Understanding the Implementation of the Illinois Personnel Records Review Act

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Cautionary Note

This publication is intended as general information, not legal advice. School board policies and administrative procedures should be reviewed by an attorney prior to adoption.

March 1989 Terrence M. Barnicle
Revised August 2003
Revised May 2011
Revised July 2021

PREFACE

School board policies and administrative procedures governing employee records are subject to certain requirements under the Personnel Records Review Act[1] ("PRRA") as amended. An understanding of the fundamental requirements of the PRRA, and related legislation affecting personnel records, such as the Illinois Freedom of Information Act ("FOIA"), will allow school districts to act consistently with Illinois law in this area.

Prior to the original enactment of the PRRA and the FOIA in 1984, there were few, if any, statutory restrictions or directions on what was to be filed in the employee's records or who was or was not given access to those records. Hence, employee access to records was largely a matter of employer discretion, or became an issue at the bargaining table. Decisions as to what to file in the personnel record and what to divulge to third parties were governed by common sense and/or the fear of being sued for libel or invasion of privacy. Some of these matters are now addressed in more specific fashion by the PRRA and FOIA, and limited protections do exist regarding the release of information from one employer to another.

Personnel records are generally subject to public review in Illinois. Under the FOIA, there is a statutory presumption that all records in the custody or possession of any public body are to be open to public inspection and copying.[2] A public body is required by law to bear the burden of proving that any public record is exempt from disclosure.[3] Therefore, the Freedom of Information Act requires disclosure, upon request, of the personnel record information of a public employee, with exceptions for private information (as defined in the Act) and evaluation information. FOIA also specifies that the mandate to disclose public records is subject to the protections or exemptions under other Illinois statutes. FOIA provides that there is an exemption from inspection and copying for "information prohibited from being disclosed by the Personnel Records Review Act."[4]

The PRRA creates certain notice requirements on employers prior to the release of certain personnel records, but places only modest restrictions on the information that may be released to third parties (see page 7). Moreover, the PRRA presents some constitutional uncertainty. The Act was amended in 1988 to correct constitutional deficiencies identified by the Illinois Supreme Court.[5]

Previously, the Supreme Court ruled that one section of the PRRA was unconstitutionally vague; however, it was revised as constitutional. We review herein the provisions of the Personnel Records Review Act.[6]

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1 820 ILCS 40/0.01 et seq.

2 5 ILCS 140/1.2

3 Id.

4 5 ILCS 140/7.5

5 *Spinelli v. Immanual Lutheran Evangelical Corporation*, 118 Ill.2d 389 (1987)

6 The amended act was challenged and found constitutional by the First District Illinois Appellate Court in *Landwer v. Scitex America Corp.*, 238 Ill.App.3d 403 (1st Dist. 1992) but the matter has not been further considered by the Supreme Court. There is a Letter from the Office of the Attorney General directly on point wherein the Director of the Illinois Department of Labor inquires whether the amendment of Section 10 of the Act, without reenactment of the entire Act, was effective to make the Act enforceable in light of the Supreme Court's declaration that "the Act" was unconstitutional in Spinelli. That Letter indicates that reenactment of the Act in its entirety was not required in order to cure the constitutional defects. See 92 Op. Att'y Gen. 005 (1992).

Overview of the Act

Stated briefly, the Personnel Records Review Act does the following:

- Describes certain kinds of information that may not be maintained in an employee's personnel records, or timeframes for the maintenance of certain records;
- Provides that information that is not in the employee's record may not be used against the employee in a judicial or administrative hearing (such as for dismissal);
- Requires the employer to allow an employee to inspect and copy the contents of his or her personnel records within seven working days of a written request;
- Establishes a procedure enabling the employee to correct, remove or explain information contained in the record;
- Exempts certain types of documents from employee inspection;
- Prohibits divulging certain types of information from the employee's record to third parties, particularly evaluation information, and provides procedures for divulging certain other types.

