

# In Brief

## PUBLIC ACCESS COUNSELOR CLARIFIES THAT FOIA PROTECTS EMPLOYEE INFORMATION WHEN A REQUEST TARGETS A BARGAINING UNIT

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On June 30, 2022, the Illinois Attorney General's Public Access Counselor (PAC) took the rare step of issuing a binding opinion that upheld a denial of a FOIA request for certain information about public employees. Interpreting a provision in the *Illinois Public Labor Relations Act* (IPLRA) that protects "any information personally identifying membership or membership status in a labor organization," the PAC found in Public Access Opinion 2022-09 that the City of Berwyn did not violate FOIA by denying a request for the names, job titles, and other information of all employees covered by a specific collective bargaining agreement. Because the *Illinois Educational Labor Relations Act* (IELRA) includes language identical to what the PAC relied on, the decision also has implications for school districts and colleges.

The IPLRA and the IELRA protect a list of six categories of employee information. In addition to several categories that are also exempt under FOIA as private information, such as personal email addresses, these statutes also prohibit disclosing:

any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation (including whether employees are members of such organization, the identity of such organization, whether or not employees pay or authorize the payment of any dues or moneys to such organization, and the amounts of such dues or moneys).

FOIA incorporates these statutory protections in exemptions that reference the IPLRA and IELRA.

In January 2022, the City of Berwyn received a request for the names, job titles, hire dates, department names, work addresses, work email addresses, and union of "each City of Berwyn

employee covered by the collective bargaining agreement with SEIU Local 73." The City denied the request in its entirety, asserting that the IPLRA prohibited the City from disclosing the information. The requester asked the PAC to review the denial, arguing that the request did not seek information about membership status or union dues, and that identifying which employees belonged to a specific bargaining unit would not indicate whether they were union members. The City argued that if it provided the requested information limited to a specific union, it would allow the requester a "back-door entry" to target employees as "probable" union members.

The PAC disagreed with the requester. The request specifically sought the "union" for each employee. In addition, while the other categories of information would not have been exempt if the scope of the request included all employees employed by the City, the PAC reasoned that complying with the request would "necessarily reveal the identity of the [union] and information concerning employee membership or membership status; *the [requester] would be informed that only these City employees are either members of the union or eligible to be members of the union*, and that a majority voted to be represented by the union." Considering the legislature's intent to "insulate employees from third party communications concerning their union membership status," the PAC concluded that the City had shown the requested information was exempt from disclosure under FOIA.

While the PAC's opinion involved a municipality governed by the IPLRA, the reasoning appears to apply equally to school districts and colleges that may receive similar requests. Contact your Robbins Schwartz attorney with any questions about the decision and be cognizant of this helpful clarification from the PAC when responding to future similarly phrased FOIA requests.