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**S**raga  
**SH**ausser, LLC

**Priority Briefing**

## **ALL PUBLIC EMPLOYEE EVALUATIONS EXEMPT FROM DISCLOSURE**

The performance evaluations of all governmental employees are now exempt from disclosure under the Freedom of Information Act. This change in the law came as a result of this week's action by the Illinois General Assembly to override Governor Pat Quinn's amendatory veto of House Bill 5154.

Last year's major overhaul of the Freedom of Information Act ("FOIA") removed the exemption for documents within a governmental employee's "personnel file," which covered performance evaluations as well as other documents. Then, in January 2010, over the objections of the news media and the Illinois Attorney General, the new Performance Evaluation Reform Act included a provision which prohibited the disclosure of the performance evaluations of three categories of school district employees: teachers, principals, and superintendents. Notably, this did not address other school district staff members or other public employees.

Last spring, the General Assembly passed House Bill 5154, which amended the Personnel Record Review Act in order to bar disclosure of all public employee performance evaluations, a move highly favored by local governmental and governmental employee groups. However, Governor Quinn amendatorily vetoed this bill to limit its reach to law enforcement employees only. The General Assembly's action this week restores the bill to its original effect and the new law goes into effect immediately.

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It should be noted that this new law goes beyond restoring an FOIA exemption. Legal exemptions under FOIA merely **allow** nondisclosure of certain classes of public records. This new law, like the narrower action last January on teacher, principal and superintendent evaluations, now actually **prohibits** disclosure of evaluations, giving governmental entities no choice.

Also, as we noted in our January 20, 2010, Priority Briefing on the Performance Evaluation Reform Act, the language of this new law does not provide any apparent exemption for disclosure of evaluations to those outside parties with a legitimate governmental interest in those records, including your attorneys, administrative agencies such as the Department of Human Rights, and the courts. While other laws may justify disclosure to these parties (disclosure to these parties is not, after all, a disclosure under FOIA), we cannot be certain how this dilemma will play out over time. For now, we strongly advise that you do not release any employee performance evaluations without consulting with your legal counsel.