What to File What not to File

There is no comprehensive definition or explanation of what must be part of an employee's "personnel" file. The PRRA does not define what must be kept in an employee's personnel file. The PRRA specifically states that the right of an employee to inspect his or her personnel records does not apply to any employer that does not maintain personnel records.[7] The PRRA essentially deals with the proper treatment of such personnel records as are kept and maintained by an employer. The scope of those records is defined by what information an employee must be permitted to access, if it exists: "[e]very employer shall, upon an employee's request ... permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action (except for certain records exempted under the Act)."[8] However, the PRRA goes on to provide that if certain information is not maintained in an employee's file, it "shall not be used by an employer in a judicial or quasi-judicial proceeding."[9] The PRRA also specifies that some information cannot be placed in a "personnel" file, details how the information can be used and that certain information cannot be released to the public.

As indicated above, the requirements of FOIA create certain obligations regarding recorded information, prepared or used by a public body regarding its personnel. Although there is no requirement that personnel records be created under PRRA or FOIA, under FOIA all records relating to personnel that are kept or possessed by a public body are subject to public disclosure, unless exempt by some specific provision of the law. Covered personnel records would be any recorded information or documents "pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body."[10]

[7] 820 ILCS 40/10
[8] 820 ILCS 40/2
[9] 820 ILCS 40/4
[10] 5 ILCS 140/2

Under the PRRA, certain records cannot be maintained about an employee. The employer may not keep records of an employee's activities or associations that are not related to the job.[11] This would include political activities and communications, religious and civic affiliations, and the like. This prohibition does not apply, however, where (a) the employee consents to the inclusion of such information in the personnel record or (b) such activities occur on the job and constitute criminal conduct or harm the employer.[12]

Thus, for example, the employer should not keep a record of an employee's involvement in political campaigns. However, if the employee elects to distribute political literature on the job, a record of that fact might reasonably be put into the file. In fact, it would have to be put in the file before it could be used in a disciplinary proceeding. This prohibition against filing information about an employee's outside activities is the only restriction on file content imposed by the Act.

On the other hand, the employer must file in the record any documents or information that may be used against the employee in a dismissal hearing or other disciplinary action. If the information is not in the file where it is accessible to the employee, the information may be inadmissible as evidence.[13] (Such "unfiled" information may be admitted as evidence, however, where the judge or hearing officer determines that the exclusion was not intentional and the employee agrees to its use or is given a reasonable time to review the information).[14] This rule does not serve to limit the employee, i.e. the employee may use as evidence any personnel information which should have been included in the file but was not.[15] There are reasons therefore to be thorough in the development and maintenance of employee conduct and performance record-keeping. The completeness of an employee's personnel file can become significant should an employee challenge a dismissal or other disciplinary action.

Section 2 of the PRRA prohibits an employer from using information that was not included in an employee's personnel file in a judicial proceeding. However, information that was not intentionally excluded may be used if the employee is given a reasonable time for review. In 2020, the court reviewed a claim from an employee, Pence, that her employer had incorrectly used notes from outside of her personnel file in discharging her. Pence received coaching and constructive criticism from her supervisor for aggressive and intimidating behavior toward several members on her leadership team. Shortly after she began receiving the coaching sessions, she was discharged. The court determined that Section 2 of the PRRA was not violated because the notes from the coaching sessions were not used in determining that she should be discharged. Her discharge was a result of all of the formal discipline she received and the coaching was not considered formal discipline. Her employer attempted to use the coaching to correct her pattern of disrespectful and aggressive behavior. Thus, her employer did not violate Section 2 of the PRRA. [16] An employer should take significant steps to include any notes or information regarding disciplinary action inside of a personnel file. This information may be salient if the employer decides to discharge or discipline an employee. Following this protocol will provide the employer with more protection in the event that an employee claims that their rights were violated under the Personnel Records Review Act.[17]

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[11] 820 ILCS 40/9

[12] Id.

