

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION

Mark O. Stern

Plaintiff,

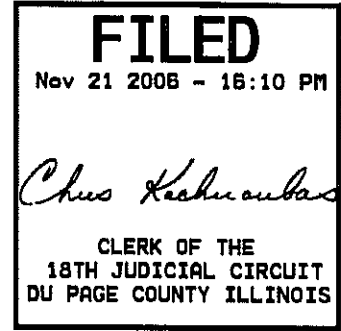
v.

Wheaton-Warrenville Community  
Unit School District 200,

Defendant.

)  
) 2006CH002194  
)

) Status Date: 03/20/07  
) Case No:  
) Assigned To: 2005  
)



**VERIFIED COMPLAINT FOR INJUNCTION PURSUANT TO THE ILLINOIS  
FREEDOM OF INFORMATION ACT**

Plaintiff, MARK O. STERN (hereafter referred to as "Plaintiff"), through his attorneys, The Collins Law Firm, PC, brings this action pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (hereafter referred to as the "Act") against defendant COMMUNITY SCHOOL DISTRICT 200 (hereafter "District 200"). In support thereof, Plaintiff states as follows:

**Introduction**

This is a case about whether the District may produce its records to some members of the public, but not to others. Plaintiff seeks the immediate disclosure of District 200's employment contract with its superintendent. That this contract is a "public document" and not subject to any exemption under the Act has already been determined --twice-- by the Illinois Attorney General, and by District 200 itself, which has produced this very contract to others in response to their FOIA requests. District 200 cannot choose to follow or disobey the law on its own whim, based upon whether a

perceived friend or foe is asking for the District's public records. District 200 should be ordered to produce the superintendent's contract to Plaintiff.

### **Count I**

#### **Claim for Injunctive Relief pursuant to the Act, 5 ILCS 140/1 *et seq.***

1. The Plaintiff is an Illinois citizen, residing in Wheaton, which is in DuPage County. Plaintiff is also a licensed attorney.
2. District 200 is a "public body" within the meaning of the definition of the Act. 5 ILCS 140/2.
3. Jurisdiction and venue are proper, *inter alia*, because a significant part of the conduct complained of herein took place in DuPage County where the parties are located.
4. On or about January 26, 2006, and pursuant to the Act, Plaintiff submitted to District 200 a request for certain public records, including a copy of the employment contract for the district superintendent of schools, including all amendments, schedules and addenda thereto. True and accurate copies of Plaintiff's request (and renewed request) are attached hereto as Exhibit A.
5. District 200 denied Plaintiff's request on February 6, 2006 and April 25, 2006, respectively, stating that the employment contract was exempt from disclosure because it is contained in the individual's employee file, and because the Act does not specifically identify an employee contract to be a public record. A true and accurate copy of District 200's denials are attached hereto as Group Exhibit B.
6. Thereafter, on July 20, 2006, Plaintiff submitted his appeal, which District 200 denied on or about July 25, 2006, thereby exhausting Plaintiff's remedies as provided

by the Act, and giving him standing to bring this lawsuit to enjoin District 200 from violating the Act, 5 ILCS 140/11. A true and accurate copy of Plaintiff's appeal and District 200's denial are attached hereto as Exhibits C & D respectively.

***The Attorney General has Twice Advised District 200 that the Contract is Public Information and that it Should be Produced to Plaintiff.***

7. Prior to bringing his lawsuit here, Plaintiff sought the help of the Office of Attorney General for the State of Illinois (hereafter "Attorney General"). At Plaintiff's request, the Attorney General reviewed District 200's denials (*see* Exhibits E and F) and specifically addressed District 200's claims that the superintendent's contract is exempt from FOIA disclosure.

8. On March 23, 2006, the Attorney General wrote District 200 and advised that "the [District's] response was improper both in content and form" and that "the information [Plaintiff] is seeking is public record." A true and accurate copy of the Attorney General's letter, dated March 23, 2006, is attached hereto as Exhibit E.

9. Again on August 17, 2006 the Attorney General's office wrote District 200 advising that its denial of Plaintiff's appeal was improper. The Attorney General stated that such employment contracts were subject to disclosure pursuant to 5 ILCS 140/2(c)(vii) which includes "all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies." The Attorney General further cited Art. VII § 1 of the Illinois Constitution, which provides that "reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law." A true and accurate copy of the Attorney General's letter, dated August 17, 2006, is attached hereto as Exhibit F.

