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**RSNLT****LAW ALERT**

## **Do Not Disclose: *Teacher, Principal and Superintendent Performance Evaluations***

**January 19, 2010**

As previously reported, the comprehensive procedural and substantive amendments to the Freedom of Information Act (FOIA), 5 ILCS 140/1, became effective on January 1, 2010. As amended, FOIA no longer provides a per se exemption for records maintained in an employee's personnel file[1]. Consequently, both employers and employee organizations questioned whether a public employee's performance evaluations would now be subject to disclosure under FOIA. The Performance Evaluation Reform Act of 2010 (the "Act"), which amends Section 24A of the Illinois School Code and was signed into law on January 15, 2010, specifically prohibits the disclosure of performance evaluations of three identified employee positions: public school teachers, principals and superintendents[2].

Because a section of the Illinois School Code now prohibits the disclosure of certain employee performance evaluations, a school district must deny any request under FOIA to inspect or copy the performance evaluations of a teacher, principal or superintendent. To comply with FOIA, the school district's designated FOIA Officer must issue a timely, written response citing the appropriate exemption from disclosure under FOIA, and explaining the reasons for the denial. Under these circumstances, a FOIA Officer would respond by citing Section 7(1)(a) of FOIA[3], and explaining that Section 24A-7.1 of the Illinois School Code expressly prohibits the disclosure of the requested information (105 ILCS 5/24A-7.1).

The Act omits any reference to the disclosure of performance evaluations of other administrators or educational support personnel. Therefore, school districts cannot rely on Section 24A-7.1 of the Illinois School Code as a basis to deny a FOIA request to inspect or copy the performance evaluations of these other employees. Until the issue of whether a school district must disclose the performance evaluations of other employee positions is addressed by the legislature, the PAC or the Illinois courts, we recommend that school districts contact legal counsel to review any FOIA request for personnel file records and to discuss other possible exemptions that may warrant a denial of the request.

If you have any questions regarding the Act or revised 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] Instead, any exemption covering a record maintained in an employee's personnel file would need to qualify under a specific FOIA exemption, including, but not limited to, the "private information" exemption, or the newly defined "unwarranted invasion of personal privacy" ("UWIPP") exemption, which requires a public body to request review by the Illinois Attorney General's new Public Access Counselor ("PAC") before denying a request for information based on the UWIPP exemption.

[2] Please note that the Act makes other significant amendments to Section 24A of the Illinois School Code. 105 ILCS 5/24A et. seq. Those amendments will be discussed in detail in a subsequent RSNLT publication.

[3] 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).

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