[13] 820 ILCS 40/4

[14] Id.

[15] Id.

[16] *Pence v. Illinois Human Rights Comm'n*, 157 N.E.3d 1027, 1034, (3rd. Dist. 2020) appeal denied, 154 N.E.3d 795 (Ill. 2020)

[17] *Id*.

Who can Access Personnel Record Information? Public Access and Employee Access

Access by the Public

Keep in mind that filing a document in a personnel file does not shield it from disclosure. With the exceptions noted below, personnel records are generally subject to disclosure.

Prior to the changes to FOIA pursuant to P.A. 96-542, effective January 1, 2010, numerous attempts were made to try to shield a "personnel file" and the contents thereof from disclosure under FOIA. Those arguments were based on the provisions in FOIA creating an exception from disclosure for personnel files as follows:

> "Information exempted under this subsection (b) shall include but is not limited to:
>
> (ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions[.]"
>
> 5 ILCS 140/7(1)(b) (West 2006).[18]

The amendments to FOIA under P.A. 96-542 have now eliminated the above language and FOIA no longer contains any exception for "personnel files". Even under the former language of FOIA providing an exemption for personnel files however, it is worth noting that in 2009, just prior to the FOIA amendments, the Illinois Supreme Court issued a decision regarding a request for a copy of a school superintendent's contract under FOIA, and found that an employment contract is not the kind of record the General Assembly intended to keep from public view and concluded it did not fall within the exemption for personnel files in section 7(1)(b) of the Act. The Court indicated the exemption in section 7(1)(b) was to be construed narrowly and agreed with the reasoning of the *Reppert* appellate court finding that employment contracts constitute information that reveals the duties of public employees and officials. As a result, the disclosure of this information would not be considered a violation of their privacy. *Stern v. Wheaton Warrenville Community Unit School District 200*, citing *Reppert*, 375 Ill.App.3d at 507.

The Illinois Supreme Court in *Stern* emphasized in its decision that FOIA is intended to "open governmental records to the light of public scrutiny" [*citation omitted*] and that "public records are presumed to be open and accessible."

The current language of FOIA reflects the finding of the Supreme Court in *Stern*. The Act continues to read that personal information which would constitute a clearly unwarranted invasion of personal privacy is exempt from disclosure, while eliminating the exemption for personnel files altogether. Such an unwarranted invasion means disclosure that is highly personal or objectionable to a reasonable person, and where the individual's privacy interest outweighs any legitimate public interest. FOIA goes on to specifically state that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

[18] See *Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, 359 Ill. App. 3d 321 (2005)(Personnel file information is per se exempt under FOIA; court held that a school district superintendent's performance evaluations and a letter stating the reasons for his dismissal were per se exempt from disclosure under the FOIA). However another appellate court would rule shortly thereafter that employment contracts were considered to be public records and thus not exempt from FOIA based on section 8 of the statute. *Reppert v. Southern Illinois University*, 375 Ill. App. 3d 502 (2007)(where the plaintiffs were seeking disclosure of employment contracts of university employees, the Court stated that "[t]o hold that all information contained in a personnel file is exempt from public disclosure simply because it is in a personnel file would permit a subversion of the broad purposes of the FOIA.)

The following school personnel record information is treated as follows:

- Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.[19] However, all settlement agreements, even if resolving a personnel or employment matter, are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of FOIA may be redacted.[20]
- Disclosure of public school teacher, principal, and superintendent performance evaluations is prohibited.[21]
- Disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.[22]
- Disclosure of private information is prohibited unless disclosure is required by another provision of FOIA, a state or federal law or a court order. "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.[23]

Employee access to records

The primary purpose of the PRRA was to establish the right of employees to review their personnel records. Specifically, an employee is entitled to examine and receive copies of any documents or information that the employer may use "in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action . . ."[24] As indicated earlier, only information that is accessible to the employee may be used in defending personnel decisions if they are challenged through legal channels.

