therefore, you had a total of two board members who out of seven as of right now that wanted to go forward with what you're talking about.***"

To the extent that Exception 7(1)(f) might have applied, Dr. Skoda's statements citing to the emails and stating what their content void its applicability.

Further, it is quite clear that the redactions of Dr. Skoda's request to poll all 7 board members and their responses, are a deliberate attempt to cover up the written evidence that proves an Open Meetings Act violation.

The Public Access Counselor should not allow a public body that conducts business by email, in violation of the OMA, to redact – in essence destroy from the public's view – all evidence of the violation by citing the exception on "pre-decisional communications used by a public body in its deliberative process." In fact, citing this exception actually supports a finding that an OMA violation was committed. It is, on its face, an admission that something in the emails shows that the BOE was deliberating and conducting pre-decisional communications by email. The Public Access Counselor should not allow D86/BOE to manipulate application of Exception 7(1)(f) to hide the evidence of the OMA violation. I, therefore, respectfully request that you review the emails without redaction to determine what portion deal with pre-decisional communications and then direct D86 to produce emails without redaction of the content that pertain to Dr. Skoda's request that board members advise him whether or not to grant Board Member Gallo's request.

THE DELAY IN PRODUCING THE RESPONSIVE EMAILS WAS A DELIBERATE ATTEMPT BY THE D86 BOARD AND ITS LAWYERS TO THWART THE PUBLIC'S RIGHT TO TIMELY FILE A REQUEST FOR REVIEW ASSERTING A VIOLATION OF THE OPEN MEETINGS ACT

Upon review of the Emails that were finally produced after 30 days of D86's delaying tactics as set forth above, it became apparent what the motivation for the delays was really about. The email in which Dr. Skoda polls the full BOE on whether or not he should grant Board Member Gallo's request that the district's attorney attend a board meeting is dated November 13, 2014. Under the Open Meetings Act, a Request for Review alleging an OMA violation must be filed within 60 days from the date of the violation. When during the 12/15/14 board meeting, Dr. Skoda publicly described how he had communicated with the full board by email to solicit their input on whether or not to grant Board Member Gallo's request that an attorney be present at a board meeting, concluded that the board majority did not want the attorney present and therefore he denied the request, I concluded that an OMA violation had taken place. I did not know on what date the violation had occurred. The next day I immediately filed the FOIA request seeking production of the relevant emails that I planned to include as evidence in a Request for Review I intended to file alleging an OMA violation.

After 30 days of delays, unnecessary, frivolous and disingenuous extensions of time to respond, the emails were finally produced on January 14, 2015 (albeit in redacted form). The relevant email from Dr. Skoda was dated November 13, 2014. Upon receipt of the emails, I immediately took note of this date and calculated that the alleged OMA violation had occurred 62 days prior to the production of the emails.

By delaying production of the emails until after the 60th day from the date of the OMA violation – first by falsely asserting that the request was voluminous, then delaying for one week responding to my inquiries for clarification on this assertion, then treating my FOIA as a brand new one after I struck ½ of the original request, then extending the time to respond by continuing to assert that my request was burdensome and categorical in nature, D86/BOE made it impossible for me or any other member of the public to identify the date of the actual OMA violation until the technical time allowed to file a Request for Review had lapsed. The FOIA request seeking production of emails was specific to statements made

by Board President Skoda, limited in time and not categorical in nature. There was no voluminous number of responsive emails – in fact only 6 to possibly as many as 13 emails were responsive. Arguing that more time was needed to collect the emails from the board members is also false, since the board members should have been asked to search their emails immediately after the FOIA request was submitted on 12/16/14. How long could it have taken them to find 6 to 13 emails? So the real question is when were they asked to search their emails? Did the FOIA officer or perhaps attorney for the district delay asking the board members to turn over responsive emails that they had written from their personal or business email accounts? I asked the FOIA officer for the date the Board Members were asked to search their emails but I was never given a response. Perhaps your office can ascertain this date as part of your determination into whether or not the D86 BOEs delaying tactics were intended to thwart the OMA.

Because the responsive emails were withheld until 62 days after the alleged OMA violation, it was impossible for me to file this Request for Review within 60 days from the date of the violation. However, upon receipt and review of the emails, I promptly filed this Request for Review; within 5 days of receiving the FOIA responses and within 35 days of first learning during the 12/15/14 BOE meeting about the alleged OMA violation. But for the deliberate attempt by D86/BOE to thwart my right to seek review of the alleged OMA violation, I would have been able to file a Request for Review within 60 days from the actual violation. I therefore, respectfully request that you waive this technicality and accept this Request for Review for your consideration and determination as to whether or not the D86 Board President and BOE violated the OMA.

THE D86 BOARD PRESIDENT VIOLATED THE OPEN MEETINGS ACT AND HIS CONDUCT RESULTED IN OTHER BOARD MEMBERS VIOLATING THE OPEN MEETINGS ACT

The Open Meetings Act requires that "***all citizens be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way.***" 5 ILCS 120 Section 1.

Meetings are defined as "***any gathering, whether in person or by .....electronic means (such as without limitation, electronic mail.....).....of a majority of a quorum of the members of a public body held for the purpose of discussing public business....***" 5 ILCS 120 Section 1.02.