10. In its August 17, 2006 letter, the Attorney General concluded that superintendent employment contracts were “public records which the school district is obligated to furnish upon request.” Exhibit F.

11. Despite this clear and unambiguous direction and interpretation from the Attorney General - the constitutional officer charged with interpreting the Act - District 200 has refused and continues to refuse to provide Plaintiff with the requested documents.

***District 200 Disclosed the Contract to Others in Response to FOIA Requests.***

12. Based on information and belief, subsequent to the denial of Plaintiff's request, District 200 has disclosed the very same superintendent's contract requested by Plaintiff to other parties pursuant to their FOIA requests, including members of the news media.

13. Thus, by District 200's own interpretation, the superintendent's contract is not subject to any exemption found in the Act. Alternatively, District 200 has waived any previously-existing right to assert an exemption.

14. At all times relevant herein, including in submitting his request and appeal, Plaintiff has fully complied with the provisions of the Act and is entitled to the requested materials. Plaintiff has no adequate remedy at law.


15. Based on the willfulness of District 200's conduct, as described above, Plaintiff is entitled to his attorneys fees and costs in bringing this suit, necessary to enforce his rights pursuant to 5 ILCS 140/11.

WHEREFORE, Plaintiff Mark O. Stern respectfully requests that this Honorable Court enter judgment in his favor, as follows:

- a) Find that District 200 is in violation of the Act, 5 ILCS 140/1 *et seq.*
- b) Enjoin District 200 from improperly withholding the superintendent's employment contract.
- c) Order District 200 to immediately produce to Plaintiff the superintendent's employment contract, including all amendments, schedules and addenda.
- d) Order District 200 to pay Plaintiff's reasonable attorneys' fees and costs in bringing this suit.
- e) Provide such other relief as this Court deems just and fair.

November 21, 2006

Respectfully Submitted,  
Mark O. Stern

By:   
One of his attorneys

Shawn M. Collins  
Robert L. Dawidiuk  
THE COLLINS LAW FIRM, P.C.  
1770 N. Park Street, Suite 200  
Naperville, Illinois 60563  
(630) 527-1595  
Attorney No. 24048

VERIFICATION

Under Penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the above and foregoing pleading are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies that he verily believes the same to be true.



\_\_\_\_\_  
Mark O. Stern

Shawn M. Collins  
Robert L. Dawidiuk  
THE COLLINS LAW FIRM, P.C.  
1770 N. Park Street, Suite 200  
Naperville, Illinois 60563  
(630) 527-1595  
Attorney No. 24048

MARK O. STERN  
1115 SOUTH GABLES BOULEVARD  
WHEATON, ILLINOIS 60187  
(630) 690-1133  
[adminf@markostern.com](mailto:adminf@markostern.com)

January 26, 2006

Freedom of Information Act Officer  
Community Unit School District 200  
130 West Park Avenue  
Wheaton, Illinois 60187

**FREEDOM OF INFORMATION ACT REQUEST**

To Whom It May Concern:

The following is a request made pursuant to the Illinois Freedom of Information Act, 5 ILCS 144/1 *et seq.* I hereby request any and all written or recorded materials within the District's possession or control that relate to the following:

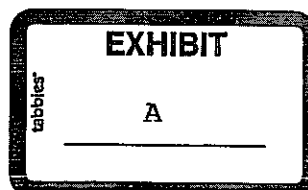
1. Copy of current employment contracts with District superintendent of schools and assistant superintendents, if any. (The District is starting the search for a new superintendent.)
2. Documentation, if any, showing total amounts expended by the District since 1999 on "normal maintenance" and "over and above normal maintenance" at each of the four District middle schools. If a summary report exists, itemization of the projects completed – I am not requesting detailed information at the level of bid specifications, payment vouchers, *et cetera* for individual projects, but I would like to receive a copy of any documents that list completed work at a summary level (*e.g.*, "replace fire alarms at Hubble, \$50,000). (District staff have recently stated that since 1999, approximately \$4 million has been spent at Hubble Middle School over and above normal maintenance.)