The PRRA defines "employee" to include any person who is:

- currently employed, or
- on layoff and subject to recall, or
- on leave of absence with a right to return to work, or
- a former employee terminated within the past year.[25]

Unless more frequent inspections are authorized in a collective bargaining agreement, the employer must grant at least two inspection requests by an employee in a calendar year when requests are made at reasonable intervals.[26] When an employee asks to inspect his or her personnel file, the employer has seven (7) working days in which to comply.[27] An additional seven days for compliance can be obtained if the employer can show that the deadline cannot be met with reasonable effort.[28]

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[19] 5 ILCS 140/7
[20] 5 ILCS 140/2.2
[21] 105 ILCS 5/24A—7.1
[22] 820 ILCS 40/11
[23] 5 ILCS 140/2
[24] 820 ILCS 40/2
[25] 820 ILCS 40/1
[26] 820 ILCS 40/2
[27] Id; but note the inconsistent provisions of FOIA; if employee were to make request for information subject to release under FOIA, public body has 5 business days to comply with request for public records under FOIA. 5 ILCS 140/3
[28] 820 ILCS 40/2

The employer may require that requests for inspection be in writing on a form provided by the employer.[29] (*See* Appendix A.)

The personnel records must be made available during normal business hours at a place near the employee's place of employment.[30] The employer may allow the employee to review his records at another time and place if it would be more convenient to the employee. The PRRA, however, does not require a school to jeopardize the integrity of its records by allowing the removal of records from the premises. If the employee is unable to inspect records in person, the employer must mail a copy of the requested record upon written request.[31]

After a review is permitted, an employee may request a copy of personnel documents, and the employer may charge the actual cost incurred in duplicating the information.[32]

The Act requires that inspection and copying rights be extended to the employee. The employer is not required to grant these rights to anyone else. However, the employee may designate in writing a representative to inspect the employee's personnel file when a grievance is pending.[33]

As noted earlier, the PRRA does not prevent the employer from sharing the contents of the personnel file (with certain exceptions to be noted later) with third parties, except for private information (as defined in FOIA) and evaluation information. Many school officials, however, restrict access to personnel files to persons with appropriate purposes in order to avoid potential litigation and to protect the privacy of their employees.

Documents Exempt from Employee Inspection

Certain types of documents are exempt from inspection. Among the types of documents which employees do not have the right to inspect are the following.[34]

1. Letters of reference, such as those received from the employee's former teachers and employers;
2. Test documents, except for the cumulative test scores. Presumably this applies to tests used as a basis for hiring and promotion and exempts the graded questions and answers;
3. Materials used by an employer for staff planning, including matters relating to the development of the employer's business, expansion or closing, or relating to the operational goals of the employer. The materials must relate to or affect more than one employee. This exception does not apply when the materials have been or are intended to be used by the employer to determine whether an individual employee is qualified for employment, promotion, transfer, or additional compensation, or in determining whether to discharge or discipline an employee;
4. Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
5. Records relevant to a pending claim between the employer and employee which are subject to discovery in a lawsuit;
6. Security records incident to an investigation of criminal conduct or other harmful activities by an employee. These security records are exempt until the employer files legal charges or takes disciplinary action against the employee based on such records.

[29] Id.
[30] 820 ILCS 40/2
[31] Id.
[32] 820 ILCS 40/3
[33] 820 ILCS 40/5
[34] 820 ILCS 40/10

Personnel Records Corrections

Under the PRRA, an employee may seek to correct or remove personnel information with which the employee disagrees.[35] If mutual agreement between the employer and the employee cannot be reached, the employee may submit a written statement explaining his or her position.[36] This position statement must be attached to the disputed record and shall be included whenever the disputed record is released to a third party.[37]

The employer or the employee may take legal action to have false information expunged from the personnel record.[38]

