

## News & Insights

### Dykema Successfully Argues to Illinois Supreme Court to Limit Reach of FOIA

May 18, 2017

On May 18, 2017, the Illinois Supreme Court unanimously held that the Illinois High School Association (IHSA) is not subject to the state's Freedom of Information Act (FOIA) laws, affirming the decisions of two lower courts. *Better Government Ass'n. v. Illinois High School Ass'n et al*, 2017 IL 121124 (May 18, 2017). Dykema member David Bressler argued to the court on behalf of the IHSA, assisted on the briefs by Melanie Chico and Rosa Tumialán.

FOIA gives public access to records of government entities, including their "subsidiary bodies," and to records of government bodies which are in the hands of private entities. In 2014, the Better Government Association (BGA) requested documents from the IHSA under FOIA concerning its sponsorships, accounting and legal contracts, vendor applications and crisis communications. IHSA responded that it was a private, not-for-profit entity which was not subject to FOIA. BGA then requested the same documents from Consolidated High School District 230, which is comprised of three IHSA member schools. District 230 responded that the records requested did not pertain to the transaction of the District's public business, were not prepared by or for the District, and were not in the control of the District and also refused the request. The BGA then filed suit in the Circuit Court of Cook County to compel the disclosure of the requested records.

The Circuit Court agreed with the IHSA and District 230, and dismissed the BGA's complaint. The Illinois Appellate Court affirmed that ruling, and the matter was appealed to the Illinois Supreme Court.

The Supreme Court noted that although 85 percent of IHSA's members are public schools, it is not a body of State or local government as defined by FOIA. The court then turned to the issue of whether it was a "subsidiary body" of a government entity. In affirming the lower courts, the court upheld the use of the four-part test used to determine whether an entity is a subsidiary body of a government entity, noting that the IHSA has a separate legal identity from its members, that it is not controlled by an agency of government, and that it does not receive public funding. The court further noted that even if the IHSA's functions of overseeing certain high school competitions and organizing tournaments were considered "governmental functions" that factor alone would not make the IHSA a subsidiary of a government body. The case represents the first time the Supreme Court has endorsed the four-part subsidiary body test.

The court also held that the records requested were not the records of District 230 in the possession of the IHSA since the IHSA was not acting on behalf of District 230 in performing its functions, and District 230 had not delegated any functions to the IHSA.

In issuing its ruling, the court also noted that IHSA does not enjoy governmental immunity, and observed that an entity such as the IHSA could be subject to federal civil rights laws while at the same time not subject to FOIA as the analyses of applicability under the respective laws differ.

"As a not-for-profit operating in the public eye, the IHSA is already very transparent and will remain so," said Bressler. "We are pleased that the court so thoroughly and clearly analyzed each issue."

#### Attorneys

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Dykema Successfully Argues to Illinois Supreme Court to Limit Reach of FOIA (Cont.)

**Practice Areas**

Litigation