Please forward the above materials to me at the above address. If there are any photocopying costs, please let me know and I will submit payment. If this request is in any way unclear, please feel free to contact me by email or phone to discuss. Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,

COPY

Mark O. Stern



MARK O. STERN  
1115 SOUTH GABLES BOULEVARD  
WHEATON, ILLINOIS 60187  
(630) 690-1133  
[admin@markostern.com](mailto:admin@markostern.com)

April 12, 2006

Ms. Denie Young  
Freedom of Information Act Officer  
Community Unit School District 200  
130 West Park Avenue  
Wheaton, Illinois 60187

**FREEDOM OF INFORMATION ACT REQUEST**

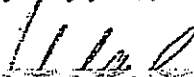
Dear Denie:

In response to my earlier request dated January 26, 2006, you provided documentation relating to maintenance items at Hubble, for which I thank you, but you indicated that the District would not provide copies of employment contracts with the Superintendent and assistant superintendents. Pursuant to the enclosed letter from the office of Illinois Attorney General Lisa Madigan, I am requesting that you reconsider, and am renewing my request, pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, for any and all written or recorded materials within the District's possession or control that relate to the following:

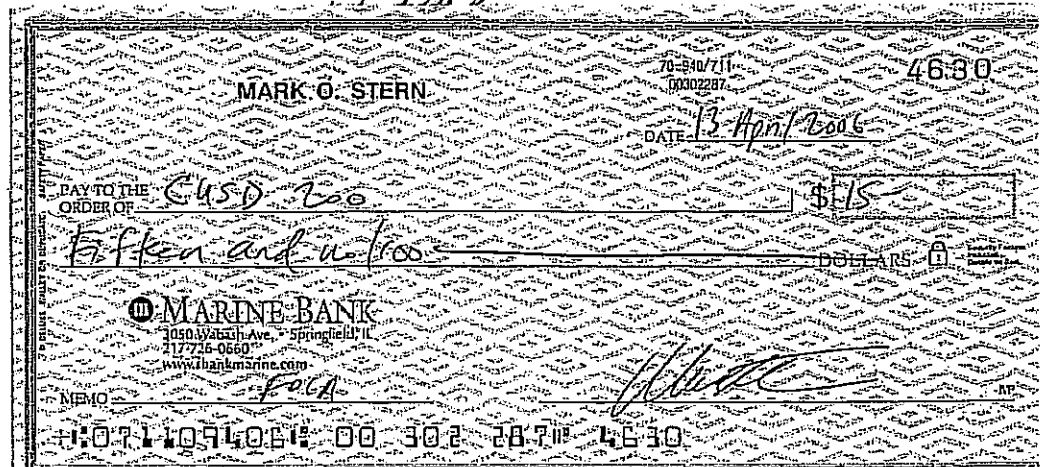
Copy of current employment contracts with District superintendent of schools and assistant superintendents, if any, including any and all amendments, schedules, and addenda.

Please forward the above materials to me at the above address. I am enclosing a check for \$15 in payment for photocopying costs. If costs exceed this amount, please let me know and I will submit an additional payment; if costs are less you may consider the excess as a donation to District 200. If this request is in any way unclear, please feel free to contact me by email or phone to discuss. Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,



Enclosures



MARK O. STERN  
70-340/711  
00302287  
4630  
DATE 13 April 2006  
PAY TO THE ORDER OF CUSD 200  
Fifteen and no/100  
\$15  
DOLLARS  
MARINE BANK  
1050 Wabash Ave., Springfield, IL  
217-726-0660  
www.bankmarine.com  
MEMO FICA  
10711094061 00 302 287 4630

Stern, Mark O.

---

From: Denie Young [DYOUNG@cusd200.org]  
Sent: Monday, February 06, 2006 4:08 PM  
To: admin@markostern.com  
Subject: FOI Request

We have received your FOI request and respond as follows:

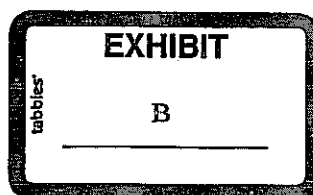
1. Copy of current employment contracts with District superintendent of schools and assistant superintendents, if any.  
This request is denied as the contracts are contained in each individual's personnel file, which we are advised is exempt from disclosure under the FOI.