The OMA prohibits a BOE from conducting pre-decisional communications on board business by email. All pre-decisional deliberations between board members on board business must be conducted at a publicly noticed board meeting, whether or not the meeting is held in Open or Closed Session. To the extent that Dr. Skoda wanted the full board to provide input or deliberate on whether or not he should approve Ms. Gallo's request that the attorney be present at a board meeting, he should have polled the board members during a publicly noticed meeting pursuant to the Open Meetings Act. He failed to do so. He did not notice up a meeting to discuss Ms. Gallo's request. Instead, he decided to poll the board members via email. Not only was his email polling the board members a violation of the OMA, but any responses he received from them addressing whether or not to grant Ms. Gallo's request also violated the OMA and were a direct result of his inquiry.

Dr. Skoda's statements during the 12/15/14 board meeting prove that he committed an Open Meetings Act violation. It is my contention that the emails D86 produced with redactions will further prove the violation once the redactions are removed and your office is provided full copies of the content of the emails.

It should be noted that I do not believe that Ms. Gallo's one sentence original email to Dr. Skoda (on which the entire board was copied) was a violation of the Open Meetings Act. (See Exhibit 13A.) She did not seek to conduct board business by email. Rather, it is clear (especially from her comments during the 12/15/14 board meeting), that she was contacting Dr. Skoda as the person on the board authorized under Board Policy 2.160 to contact the attorney and ask for his/her attendance at a board meeting. (See Board Policy 2.160 at http://www.hinsdale86.org/sb/bp/Policy%20Sections/Section%202/2160.pdf.) Ms. Gallo directed her email to "Dr. Skoda" and she simply requested the presence of the attorney at a board meeting. Dr. Skoda had the authority under board policy to approve this request without input from the full board. He chose, however, to involve the full board in a decision on whether or not to grant another board member's request. That required deliberation and input from each board member, either via a written email stating their desire to have the attorney present, or via their silence which as he state during the 12/15/14 board meeting he trearted as a NO vote by that board member against having the attorney attend a meeting. To put his fellow board members in a position where their written response or silence was a deliberative action outside of the OMA was inappropriate and it is clear that Dr. Skoda does not have a sufficient understanding of the OMA compliance requirements.

Decision making by email is prohibited by the OMA, yet that is exactly what the D86 BOE president initiated and conducted. I, therefore, respectfully request that the Public Access Counselor find Board President Skoda and the D86 BOE in violation of the Open Meetings Act. I further request that the D86 BOE be directed to participate in additional public training on compliance with the Open Meetings Act and the Freedom of Information Act as their continuing conduct establishes that they do not understand compliance requirements of these two open governance statutes.

Respectfully submitted,

[redacted]

Yvonne Mayer
D86 Parent, Resident and Taxpayer

YVONNE MAYER
[redacted]

January 20, 2015

Ms. Sarah Pratt, Assistant Attorney General
Public Access Counselor, Public Access Bureau
Office of the Attorney General
500 S. Second Street
Springfield, IL 62706
SUBMITTED BY EMAIL

RE: AMENDMENT to Request for Review filed on 1/19/15 Alleging an Open Meetings Act Violation by the Hinsdale Township High School District 86 Board of Education and Requesting Review of Partial Denial of a 12/16/14 Freedom of Information Act Request in connection with the Alleged Open Meetings Act Violation

Dear Ms. Pratt:

Yesterday I filed by fax a 2 part Request for Review with your office alleging a violation of the Open Meetings Act by Hinsdale Township High School District 86 Board of Education and a violation of the Freedom of Information Act by District 86 in the partial denial of a FOIA Request I filed on 12/16/14 that related to the alleged OMA violation. This afternoon, Ms. Kelly Hansen from your office contacted me by phone with a couple of clarifying questions. I provided her with answers to the questions and she asked that I submit this Amendment to the Request for Review.

Attached please find a REPLACEMENT to Exhibit 1 attached to the Request I filed yesterday. I mistakenly attached the wrong FOIA request. The correct FOIA request is now attached as Exhibit 1.

In addition, on page 5 and 6 of the Request for Review I submitted yesterday, I stated the following:

"*I am not appealing the redactions of attorney client privileged information under FOIA Section 7(1)(m) although I am asking that you direct the D86 BOE to turn over all of the emails to your office without redactions in order that you can inspect them and determine if anything they have redacted on the grounds of attorney client privilege does in fact qualify under that exception.*"

I would like to amend the Request for Review to strike the above language and replace it with:
"***D86/BOE has asserted FOIA Section 7(1)(m) as a basis to redact content in the responsive emails that is attorney client privileged information. Without knowing the content, it is impossible for me to determine if D86/BOE has improperly identified content as attorney client privileged information. I am therefore appealing their redaction of any text under this FOIA exception and requesting that you direct the D86 BOE to turn over all of the email to your office without redactions in order that you can inspect them and determine if anything they have redacted on the grounds of attorney client privilege does, in fact, qualify under that exception.***"

Please let me know if your office has any further clarifying questions regarding my submission.

Respectfully submitted,

Yvonne Mayer
D86 Parent, Resident and Taxpayer

Steven M. Richart

From: Debra Jacobson
Sent: Friday, February 13, 2015 4:54 PM
To: 'lbartelt@atg.state.il.us'
Cc: Therese L. Hodges; 'vmancini@eklwilliams.com'; 'blaw@hinsdale86.org'; Steven M. Richart
Subject: 2014 PAC 33233 (Mayer)
Attachments: CONFIDENTIAL Answer - 2014 PAC 33233 (Mayer).pdf; Redacted Answer - 2014 PAC 33233 (Mayer).pdf

Dear Ms. Bartelt:

Attached is the confidential answer of Hinsdale Township High School District No. 86 in the above referenced matter. Pursuant to FOIA Section 9.5(c), the District requests that you not share it with any other party. Also attached is a redacted copy that can be shared with the complainant. Hard copies will follow via mail. If you have any questions, please let us know.