Divulging Information to Third Parties

Under the PRRA, an employer may not divulge to third parties any information, disciplinary reports, letters of reprimand, or evidence of other disciplinary action that are more than four years old unless the school district is ordered to do so by a judge in a legal action or arbitration.[39] However, this section does not apply to a school district or an authorized employee or agent of a school who is sharing information related to an incident or an attempted incident of sexual abuse.[40] Further, such disciplinary reports that are less than four years old may be divulged only when written notice is sent by first-class mail to the employee on or before the day when the information is disclosed, or through electronic mail if available.[41] (*See* Appendix D.) There are a few exceptions to this written notice requirement. Records of disciplinary actions that are less than four years old may be divulged to third parties without written notice if:[42]

- the employee has signed an employment application with another employer waiving written notice; or
- the disclosure is ordered to a party in a legal action or arbitration; or
- disclosure is requested by a government agency involved in a claim or a complaint by an employee or a criminal investigation.

School districts would be wise to incorporate waivers of notice in their employment applications, making it as easy as possible for previous employers to share relevant information about job applicants. (*See* Appendix E.)

These are the only statutory restrictions imposed on the divulging of employee personnel records. In large part, decisions to divulge such information can be based on local school board policy and practice. Such policy would be best to narrowly tailor third party access to personnel files to be consistent with the FOIA and PRRA. Even school officials, including individual members of the school board, should have limited access to employee files as their official duties may require. Such restrictions are often based on a common sense respect for individual privacy and civil law.

Special circumstances can also arise, wherein a prospective employer makes an inquiry about a former employee of a school district. There are dual concerns which school officials may have regarding liability. Officials may be concerned about sharing too much information or opinion about the former employee with a prospective employer, which may adversely impact the person's employment prospects, or not sharing enough information about an employee, particularly one who poses a risk of some kind to staff or students. An employer should first remember that, absent employee consent, disclosure of performance evaluation

[35] 820 ILCS 40/6
[36] Id.
[37] Id.
[38] 820 ILCS 40/9
[39] 820 ILCS 40/7
[40] 820 ILCS 40/8
[41] Id.
[42] Id.; 820 ILCS 40/8

information is prohibited. Relative to information falling outside of performance evaluation, for example, discipline information, Illinois law does recognize the significance and value of employers being able to share accurate information about former employees, in response to a request by a prospective employer. In that regard, an employer or an authorized employee or agent acting on behalf of their employer is immune from liability if such employer, employee or agent:

> "...upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure.
>
> The presumption of good faith established in this Section may be rebutted by preponderance of evidence that the information disclosed was knowingly false or in violation of a civil right of the employee or former employee."[43]

While there are protections provided employers relative to disclosure of information related to a former employee, with the exception of performance evaluation information, school districts should be mindful of the need to provide notice to an employee under PRRA when a disciplinary report is released, or discussed with, a third party.

In 2016, the Attorney General issued an opinion on divulging personal information that contains employee compensation. A gentlemen name Mr. Carroll submitted a request seeking information that contained employee bonuses as a result of re-allocated funds to the Housing Authority in the city of Freeport. The Housing Authority denied the request for the information, and it asserted that the PRRA prevents disclosure of the information.

The Attorney General's opinion specifically analyzed the disclosure of employee compensation information. It provides clarity on whether information containing employee compensation may be released under the PRRA. The opinion provides that the PRRA is not a basis to deny a request for compensation information. Furthermore, the opinion concluded that only performance evaluations are exempt from disclosure under the PRRA.[44]

Disclosure of Disciplinary Information from Personnel Record Considerations

As discussed above, under the PRRA, disciplinary reports, letters of reprimand, or other disciplinary actions that are less than four years old may be divulged only when written notice is sent by first-class mail to the employee on or before the day when the information is disclosed, or through electronic mail if available.[45] This notice provision applies both to the release of an actual physical document which constitutes a disciplinary report, as well as to information contained within that report. Absent prior, proper notice therefore, under the PRRA a school district should be cautious when commenting on ongoing employee investigations which may disclose "disciplinary reports" or information.