2. Documentation, if any, showing total amounts expended by the District since 1999 on 'normal maintenance' and 'over and above normal maintenance' at each of the four District middle schools.

The information is not available in the form you have requested for all four middle schools. Information on maintenance, improvements, and capital expenditures is available for Hubble Middle School and is contained in a binder and a large box. As the fee for copying materials is set by policy at 20 cents a page and there are several hundred pages, we extend to you the invitation to come into the School Service Center and review the documents. At that time you may select any of the pages you wish to have copied at the above mentioned rate of 20 cents a page.

Please contact me and we will set a time for you to review the materials.

Denie Young  
Records Keeper  
630/682-2015



FRANCZEK SULLIVAN P.C.  
ATTORNEYS AT LAW

JOHN A. RELIAS  
312-786-6160  
jar@franczek.com

300 SOUTH WACKER DRIVE  
SUITE 3400  
CHICAGO, ILLINOIS 60606  
PHONE 312-986-0300  
FAX 312-986-9192  
<http://www.franczek.com>

April 25, 2006

Mark O. Stern  
1115 South Gables Boulevard  
Wheaton, IL 60187

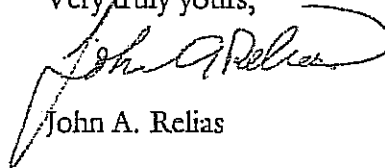
Re: FOIA Request

Dear Mr. Stern:

The undersigned represents Wheaton-Warrenville Community Unit School District 200. Your letter dated April 12, 2006, but received by the School District on April 17, 2006 has been referred to me for a response.

Your request for the current employment contracts of the Superintendent of Schools and Assistant Superintendents is denied because such records are personnel items not subject to the Freedom of Information Act, 5 ILCS 104/1 et seq. Specifically, Section 2(c)(viii) defines a public record as "the names, salaries, titles, and dates of employment of all employees and officers of public bodies." Significantly, that subsection does not include the actual employee contract.

Very truly yours,



John A. Relias

JAR/rs

cc: Dr. Gary Catalani

MARK O. STERN  
1115 SOUTH GABLES BOULEVARD  
WHEATON, ILLINOIS 60187  
(630) 690-1133  
[admin@markostern.com](mailto:admin@markostern.com)

July 20, 2006

Mr. Andrew O. Johnson  
School Board President  
Community Unit School District 200  
130 West Park Avenue  
Wheaton, Illinois 60187

**FREEDOM OF INFORMATION ACT APPEAL**

Dear President Johnson:

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140, I am writing to lodge a formal appeal of the District's denials of my Freedom of Information Act requests dated January 26, 2006 and April 12, 2006 for "Copy of current employment contracts with District superintendent of schools and assistant superintendents, if any, including any and all amendments, schedules, and addenda."

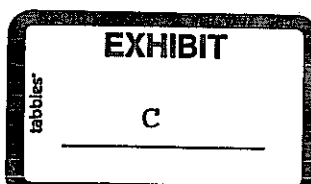
I made my initial request by letter dated January 26, 2006. On February 6, Ms. Denie Young responded to my January 26 request with a denial, apparently asserting that the requested documents are exempt as "personnel records."

Thereafter, I contacted the office of the Illinois Attorney General, who responded with a letter dated March 23 directed to District Superintendent Dr. Gary Catalani, outlining the deficiencies in the District's response and advising that employment contracts are public records subject to disclosure under FOIA.

I renewed my request by letter dated April 12, and included a copy of the Attorney General's letter. I then received a letter dated April 25 from your attorneys, Franczek Sullivan, again denying the request and citing an alleged exemption under 5 ILCS [140](2)(c)(viii).

Neither the February 6 response nor the April 25 response complied with the requirement of 5 ILCS 140/9 that I be informed of the right to appeal, or indicated the person to whom an appeal should be directed, so I am directing the appeal to you as head of the public body.

As stated in the Attorney General's letter, employment contracts are public records subject to disclosure. I have not requested, and do not want, exempt personnel files or personal information about any District employee. Furthermore, the explanation cited in the April 25 letter is clearly incorrect; the definition of public records in 5 ILCS 140/2 states that "'Public records' includes, but is expressly not limited to" "the names, salaries, titles, and dates of employment of all employees and officers of public bodies."