Sincerely,

Debra Jacobson

Debra H. Jacobson, Attorney
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
Tel: 847/670-9000
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Hodges Loizzi
Eisenhammer Rodick & Kohn LLP

Terry L. Hodges
thodges@hlerk.com

February 13, 2015

Via U.S. Mail and Electronic Mail

Ms. Leah Bartelt
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
100 West Randolph St
Chicago, IL 62901
lbartelt@atg.state.il.us

Re: FOIA Request for Review – 2014 PAC 33233 (Mayer)

Dear Ms. Bartelt:

We are writing in response to your request regarding the above-referenced matter, which was received by Hinsdale Township High School District No. 86 ("District") on February 3, 2015. We represent the District in this matter and submit the requested response on the District's behalf.

This matter is one of several Requests for Review filed by Yvonne Mayer, a District community member and licensed attorney in the State of Illinois (see ARDC website of registered attorneys), alleging various violations of FOIA and the *Open Meetings Act* ("OMA"). By way of background, Ms. Mayer is a recurrent FOIA requester whose numerous FOIA requests and demands for information have cost the District thousands of dollars in legal fees and countless hours of staff time. She has also filed four Requests for Review with the PAC since December 12, 2014. (2014 PAC 32722 (pending); 2015 PAC 33220 (review denied); and 2015 PAC 33490 (pending)). The District responded to her last Request for Review on January 16, 2015. (*See* Exhibit 4).

In this case, Ms. Mayer's FOIA request was submitted on December 16, 2014, seeking copies of Board member e-mails dated on or after September 1, 2014, concerning four topics (generally related to the attendance of the District's attorney at a Board meeting) and for copies of all legal bills submitted to the District on or after April 1, 2012. Because Ms. Mayer's original request would have required the compilation of more than 500 pages of records, the District sent Ms. Mayer a voluminous request notice on December 22, 2014. On December 29, 2014, Ms. Mayer submitted an amended request, which had been narrowed to exclude her request for copies of the legal bills. On January 14, 2014, after properly extending the deadline, the District granted in part and denied in part Ms. Mayer's amended request. The District has complied with all statutory timelines in responding to Ms. Mayer's requests.

As evidenced by Ms. Mayer's current submission, she continues to utilize FOIA purely as a means to further her own personal agenda to discredit individual Board members. Her original FOIA request was a thinly-veiled fishing expedition to find evidence of an alleged OMA violation where none exists, and the PAC has denied her Request for Review under OMA because it was untimely. (*See* Exhibit 5). Thwarted in her efforts to establish an OMA violation, she is now demanding access to internal deliberative and attorney-client privileged information that she hopes to be able to use to her own strategic advantage in her ongoing disputes with certain Board members. As explained below, Ms. Mayer is not entitled to such information, and the District has appropriately complied with its obligations under FOIA.

In your letter dated January 29, 2015, you have requested that the District (1) provide unredacted copies of the redacted records produced to Ms. Mayer, (2) provide a detailed explanation of the factual and legal bases for the asserted FOIA exemptions relied upon by the District in responding to the requests, and (3) provide an explanation of the District's decision to designate Ms. Mayer's December 16, 2014, FOIA request as a voluminous request. Our response tracks the requests in your letter to the District.

A. Enclosure of Redacted and Unredacted Copies of Withheld or Redacted Records and Other Exhibits

We have included as Exhibit 1 the unredacted copies of the redacted records for your confidential review. The following list itemizes all exhibits included with this response:

Exhibit 1	Unredacted/withheld e-mails (CONFIDENTIAL)
Exhibit 2	E-mails between District staff and District Attorney re: e-mail search for Ms. Mayer's FOIA request (CONFIDENTIAL)
Exhibit 3	Screen shots of e-mail search files (CONFIDENTIAL)
Exhibit 4	District's Response to Request for Review (Confidential Answer) – 2014 PAC 32722 (CONFIDENTIAL)
Exhibit 5	PAC Denial of Mayer Request for Review – 2015 PAC 33220

All exhibits marked "CONFIDENTIAL" are exempt and remain confidential pursuant to FOIA Section 9.5(c). The exhibits are further explained below.

B. Explanation of the Factual and Legal Bases for the Asserted FOIA Exemptions Relied Upon by the District in Responding to the Requests

1. Personal E-mail Addresses (7(1)(b))

Ms. Mayer objects to the redaction of personal e-mail addresses of Board members by way of incorporating her arguments in 2014 PAC 32722. (*See* Mayer's Request for Review at 6). However, as the District stated in its response to Ms. Mayer's FOIA request and in its Answer to 2014 PAC 32722 (*see* Exhibit 4 at 3-4, 6-8), FOIA expressly exempts "private information" from disclosure, including "personal e-mail addresses." *See* 5 ILCS 140/7(1)(b); *see also* 5 ILCS 140/2(c-5). There is no exception for personal e-mail addresses of Board members, and the Board members did not waive their privacy rights in these addresses. Accordingly, Ms. Mayer's request that the District be directed to disclose personal e-mail addresses of Board members must be denied.