In 2001, the Northern District of Illinois construed Section 7(1) and Section 8 of the Act after Christopher Bogosian was fired from his position as a first grade teacher at Wiesbrook Elementary School in Wheaton, Illinois, following an investigation of charges by other teachers that he had been touching and kissing female students in an inappropriate manner. After the investigation, the Board of Education of Community Unit School District 200 issued a press release describing the charges against him and saying that "the Board agreed that Mr. Bogosian's actions were inappropriate, unprofessional, and inconsistent

[43] 745 ILCS 46/10

[44] Public Access 16-012, 2016 WL 11467488, at *1 (Dec. 21, 2016)

[45] 820 ILCS 40/7

with the district's philosophy of instruction in the primary grades." Thereafter, Mr. Bogosian brought a suit alleging due process violations, defamation, civil conspiracy, tortious interference with a contractual relationship, and violations of the Illinois Personnel Records Review Act.[46]

The Court determined that the Act provides a private right of action for employees who are denied access to personnel records or whose records are divulged without written notice. It also determined that Section 7 of the Act does not apply if "the employee has specifically waived written notice as part of a written, signed employment application with another employer." *Bogosian*, 134 F.Supp.2d at 961; 820 ILCS § 40/7(3)(a). The school district attempted to assert that it did not have to provide Bogosian with written notice prior to making its remarks because Section 7(1) did not apply to verbal statements. However, the Court noted that Section 8 of the Act requires employers to "review a personnel record before releasing information to a third party."

Disclosure of disciplinary requests also applies to requests made under FOIA. Under section 1.2 of FOIA, all records in public custody are presumed to be open to copying and inspection unless they are exempt.[47] Moreover, an employer should give said notice unless there is a categorical exemption. In section 7.5 of FOIA, there is an exemption for information prohibited from being disclosed by the Personnel Records Review Act. In *Johnson*, the court examined whether the PRRA applied to FOIA requests. Maceo Johnson filed a lawsuit requesting injunctive relief after he was denied a FOIA requests for disciplinary records by the Joliet police department. Johnson argued that the PRRA had been construed to not apply to requests made under FOIA. However, the court determined that the records Maceo requested were the exact type of records exempt from disclosure in Section 8 of the PRRA. The records contained an officer's disciplinary history. The court reasoned that any records containing the disciplinary records of an employee fell under the ambit of the PRRA. Moreover, the court noted that FOIA holds that the prohibitions found in the PRRA are applicable to FOIA requests. An employer who is responding to a FOIA request should ensure that information is not prohibited from disclosure under the PRRA.

Enforcement

There are a number of remedies available in the event that violations occur under the Act. It appears that prior to initiating any litigation based on the PRRA, an employee is required to pursue an administrative remedy through the Illinois Department of Labor. In a case decided by the Northern District of Illinois in 2001,[48] the Court determined that the filing of a complaint with the Illinois Department of Labor was a prerequisite to bringing a suit for an alleged violation of the Illinois Personnel Record Review Act. In construing the plain and ordinary meaning of the Act, the Court concluded that "the Illinois legislature intended that the Director of the Department of Labor be the primary enforcer of the statute, and that an employee's private right of action arises only when the Director is unable to resolve the dispute between the parties and also elects to forego legal recourse."

An employee may ultimately pursue an action in the appropriate circuit court in order to compel compliance with the Act's requirements. Failure to comply with an order of the court may be punished as contempt. In addition, the court may award an employee the employee's actual damages plus costs which may result from a violation of the Act. For a willful violation, an employee would be awarded $200 plus costs, reasonable attorney's fees, and actual damages. In light of the *Anderson* decision above, which requires employee's to exhaust their administrative remedies and file a complaint with the director of the Illinois Department of Labor first, school district's should include this requirement in any school board policy or in any collective bargaining agreement that addresses this issue directly.