Mr. Andrew O. Johnson  
July 20, 2006  
Page 2

I hereby appeal and request that you immediately reconsider the prior denials and grant the request. Please advise me of any photocopying costs and I will submit payment. If this request is in any way unclear, please feel free to contact me to discuss. Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,



Mark O. Stern

Enclosures

cc: Terry Mutchler, Esq.

FRANCZEK SULLIVAN P.C.  
ATTORNEYS AT LAW

300 SOUTH WACKER DRIVE  
SUITE 3400  
CHICAGO, ILLINOIS 60606  
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JOHN A. RELIAS  
312-786-6160  
[jar@franczek.com](mailto:jar@franczek.com)

July 25, 2006

Mark O. Stern  
1115 South Gables Boulevard  
Wheaton, IL 60187

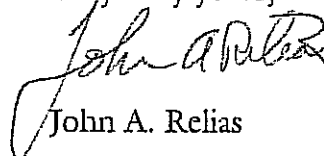
Re: Appeal of FOIA Request

Dear Mr. Stern:

Andrew Johnson, President of the Board of Education of Wheaton-Warrenville Community Unit School District 200 has requested that I respond to your appeal to him of the denial of your FOIA request for current employment contracts of the Superintendent of Schools and Assistant Superintendents.

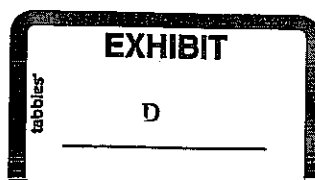
Mr. Johnson adheres to the rationale for denial of your request as stated in my April 25, 2006 letter to you. Therefore, your appeal is denied.

Very truly yours,

  
John A. Relias

JAR/rs

cc: Andrew Johnson





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

March 23, 2006

Dr. Gary T. Catalani  
Community School District 200  
130 West Park Avenue  
Wheaton, IL 60187

Dear Dr. Catalani:

I am writing regarding a complaint that our office has received related Community School District #200 and the Illinois Freedom of Information Act, 5 ILCS 140.

Mr. Mark O. Stern filed a request for information pursuant to the Act on January 26, 2006 seeking a copy of current employment contracts for the Superintendent and Assistance Superintendents. He also sought documents reflecting the amount expended by the District since 1999 for maintenance at each of the four District Middle schools.

On February 6, 2006, the District responded to Mr. Stern's request for information. The District's response was improper both in content and in form. The District should correct its response to ensure full compliance with the Act as outlined below.

The District denied Mr. Stern's first request, stating that contracts are contained in each individual's personnel file and is exempt from disclosure. Please be advised that employment contracts are public information both under the Freedom of Information Act, 5 ILCS 140, and the Illinois Constitution.

The Act specifically identifies as public record, "all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies." 5 ILCS 140/2(c). Access to certain kinds of public records also is



guaranteed by article VIII, section 1(c) of the Illinois Constitution of 1970, which provides that "reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law."

The citizen's second request asked for documents that, among other things, reflect the amount of money the District spent on "above normal maintenance." He specifically indicated that District staff has stated that since 1999 about \$4 million have been spent on "above normal maintenance." It is apparent that his request is seeking budgetary information outlining the amount of money the District spent on "above normal maintenance."

The District responded to Mr. Stern that the information is contained in a large box and that Mr. Stern was welcome to come and examine it and pick out any documents that he wished to have copies.

Please be advised of the proper procedure a public body must undertake in complying with the Freedom of Information Act.

A public body must respond promptly to a request for information and absent extraordinary circumstances within seven-working days. The response must be in writing. In limited circumstances, a public body may invoke an additional seven working days. 5 ILCS 140.

If a public body denies any part of the information requested, the public body must cite the section of the Act that permits that public body to withhold the information. The public body must inform the requestor that he or she has a right to file an appeal and must provide the name, title and address of the head of the public body to whom the appeal can be made. A citizen may request to either inspect or be provided with a photocopy of the documents. 5 ILCS 140.