2. Pre-Decisional Communications (7(1)(f))

Ms. Mayer next alleges that the District was prohibited from redacting any portion of the Board's e-mails pursuant to FOIA Section 7(1)(f) simply because the Board President referenced these e-mails at a Board meeting. However, the District fully considered the Board President's remarks in its response and did, in fact, release those portions of the e-mails that were publicly cited and identified.

FOIA Section 7(1)(f) exempts all "preliminary 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." 5 ILCS 140/7(1)(f) (emphasis added). This exemption is intended to protect the communications process and encourage frank and open discussion among agency employees (and their consultants) before a final decision is made and generally includes "pre-decisional, deliberative communications that are part of an agency's decision-making process." *Harwood v. McDonough*, 344 Ill.App.3d 242, 248 (1st Dist. 2003).

Here, it is self-evident from the content of the unredacted e-mails that they were pre-decisional, deliberative communications between Board members. (*See* Exhibit 1). The communications concerned a Board member's request (Kay Gallo) for the District's attorney to be present at a Board meeting on November 17, 2014, to discuss a threat of litigation made by Ms. Mayer. Ms. Mayer had threatened legal action against the District because it did not disclose the personal e-mail addresses of Board members and private citizens in response to one of her prior FOIA requests. (Exhibit 1 at 1). The e-mail chain began on November 13, 2014, when Board member Kay Gallo made a request to Board President Richard Skoda that the District's attorney be present at the November 17th Board meeting. (*Id.*) The redacted material in the e-mails consists of the specific opinions and thought processes of several Board members on the issue of whether the District's attorney should attend the Board meeting. This material is exactly the type of information exempted by Section 7(1)(f) – preliminary records in which opinions are expressed.

Those communications ultimately led to the Board President's decision not to have counsel attend the November 17th meeting.[1]

Ms. Mayer's assertion that the Board President's limited reference to portions of two e-mails in open session somehow automatically waives *all* of the exempted content of the e-mails has no legal basis. Under Section 7(1)(f), only the "*relevant portion*" of a record loses its exemption upon citation and identification by the head of the public body. 5 ILCS 140/7(1)(f). It logically follows, then, that portions of a record which are *irrelevant* to the public citation of the head of the public body are *not* subject to waiver of the exemption. Such a plain reading of the statute is further supported by the court's reasoning in *Harwood.* In that decision, the public body was not compelled to release a full consultant's study because the head of the agency and the Governor had only publicly cited to an executive summary of the study. The full study was not cited and remained exempt. 344 Ill.App.3d at 248.

Similarly, in this case, only those portions of communications publicly cited by Dr. Skoda have been disclosed by the District, and the remainder are exempt under Section 7(1)(f). Dr. Skoda stated in open session that he had written to his fellow board members to ascertain if there was majority support for having the District's attorney attend the meeting, and that only Ms. Gallo had answered in the affirmative by the deadline he had set in the e-mail. He further explained that another person had responded to him after the deadline to say that the Board website was not working. (For a video recording of the 12/15/14 open session, see http://www.hinsdale86.org/sb/Video%20Archive/December%2015%202014%20Regular%20Action%20Meeting.aspx. The relevant exchange between Dr. Skoda and Ms. Gallo begins at 3:44:13). Accordingly, the relevant portion of Dr. Skoda's e-mail to the Board that he cited to the public was limited to those two pieces of information: (1) that Ms. Gallo wanted the attorney present, and (2) that he was seeking to gauge the support of the other Board members for the attorney's attendance. Those relevant portions of that e-mail have already been disclosed to Ms. Mayer. (*See* Exhibit 1 at page 11). She knows from disclosed portions of the e-mails that Ms. Gallo wanted the attorney to be present at the meeting, and that the Board President had heard from another member on the issue. It is clear from the portions that have already been released that Dr. Skoda was seeking input from the Board on the attendance of the District's attorney at the meeting. The remaining redacted content of Dr. Skoda's e-mail is irrelevant to Dr. Skoda's public citation and has, therefore, not been waived pursuant to Section 7(1)(f).

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[1] Contrary to Ms. Mayer's assertions, the redacted e-mails in no way establish any "meeting" or decision made by the Board of Education outside of the public's view. As Ms. Mayer concedes in her Request for Review, the Board President has the express authority to direct an attorney's attendance at a Board meeting. (*See* Mayer's Request for Review at 6). Here, as shown in Exhibit 1, Dr. Skoda was simply being asked to invoke his authority as Board President in different directions by his fellow Board members: Board member Gallo, who initiated the exchange by requesting that Dr. Skoda ask an attorney to be present, and another Board member who objected to the attorney's presence. Dr. Skoda was simply caught in the middle, and his decision to seek additional input from other Board members does not rise to the level of an OMA violation.

As mentioned above, Dr. Skoda also referenced a second e-mail in open session that he received from another board member in response to his first e-mail. As a threshold matter, it is questionable whether Dr. Skoda sufficiently cited or identified the second e-mail (and thus waived its relevant portion), since he did not even publicly identify its author or reveal its contents beyond that the fact that it contained a reference to technical difficulties with the Board's e-mail. However, even assuming that his reference to the second e-mail was a "citation" within the meaning of Section 7(1)(f), the District has already disclosed the relevant portion of the second e-mail as well. (*See* Exhibit 1 at page 22).

