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RSNLT**LAW ALERT**

GOVERNOR EXERCISES AMENDATORY VETO POWERS TO NARROW PROPOSED FOIA EXEMPTION FOR EMPLOYEE PERFORMANCE EVALUATIONS

July 28, 2010

Responding to concerns voiced by public employers and public employee organizations after last year's enactment of the amended Freedom of Information Act (FOIA), the Illinois legislature on April 29 passed House Bill 5154, which would amend the Personnel Records Review Act (PRRA) to prohibit disclosure of all performance evaluations in response to a FOIA records request.

On July 26, 2010, just days before his review period would end, Governor Quinn amendatorily vetoed HB 5154. The amendatory veto prohibits only disclosure of performance evaluations of local and State peace officers, rather than disclosure of all public employee performance evaluations. As HB 5154 has not been signed into law, public employers - including those that employ peace officers - cannot yet rely upon the PRRA as a legal basis to assert that a public employee's performance evaluation is exempt from disclosure under FOIA.[1]

The Governor's amendatory veto is troubling for public employers and employees. Disclosing employee performance evaluations to the public will jeopardize the reliability of the employee evaluation process, as supervisors may be less inclined to assess an employee's performance candidly if they know the evaluation document is subject to disclosure in response to a FOIA request. Such disclosures could expose public employees to abuses of FOIA by individuals who take a critique out of context to personally attack them, impairing the function of public employees and their public employers, by extension.

However, HB 5154 may yet be signed into law. With the Governor's amendment, HB 5154 will now be returned to the Illinois House of Representatives for consideration during the Fall Veto Session (November 16-18 and 29-30). The House can do one of three things: (1) vote to override the Governor's amendatory veto; (2) concur with the Governor's amendatory veto; or (3) take no action. If the House does not take any action, HB 5154 will not be signed into law in any form. If the House overrides or concurs with the Governor's amendatory veto, HB 5154 will then be sent to the Senate for consideration. If the Senate takes the same action as the House, HB 5154 will either be signed into law as originally passed (prohibiting disclosure of all public employee performance evaluations) or as amended by the Governor (limiting the prohibition from disclosure to only peace officer performance evaluations).

It is clear by the passage of HB 5154 that Illinois legislators believe that employee performance evaluations are confidential, personal, *private* records, which should not be subject to disclosure under FOIA. Public employers will be optimistic that the legislature will vote as it did when it passed HB 5154, and override Governor Quinn's amendatory veto.

If you have any questions regarding the status of HB 5154 or amended 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] As previously reported on January 19, 2010, Section 24A-7.1 of the Illinois School Code expressly prohibits the disclosure of

performance evaluations of three specific employee positions: public school teachers, principals and superintendents. As such, school districts must still deny any request under FOIA for a copy of the performance evaluation of a teacher, principal or superintendent.

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