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LAW ALERT

DO NOT DISCLOSE: *The Personnel Records Review Act Will Now Prohibit the Disclosure of All Employee Performance Evaluations in Response to a FOIA Records Request*

December 2, 2010

As previously reported on July 28, 2010, Governor Quinn amendatorily vetoed House Bill 5154, which would have amended the Personnel Records Review Act (PRRA) to prohibit disclosure of all performance evaluations in response to a FOIA records request. As presented, the amendatory veto prohibited only disclosure of performance evaluations of local and State peace officers, rather than disclosure of all public employee performance evaluations. With the Governor's amendment, HB 5154 was returned to the Illinois General Assembly for consideration during the Fall Veto Session (November 16-18, 29-20 and December 1-3).

Yesterday evening, the Illinois General Assembly **voted to override** the Governor's amendatory veto. House Bill 5154, as originally passed, will now be signed into law. As such, Section 11 of the PRRA will now prohibit the disclosure of all performance evaluations in response to a FOIA records request. 820 ILCS 40/11. As a result, a public body **must** deny any request under FOIA to inspect or copy the performance evaluations of a current or former employee, regardless of the position held. To comply with FOIA, the public body's designated FOIA Officer must issue a timely, written response citing the appropriate exemption from disclosure under FOIA, and explaining the reason for the denial. Under these circumstances, a FOIA Officer would respond by citing Section 7(1)(a) of FOIA^[1], and explain that Section 11 of the PRRA expressly prohibits the disclosure of the requested information (820 ILCS 40/11).

The action by the Illinois General Assembly makes it clear that the legislators believe that employee performance evaluations are confidential, *personal*, private records, which should not be subject to disclosure under FOIA. The confidentiality of employee performance evaluations will help preserve the reliability of the employee evaluation process, which is significant for public employers and their employees.

If you have any questions about this *Law Alert* or amended FOIA, please feel free to contact any RSNLT attorney.

Catherine R. Locallo, an associate in the firm's Chicago office prepared this *Law Alert*.

^[1] Section 7(1)(a) of FOIA provides that "information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law is exempt from disclosure". 5 ILCS 140/7(1)(a).

12/2/2010

RSNLT E-Alert

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