Further, it is clear from the context of Dr. Skoda's public comments that not only did he not cite the deliberative content (or attorney-client privileged content) of the two e-mails, but that he also had no intention of citing the e-mails for such a purpose. He cited the e-mails for the purpose of showing that he was not acting as "dictator" in his capacity as Board President. He was seeking input from his fellow Board members regarding their desire, or lack thereof, to have him schedule the District's attorney to be present at a board meeting. Dr. Skoka did not cite the e-mails for the purpose of disclosing their deliberative content, let alone with any intent of exposing the specific opinions of Board members concerning this issue to the very opponent who filed the legal challenge against the District to which those opinions pertained. Accordingly, based on both the actual and intended scope of Mr. Skoda's public citation to the e-mails, the redacted information is exempt under Section 7(1)(f).

3. Attorney-Client Privileged Communications (7(1)(m))

Section 7(1)(m) exempts from disclosure "communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation." 5 ILCS 140/7(1)(m). The Illinois Supreme Court has held that the attorney-client privilege applies "[W]here legal advice of any kind is sought from a professional legal advisor in his capacity as such, the communications relating to that purpose, made in confidence by the client, are protected from disclosure by himself or the legal advisor, except the protection be waived." *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.*, 189 Ill.2d 579, 584, 244 Ill.Dec. 941, 727 N.E.2d 240, 243 (2000). Illinois courts have also held that under Illinois FOIA, even legal billing records are exempt to the extent they indicate the substance of confidential attorney-client discussions. *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 201 (1st Dist. 1997).

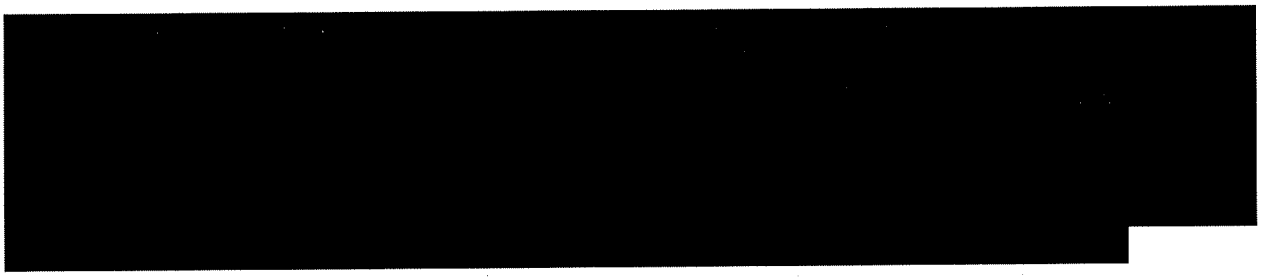
Here, it is clear that certain redacted portions of the e-mails, if disclosed, would reveal the substance of confidential attorney-client communications between the Board and its counsel. On certain occasions, District counsel (Terry Hodges) was cc'd on e-mails from Board members so that she would be aware of those substantive issues on which she would be expected to render advice if she attended the Board meeting. (*See* Exhibit 1 at pages 6, 10, 18-19). On other occasions, a Board member directly referred to the substantive issues on which the District's legal counsel had already advised, or was in the process of advising, the Board. (*See* Exhibit 1 at

pages 10, 11, 18-19, 25-26). As such, the District's reliance on the exemption for attorney-client privileged communication under Section 7(1)(m) is entirely proper.

Further, the District's interests in preserving the privilege are especially heightened in this case given that the substance of the privileged communications concerns Ms. Mayer's own FOIA demands and her threat to take legal action against the District. The privilege must be preserved so that the District's litigation strategy or other confidences are not disclosed to Ms. Mayer to the detriment of the District. Quite frankly, Ms. Mayer, herself a licensed attorney in this State, should know better than to attempt to interfere in the District's attorney-client relationship and intrude upon the Board's privileged communications.

C. The District Appropriately Designated Ms. Mayer's FOIA Request as Voluminous

The District properly designated Ms. Mayer's original December 16, 2014, FOIA request as a voluminous request pursuant to FOIA section 3.6 because her request required the compilation of more than 500 pages of records. 5 ILCS 140/2(h)(ii); 5 ILCS 140/3.6.



Ms. Mayer also requested all of the District's legal bills submitted to the District on or after April 1, 2012. The District reasonably estimated that the request for over 2 ½ years of legal bills, in combination with the 300 e-mails, would easily exceed 500 pages. By way of example, the District's legal bills for only the three month period of May-July of 2014 numbered 88 pages. (See response to FOIA 14-110 at http://www.hinsdale86.org/foia/Forms/FOIA%20View.aspx). Based on that volume of bills for such a short time period, it was entirely reasonable for the District to estimate that 2 ½ years' worth of legal bills itself could easily exceed 200 pages, and even more reasonable to estimate that the legal bills, in combination with the hundreds of pages of e-mails, would easily exceed the 500 page threshold. Accordingly, the District appropriately designated Ms. Mayer's request as voluminous and provided her with the notice required by FOIA Section 3.6.

Conclusion

As explained above, the District's FOIA response was proper. The redacted personal e-mail addresses of Board members, pre-decisional opinions of the Board, and the Board's privileged

communications with its legal counsel are exempt under Sections 7(1)(b), 7(1)(f), and 7(1)(m), respectively, and these exemptions have not been waived. Furthermore, the District's designation of Ms. Mayer's original FOIA request as a voluminous request under Section 3.6 was clearly appropriate and warranted.

