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VBH BOT FYI Legal FOIA

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Illinois Press awarded civil penalties in landmark FOIA case
From The Illinois Press Association
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The Illinois Press Association was declared victorious recently in a Winnebago county court in a groundbreaking lawsuit against Rockford Public School District 205 and its superintendent over violations and abuse of the state's Freedom of Information Act.

The lawsuit, filed last November by the IPA and the Rock River Times, was the first case filed under Illinois' new FOIA which went into effect January 1, 2010. As a result of the lawsuit, the Winnebago County Circuit Court of the 17th Judicial Circuit imposed civil penalties against the school district in the amount of \$2,500 for its repeated violations of FOIA involving one document.

Illinois' current FOIA states that a court can impose a civil penalty upon a public body that "willfully and intentionally" fails to comply with the Act. This language was insisted upon by the IPA and the attorney general's office during the 2009 FOIA rewrite to ensure that public bodies would properly obey the law. While most public bodies have abided by one of the most important laws in Illinois, some have continued to ignore FOIA and what is statutorily required under the law.

"Unfortunately, some public bodies such as the Rockford School District are still blatantly ignoring and violating FOIA so the IPA saw no option other than to respond by filing suit," said Dennis DeRossett, executive director of the Illinois Press Association. "In this instance, the Rockford School District was by far one of the worst abusers of the new FOIA law the IPA had encountered," DeRossett added.

The lawsuit involved the failure of the school district to release a letter to The Rock River Times which filed multiple FOIA requests over a two-month period. Despite the letter being deemed a public document by the attorney general's public access counselor, the school district refused to release the letter on three separate occasions, citing two different FOIA exemptions. The school district even went as far as labeling the decision of the attorney general's Office as "erroneous." Soon after the lawsuit was filed last fall, the letter was released by the district.

The letter in question was written by a former principal in the district and contained unflattering details about Rockford Superintendent Dr. LaVonne Sheffield in response to a letter written by Sheffield titled "Separation of Employment." The principal has

since left the school district on his own accord and is employed by another school district. Also, Sheffield resigned as superintendent this spring amid controversy.

In his ruling, Winnebago County Circuit Judge Eugene G. Doherty, said, "The record gives a clear impression that the district understood that it was wrong on all three claimed exemptions, but was looking for a way to save face rather than simply admitting it was wrong and disclosing the document." He further states "the entire course of events here strongly suggest that the district first decided that it would not release a document which it did not want to release, and only then did it begin looking for reasons to support a decision it had already made. The invocation of a new (and equally unfounded) basis for exemption after the first reasons had been proven incorrect is an indication of the Districts intransigence. Only when the requesting party filed suit was the district finally compelled to concede that its position was indefensible."

In praising today's ruling, Attorney General Lisa Madigan said, "This case demonstrates the critical importance of enforceable transparency laws. People have a fundamental right to know how their government conducts itself on their behalf."

The Illinois Press Association and The Rock River Times were represented by Don Craven of Springfield, legal counsel for the IPA.

Craven said, "This case was a poster child for the imposition of civil penalties. The district was delaying, playing games and exemption shopping. When pushed, they invented a conversation with PAC Cara Smith — a conversation she says never took place — and released the document at 5 p.m. on Thanksgiving Eve, citing of course their longstanding policy of open and transparent government. Perhaps writing this check for civil penalties will encourage the District to have a slightly more sincere policy in support of open and transparent government."

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