In the above-referenced case, the District failed to cite the section of the Act that the District believed authorized withholding of information and failed to inform the citizen of his right to appeal the denial of information. Moreover, the information he is seeking is public record. Further, the District cannot merely tell a requestor to come and view documents and if he wants any, they will be photocopied. It is the District's responsibility under the Act to examine the records to determine what, if any, records are responsive to the request and make those available in accordance with the Act.

Please immediately respond to Mr. Stern's request in accordance with the Act and as outlined above. If you have questions, please contact me at 217.524.1503.

Respectfully,

A handwritten signature in black ink, appearing to read "Terry Mutchler", written over the printed name.

Terry Mutchler  
Public Access Counselor  
Assistant Attorney General

cc: Mark O. Stern



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 17, 2006

Mr. John A. Relias  
Franczek Sullivan P.C.  
300 South Wacker Drive, Suite 3400  
Chicago, Illinois 60606

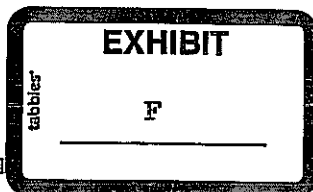
Dear Mr. Relias:

On February 14, 2006, Public Access Counselor Terry Mutchler received a written request for assistance from Mr. Mark O. Stern, regarding a request for documents he had submitted to the Freedom of Information Officer for Wheaton-Warrenville Community Unit School District 200. By letter dated January 26, 2006, Mr. Stern had requested, *inter alia*, copies of current employment contracts for the superintendent of the district and the assistant superintendents, if any. Mr. Stern received an e-mail response from Ms. Denie Young, who is identified only as a "records keeper," indicating that Mr. Stern's request for the contracts was denied on the basis that the contracts were contained in each employee's personnel file, and were therefore exempt from disclosure.

Mr. Stern contacted Ms. Mutchler when the District denied the release of the records he sought. On March 23, 2006, Ms. Mutchler sent a letter to Dr. Gary T. Catalini, in which she pointed out that the contracts in question did not appear to be exempt from disclosure and, further, that the form of the District's denial of the request failed to meet the requirements of the Freedom of Information Act (the Act). In your capacity as counsel for the school district, you subsequently contacted Ms. Mutchler on March 28, 2006, to express your opinion that the information contained in these contracts would be exempt from disclosure because they were contained in personnel files and their release would constitute an unwarranted invasion of personal privacy.

By letter dated July 20, 2006, Mr. Stern appealed the denial of his requests for records. On July 27, 2006, Mr. Stern forwarded a copy of your letter of July 25, 2006, denying his appeal, again referencing the personnel records exception to the Act.

In your earlier letter of April 25, 2006, to Mr. Stern, you had noted that the statutory definition of public record (5 ILCS 140/2(c)(viii) (West 2004)) included "the names, salaries, titles, and dates of employment of all employees and officers of public bodies," but further stated



John A. Relias  
August 17, 2006  
Page 2

that "[s]ignificantly, that subsection does not include the actual employee contract." However, the definition of "public record" specifically includes "all information in any account, voucher, or *contract dealing with the receipt or expenditure of public or other funds of public bodies.*" (Emphasis added.) 5 ILCS 140/2(c)(vii) (West 2004). That subsection clearly includes employment contracts with public officials; therefore, no reference to employment contracts in the succeeding subsection was necessary, and indeed would be superfluous. *See also* Ill. Const. 1970, art. VIII, §1 (records of the obligation and use of public funds of school districts are public records available for inspection by the public according to law.) Your letter of July 25, 2006, denying Mr. Stern's appeal indicates that the denial was based on the rationale of your earlier correspondence.

The records being sought by Mr. Stern are "public records" which the school district is obligated to furnish upon request. They are not exempt from disclosure under subsection 7(1)(b)(ii) of the Act. If the contracts contain personal information that might be recognized as being restricted in nature, such as a bank account number or a Social Security number, that data may appropriately be redacted before the contracts are released. *See* 5 ILCS 140/8 (West 2004). The Office of the Attorney General accordingly asks that you reconsider Mr. Stern's requests and produce the records that he has requested in accordance with the requirements of the Act.

Very truly yours,



MICHAEL J. LUKE  
Senior Assistant Attorney General  
Chief, Public Access & Opinions Division

MJL:an

cc: Mark Stern