For these reasons, the District respectfully requests that you uphold its decision to deny the release of the redacted information and find that the District did not violate FOIA. If you have any questions or require any further information, please do not hesitate to contact us.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP

[redacted]

Terry L. Hodges
One of the District's Attorneys

EKL, WILLIAMS & PROVENZALE LLC
Two Arboretum Lakes
901 Warrenville Road, Suite 175
Lisle, Illinois 60532
630/654-0045

Vincent Mancini
Co-Counsel for the District

Enclosures

cc: Dr. Bruce Law, Superintendent

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 29, 2015

Ms. Yvonne Mayer
[redacted]

RE: OMA Request for Review – 2015 PAC 33220

Dear Ms. Mayer:

Pursuant to section 3.5(a) of the Open Meetings Act ("OMA") (5 ILCS 120/3.5(a) (West 2012)), the Public Access Bureau has received your Request for Review alleging that the Hinsdale Township High School District 86 Board of Education ("Board") violated OMA on November 13, 2014.

Under section 3.5(a) of OMA, "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General ***not later than 60 days after the alleged violation***." (Emphasis added.) Your OMA Request for Review, which you e-mailed to our office on January 20, 2015, alleges that the Board held an improper meeting on November 13, 2014, and that you learned about the meeting on December 15, 2014. You also contend that because the District delayed responding to your Freedom of Information Act ("FOIA") (5 ILCS 140/1 *et seq.* (West 2012)) request seeking records related to that alleged meeting, you should not be time barred from submitting your Request for Review by the 60-day filing period set forth in section 3.5(a) of OMA. However, you did not require access to the documents you sought in that FOIA request to file an OMA Request for Review with our office once you learned of the alleged violation on December 15, 2014, which was well within the 60-day filing period. Because you submitted your Reqeust for Review more than 60 days after the date of the alleged violation on November 13, 2014, section 3.5(a) of OMA precludes this office from reviewing this matter.

500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (217) 785-2771 • Fax: (217) 782-7046
100 West Randolph Street, Chicago, Illinois, 60601 • (312) 814-3000 • TTY: (312) 814-3374 • Fax: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529-6416

Exhibit 5

This letter serves to close this file. Please contact me at (312) 814-5201 if you have questions or would like to discuss this matter.

Very truly yours,

[redacted]
Assistant Attorney General
Public Access Bureau

33220 o 60 days sd

cc: Mr. Richard Skoda
Board of Education President
Hinsdale Township High School District 86
5500 S. Grant Street
Hinsdale, Illinois 60521

Exhibit 5

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 18, 2015

Ms. Yvonne Mayer
[redacted]

RE: FOIA Request for Review – 2015 PAC 33233

Dear Ms. Mayer:

The Public Access Bureau has received the enclosed response letter to your Request for Review from Hinsdale Township High School District No. 86. Additional confidential materials provided to the Public Access Bureau have been withheld.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. Please send a copy of your reply to Ms. Hodges as well. Please contact me at (312) 814-6437 or lbartelt@atg.state.il.us if you have any questions or would like to discuss this matter. Thank you.

Very truly yours,

[redacted]

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

Enclosure

cc: *Via electronic mail*
Ms. Terry L. Hodges (will receive letter only)
Hodges Loizzi Eisenhammer Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
djacobson@hlerk.com

YVONNE MAYER
[redacted]

March 3, 2015

Ms. Leah Bartelt
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
100 West Randolph Street
Chicago, IL 62901
lbartelt@atg.state.il.us
VIA EMAIL

RE: FOIA Request for Review – 2015 PAC 33233

Dear Ms. Bartelt:

I am writing in reply to Hinsdale Township High School District 86's ("D86") 2/13/15 Response to the Request for Review I submitted on 1/19/15 – 2015 PAC 33233. I received D86's Response from you by regular mail on 2/23/15. This letter serves as my reply.

Illinois, it's no secret, is in a crisis as for years unethical politicians have used the government as a personal plaything, spending money to benefit cronies, intimidating citizens, accepting secret benefits and hiding, as much as possible, these actions. D86 suffers from these very ailments; secretive power hungry politicians who conduct business behind closed doors or via email, control our BOE and engage in uncontrolled spending on witch-hunts against students, former board members and administrators while at the same time pursuing an anti-teacher agenda. Just in the past year, members of the Board of Education ("BOE") have brought unfounded police charges against teachers, accepted political donations (to be used for their re-election campaign) from groups with an anti-teacher agenda, used their personal emails to avoid FOIA law, had their supporters reach out and threaten individuals with lawsuits, and attempted to mock and humiliate board members and members of the public who disagree with them. The only weapon the public has to stop such egregious conduct is the truth, and the truth depends on the transparency guaranteed by Illinois law through the freedom of information act and the open meetings act.

As if to prove that they are exactly the type of politicians that have dragged Illinois into a fiscal and moral gutter, they have hired not one, but two law firms to attack me personally, a housewife and mother who last practiced law in the 1990's, all in their "defense" of the open governance violations I have alleged in Requests for Review I have filed with your office, including this most recent one -- 2015 PAC 33233. As if they

were "Goliath" and I "David," they have brought in the "big guns" to "take me out" -- all paid for with taxpayer dollars, including taxes I have paid to D86. Yet even the action of hiring a second law firm to serve as Co-Counsel for D86 was done in violation of the Open Meetings Act.[1] The public is very concerned that Board President Richard Skoda and company are heirs to a long line of out of control Illinois politicians that are unable to comply with Illinois open governance laws, manage finances, pay their own taxes, control their own campaigns, or even their own tempers.

