



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 19, 2011

Mr. Derek Schnapp
Director of Public Relations
University of Illinois at Springfield
One University Plaza, MS PAC 563
Springfield, IL 62703-5407

RE: FOIA Pre-Authorization Request - 2011 PAC 13555

Dear Mr. Schnapp:

We have received and reviewed the written notice from the University of Illinois Springfield (UIS) of its intention to deny disclosure of certain information pursuant to sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c), (f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010).

On March 31, 2011, Mr. Bruce Rushton submitted a FOIA request for [REDACTED] personnel file, including but not limited to, all correspondence showing any complaints or praise of [REDACTED] all disciplinary matters with which he was involved, his salary history and his work assignments." In its written notice, UIS asserts that certain documents contained within the requested personnel file are exempt from disclosure under sections 7(1)(c) and 7(1)(f) of FOIA.

On April 19, 2011, this office sent a further inquiry letter to UIS, requesting a copy of the records that UIS is withholding from disclosure pursuant to sections 7(1)(c) and 7(1)(f) together with a detailed explanation of its basis for withholding the records. On May 3, 2011, UIS provided a copy of the withheld records in three (3) separate attachments for our review, asserting that the entire documents are exempt from disclosure under section 7(1)(f) of FOIA. UIS also asserts that the names of students, as contained in the records, are exempt from disclosure under section 7(1)(c) of FOIA.

Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of

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personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. In addition, section 7(1)(c) provides 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."

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

DETERMINATION

UIS's use of the exemption in section 7(1)(c) to withhold students' names is **approved**. We have concluded that UIS has met its initial burden of demonstrating that the disclosure of this information would be highly objectionable to a reasonable person. Under these circumstances, the subjects' right to privacy outweighs any public interest in the information that UIS intends to withhold.

UIS's use of the exemption in section 7(1)(f) to withhold the records contained in attachment 1 is **denied**. We have concluded that these documents do not amount to pre-decisional materials in which opinions are expressed, or policies or actions are formulated. As a result, UIS has not met its initial burden of demonstrating, with clear and convincing evidence, that this information is properly exempt, in its entirety, under section 7(1)(f).

UIS's use of the exemption in section 7(1)(f) to withhold an email correspondence and two letters, as contained in attachment 3, is **approved**. We have determined that these documents constitute pre-decisional materials in which opinions and recommendations were expressed. Further, there is no indication that these documents have been publicly cited or identified. Accordingly, the University has met its initial burden of demonstrating that this information is exempt from disclosure under section 7(1)(f) of FOIA.

We have determined that it is not necessary to address UIS's section 7(1)(c) assertion with regards to the employee performance evaluations contained in the requested records because performance evaluations fall within the category of records that are exempt from disclosure under section 7.5(q) of FOIA (5 ILCS 140/7.5(q) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010)) and section 11 of the Personnel Record Review Act (820 ILCS 40/11 (West 2010), as amended by Public Act 96-1483, effective December 1,

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2010)). Notably, the use of the section 7.5(q) exemption to deny disclosure of performance evaluations does not require pre-approval from our office.

UIS also indicates that it intends to redact additional information from the records pursuant to sections 7(1)(a) and 7(1)(b) (5 ILCS 140/7(1)(a), (b) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010) of FOIA. Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than sections 7(1)(c) and 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

If you have any questions, please contact me at (312) 814-6437. This correspondence shall serve to close this matter.

Very truly yours,



TOLA SOBITAN
Assistant Attorney General
Public Access Bureau

cc: Mr. Bruce Rushton
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