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[46] *Bogosian v. Bd. of Educ. of Community Unit Sch. Dist. 200*, 134 F.Supp.2d 952 (N.D.Ill. 2001)
[47] *Johnson v. Joliet Police Dep't*, (3rd. Dist. 2018), ¶ 7, 107 N.E.3d 964, 965
[48] *Anderson v. Bd. of Educ. of City of Chicago,* 169 F.Supp.2d 864 (N.D.Ill. 2001)

An employee who can factually demonstrate that their opportunity for employment was harmed by inaccurate information in their personnel file may be entitled to an injunction. An employee who asserts that there is no adequate remedy at law may request an injunction. The PRRA permits an employee to force the expungement of false information that was placed in a personnel record through legal action. In June 2010, Fascia Edwards requested an injunction against her employer under the PRRA. Edwards alleged that there was no adequate remedy at law and monetary relief would be inadequate.[49] Edwards alleged that the employer had knowingly placed false information in her employment record that harmed her opportunity for employment, and the employer refused to remove the information. As a result, she requested an injunction. However, the injunction was denied because she failed to demonstrate exactly how her opportunity for employment was harmed.

Steps Toward Compliance

Policy and Procedure

To ensure basic compliance with the personnel records law, school officials should first review their current policies and collective bargaining agreements. Keep in mind that employee's rights with respect to reviewing their personnel records may be expanded, but not curtailed, by the terms of a collective bargaining agreement.

- Unless otherwise provided in a collective bargaining agreement, we would recommend district policy include the following:
- Restrict access to, and disclosure of, personnel records except as provided by school board policy and the Act.
- Provide that records will not be removed from the premises where they are maintained and that inspection will be conducted under the supervision of a responsible staff member.
- Direct the superintendent to develop procedures for collecting and maintaining employee records and for responding to employee and third-party requests to inspect and/or copy personnel records.
- Provide for a fee schedule based on actual costs for duplicating records.

Administration and Implementation

In regard to the administration and implementation of the requirements of the PRRA, we would recommend school district administration:

- Understand at the outset, or periodically review employee records to address the need to remove inappropriate information related to an employee's outside activities and to be sure the record includes information that might be needed to defend personnel actions against legal challenge by the employee.
- Assign the responsibility for responding to requests for records inspection to one or more staff members, perhaps the Freedom of Information Act officers, and provide them with forms for employees to use in submitting requests in writing as well as basic training in the requirements of the PRRA.
- Provide for a written record of how each employee request for records inspection is handled and develop a file for retaining such requests in an organized fashion. The record should show, for example, whether the request was handled within seven working days as required by law or whether an additional seven days was invoked. It also should show whether any specific records were denied as being exempt from employee inspection.

[49] *Edwards v. Illinois Dept. of Fin. & Prof'l Regulation*, 2011 IL App (1st) 103214-U; 2011 WL 10071981 (1st. Dist. 2011).

Forms/Notice(s)

Some sample forms/notice(s) that may be adapted to local needs are shown in Appendices A through E.

Appendix A

Sample — Personnel Records Inspection Request Form

Employee's Name _____

Address _____

Telephone No. _____

As provided by the Personnel Records Review Act (820 ILCS 40/0.01 *et seq.*), I hereby request:

- ❑ An opportunity to review and/or copy the documents from my Personnel Records listed below; or,
- ❑ Because I am unable to review my Personnel Records at my employing unit, I request that you send me a copy of the documents from my Personnel Records listed below. I understand that I will be charged for the actual cost of duplicating these documents; or
- ❑ Because a grievance is pending, I ask that my representative, be granted an opportunity to review the documents listed below in my behalf.