Well, I will not be silenced, nor will I allow a public school district to launch a personal attack against me or any other member of the public whose only purpose in filing the legitimate FOIA request at issue was to obtain public records that would evidence an Open Meetings Act violation by the D86 BOE.

This Request for Review was submitted as a joint Request for Review, alleging improper redaction of email content AND alleging an Open Meetings Act violation. The OMA portion was dismissed as untimely by your office (it was assigned a separate Request for Review Number -- 2015 PAC 33220) since it was filed more than 60 days after the alleged violation. In an attempt to provide your office with public records to support my charge that the D86 BOE had violated the OMA, I filed a FOIA request seeking production of the relevant emails the day after I first learned that an OMA violation might have occurred. D86 delayed production of the emails until 62 days after the OMA violation was committed, in order to prevent me from filing a timely OMA Request for Review. Unfortunately, despite these offensive strategic tactics that I described in detail in the Request for Review, your office was required by statute to apply the 60 day statute of limitations and dismiss the portion of my request seeking a determination that an OMA violation had occurred. Your office, however, did ***not*** issue a substantive finding that the D86 BOE had ***not*** violated the OMA, rather it simply dismissed the charge as untimely.

It is important for the D86 community and public to obtain the content of these emails, because while your office may be precluded by statute from issuing a formal ruling that an OMA violation was committed, the public should still be allowed to access the public records that show that the BOE improperly conducted business via email. The community can then reach its own conclusions about the Open Governance violations that certain of its board members have committed.

I do not plan to repeat the arguments I made in my original Request for Review to support my request that your office direct D86 to produce un-redacted emails. I stand by

---

[1] On February 3, 2015 I was left with no choice but to file a Request for Review alleging that the BOE violated the OMA when it hired Attorney Vincent Mancini from Eck Williams & Provenzale LLC to serve as Co-Counsel for D86 in connection with this Request for Review -- 2014 PAC 32722. On 2/11/15, I received notification that your office assigned the OMA Request for Review to Assistant Attorney General Joshua Jones – 2015 PAC 33490 and began its investigation. In addition, during the D86 2/9/15 BOE meeting, BOE member Kay Gallo stated that she too has filed a Request for Review with your office alleging a violation of the OMA by certain members of the D86 BOE in hiring Mr. Mancini and the Ekl firm.

the legal arguments I made in that filing and request that your office determine what portions of the redacted content can legitimately be withheld as attorney client privileged and what portion of the redacted content was improperly withheld. I stand by my original argument that the OMA prohibits a board of education from conducting pre-decisional communications on board business by email. The district's own response acknowledges that the content it redacted shows pre-decisional communications. It is my contention that Dr. Skoda polled the board of education to determine whether or not to have the BOE's attorney attend a board meeting as requested by Board Member Gallo. He was prohibited by the OMA to poll the board members in such a manner. Now that the district has produced the emails to you, you can determine whether he did so. The BOE should not be allowed to cover up an OMA violation by redacting the content from the "public's" records that shows that Dr. Skoda polled the board members and how each board member responded. While the 60 day statute of limitation may preclude your office from issuing a determination on whether or not the email communications between the various board members were an actual OMA violation, it can still order the district to release the content of the emails that are not protected attorney client communications. Dr. Skoda's polling the board members, and the responses from individual board members, are not attorney client privileged communications that can be properly withheld.

Before concluding, I will address some of the ludicrous, irrelevant and red herring arguments that the D86 attorneys have made in their response, as they are nothing more than an attempt to deflect your attention away from the BOE president's misconduct and the District's efforts to cover up the OMA violation.

Red Herring #1: Right out of the gate on page 1 of their response, the D86 attorneys inform you that I am a licensed attorney in the state of Illinois. It is true. So what? After graduating from law school, I practiced law at Schiff Hardin and Waite in Chicago before teaching at the University of Michigan Law School until 1994. Then I stopped practicing law to become a stay at home mother of 4. I have maintained my license and have kept current with my continuing legal education requirements. None of this is relevant, however, to my filing this Request for Review. I filed the Request for Review as a member of the public, a resident, tax-paying parent of D86 students. It wouldn't matter if I were a lawyer, plumber, minister, teacher, garbage collector or any other myriad of professions. Yet because D86 has felt obligated to hire TWO law firms to fight my Request for Review, they want to "level" the playing field and assert my professional background. I guess I should be flattered, but again, who cares. You should not. My professional background plays no role in my decision to file the Request for Review and unlike them, I am not being paid hundreds of dollars per hour to represent anyone.

Red Herrings #2 and #3: Next, D86's Counsels state on page 1 that "*by way of background, Ms. Mayer is a recurrent FOIA requestor whose numerous FOIA requests and demands for information have cost the District thousands of dollars in legal fees and countless hours of staff time.*" This is not only a misrepresentation but also fails to disclose all of the facts. First of all, the Freedom of Information Act defines what a

frequent, or shall we use the official statutory term -- ***recurrent*** – FOIA filer is. Section 2(g) specifically states:

"***Recurrent requestor,*** *as used in Section 3.2 of this Act, means a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period.* " (5 ILCS 140/2(g)

Since I have only filed a grand total of 9 FOIA requests EVER with D86, with the most being 5 in a 30-day period, it is quite the misrepresentation for the TWO D86 law firms to assert that I am a recurrent FOIA filer. (Source: D86 FOIA Log that can be accessed at http://www.hinsdale86.org/foia/Forms/FOIA%20View.aspx)

Further, their assertion that my FOIA requests have cost D86 thousands of dollars is actually quite humorous, considering that D86 chose – no one forced it -- to hire not ONE, but TWO law firms, to try and stop me and others from accessing public records. The two law firms, whose partners charge between $250 and $285 per hour on municipal matters, have no shame. Nor do they disclose that in the period of time since I filed my very first FOIA request with D86 (9/10/14 until today), there have been a total of 56 FOIA requests filed by over 30 individuals (some of whom have filed multiple requests, such as a newspaper reporter and one of the board president's most staunch supporters) and that D86 has incurred over $42,000 in legal fees in connection with FOIA requests in one seven month period alone (July 2014 through January 2015). (Source: D86 FOIA log -- see above link – and **Exhibit 1**, Legal Fees data included in D86's January 2015 Financial Summary Report.) It appears that the law firms D86 has hired to handle FOIA requests are the real winners in the public records "battles" D86 has chosen to wage, making out like bandits, all at the tax payers' expense. But again, the amount of money they have been paid is not relevant to the legal issues raised by this Request for Review.

Red Herring #4 and 5: In D86's response, its two law firms "go political" on me, accusing me of "*utilizing FOIA purely as a means to further her own personal agenda to discredit individual board members.*" It further states that "*Thwarted in her efforts to establish an OMA violation, she is now demanding access to internal deliberative and attorney-client privileged information that she hopes to be able to use to her own strategic advantage in her ongoing disputes with certain board members.*" (p. 2)

MY "*personal agenda*?" ***My*** "strategic advantage" in ***My*** "*ongoing disputes*?" What are the 2 law firms talking about? I have no personal agenda in seeking public information that will enable the PUBLIC to make informed political judgments AND monitor governmental behavior to determine whether or not elected government officials have violated open governance laws. Under FOIA law, I have a PUBLIC right to access the requested information for exactly that purpose.

The purpose of the Freedom of Information Act is clearly stated in Section 1:

"Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared 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 this Act. ***Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.***

The General Assembly hereby declares that ***it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government****. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act."*
ILCS 140/(1) (from Ch.116, par.201)

The REALITY is that I filed the 12/16/14 FOIA request for the legitimate purpose of determining if in fact D86 Board President Skoda and other BOE members, all publicly elected officials-- had violated the Open Meetings Act by conducting board business via email. I was seeking production of the public records that would evidence this violation (or not) and planned to wait until the emails were produced by the district to determine whether or not a Request for Review alleging an OMA violation was warranted. While Dr. Skoda had made verbal statements during the 12/15/14 board meeting that indicated the probability that an OMA violation had been committed, I did not want to rush to judgment and preferred to FOIA the emails first. Naively, I misjudged the lengths he and D86 would go to -- first to delay production of the emails until more than 60 days had elapsed from the date of the violation, second to withhold the content that would confirm the OMA violation and third to hire a second law firm to fight the public's right to access public records.

Once the emails were produced to me in redacted form, and more than 60 days after the alleged violation, I determined that it was in the public's interest to file the JOINT Request for Review -- alleging both improper redactions and the OMA violation. Contrary to the district's allegations, I did not pursue a FOIA request for review AFTER my OMA allegations were "thwarted." The two requests were filed concurrently as one Request for Review, and it was the Public Access Counselor's office that split chose to assign two separate case numbers to the allegations.

D86's two law firms' insistence that I am pursuing relief from your office because of my "*ongoing disputes with certain board members*" is ridiculous. My "*ongoing disputes*" can only be a reference to my pursuit of production of public records from D86 through the FOIA process, since I have NO PERSONAL disputes of any kind with any board member. FOIA provides an avenue for relief when a member of the public believes a public entity has improperly withheld public records and that avenue allows me to file Requests for Review with the Public Access Counselor OR

file a complaint in court. In this case, as in all other Open Governance "disputes" I have ever had, I have filed legitimate Requests for Review with your office. I have always respected the decisions from your office and chosen not to pursue further appeals in court.

The tone and personal attacks launched against me by D86's two law firms are nothing more than a frivolous attempt to deflect attention away from the truth of certain BOE members' actions, and the real legal issues.

CONCLUSION:

For all of the reasons set forth in the Request for Review 2015 PAC 33233, and in this Reply to D86's Response, I respectfully request that your office review the emails D86 has submitted to you and determine what, if any of the content that D86 redacted should be produced. I request that you determine what content, if any, constitutes attorney client privileged communication and can be properly withheld. I request that you direct D86 to produce any redacted content that does not constitute attorney client privileged communications, including Dr. Skoda's polling BOE members on whether or not to grant Ms. Gallo's request that the D86 attorney attend a board meeting, and the individual board members' responses.

Respectfully submitted,

Yvonne Mayer

Cc via email: Ms. Terry Hodges, as requested in Ms. Bartelt's 2/18/2015 cover letter
Ms. Mary O'Rourke, D86 FOIA Officer

HINSDALE TOWNSHIP HIGH SCHOOL DISTRICT NO. 86
TWO MAYER FOIA ATTORNEY GENERAL DISPUTES
2014 PAC 32722 (MAYER) / 2015 PAC 33233 (MAYER)
LEGAL COSTS BREAKDOWN

Matter	HLERK Fees	Ekl Williams Fees	Total Fees
2014 PAC 32722	$8,836	$2,562	$11,398
2015 PAC 33233	$6,675	$937	$7,612

Prepared by: HLERK LLP, January 4, 2021

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