The documents I wish to inspect and/or copy are as follows:

- ❑ Any personnel documents which are, have been or are intended to be used in determining my qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action except as provided in Section 10 of the Personnel Records Review Act; or
- ❑ Only these selected documents (clearly identify specific items you wish to inspect):

_____

_____

Signature of Requesting Employee _____

FOR OFFICE USE ONLY

Date Request Received_____Request No. _____

Request Received by_____

Title_____

Date response due_____Date response made _____

Time extended to (date)_____Employee notified of extension (date) _____

(attach copy)

Copies made_____How many_____Cost_____

Denied (date) _____

(attach copy)

Signature of employee responding_____

Appendix B

Sample — Memorandum Regarding Employee Request For Personnel Records

(This form is for districts that do not require a common form for all requests such as the sample in Appendix A.)

Employee name_____

Address or other employee identification _____

On the_____day of_____20____, at the hour of_____M., the employee named above:

- ❑ presented a request to inspect/copy his/her Personnel Records (attach copy of request); or
- ❑ designated in writing a representative to inspect/copy his/her Personnel Records where a grievance was pending (attach copy).

Said request was accommodated as follows (Check all items that apply):

- ❑ Requested Personnel Records were presented to_____for inspection at the hour of_____ on the_____day of 20_____.
- ❑ Requested records were copied and mailed to_____on the _____ day of _____20____.
- ❑ Copies of requested documents were provided and the employee named above was billed for the actual cost of duplication in the amount of $_____.
- ❑ Some or all of the requested records were denied for inspection as being exempt under Section 10 of the Personnel Records Review Act (820 ILCS 40/0.01 *et seq*.). (Attach copy of denial.)

Date and time of memorandum: _____

By:_____

Title:_____

Witness:_____

Appendix C

Sample — Form for Denial of Exempt Employee Records

Dear (name of employee):_____

You are hereby notified that your request to review the following items from your Personnel Records:

(here list requested documents that are exempt and not presented for inspection)

is hereby denied under the exemptions checked below as provided in Section 10 of the Personnel Records Review Act (820 ILCS 40/0.01 *et seq.*):

- ❑ Letters of reference.
- ❑ Portions of a test document.
- ❑ Materials used for staff planning.
- ❑ Information that would constitute a clearly unwarranted invasion of another person's privacy.
- ❑ Such personnel records are not maintained.
- ❑ Records relevant to another pending claim which may be discovered in a judicial proceeding.
- ❑ Investigatory or security records maintained prior to the taking of adverse personnel action.

School District No._____Date:_____

By:_____Title:_____

Appendix D

Sample – Letter of Notification/Written Notice Sent by First-Class Mail or E-mail When Information is Required to be Disclosed

[DATE]

[NAME OF EMPLOYEE/FORMER EMPLOYEE]

[ADDRESS/LAST KNOWN ADDRESS]

Re: Disclosure of Information Pursuant to Personnel Records Review Act

Dear_____:

I am writing in regards to the requirement contained in the Personnel Records Review Act, 820 ILCS 40/1 *et seq.*, to inform you that disciplinary reports that are less than four years old have been requested by _____ and are being sent to_____ in accordance with that request.

Accordingly, this letter is written notice of the disclosure of any disciplinary reports, letters of reprimand, or evidence of other disciplinary action that are less than four years old that may be in your personnel file that has been requested by _____.

If you have any questions or concerns, you may contact me at_____

Very truly yours,

Appendix E

Sample — Waiver of Notice for Job Applicants Regarding Release of Disciplinary Information by Previous Employers

I hereby waive written notice from my current employer and/or any previous employers, as provided by Section 7 of the Illinois Personnel Records Review Act (820 ILCS 40/0.01 *et seq.*), and authorize them to release information regarding any disciplinary actions taken against me within the past four years.

Signature of Applicant _____

Consider placing a waiver of notice on the school district's employment application in such a way that it can be readily copied and shared with previous employers who require a copy before they will release information regarding past disciplinary actions. The waiver can be an integral part of the job application and the applicant's signature can be made a condition for employment consideration.