



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

August 17, 2010

Mr. Thomas Hardy
FOIA Officer
University of Illinois
506 S. Wright Street
Urbana, Illinois 601801

RE: FOIA Pre-Authorization Request – 2010 PAC 7995, 8090 and 8340

Dear Mr. Hardy:

We have reviewed the documents that our Office received on July 2 and July 26, 2010 with respect to your notice of intention to deny disclosure of specific information pursuant to Section 7(1)(c) and Section 7(1)(f) of the Freedom of Information Act (FOIA) 5 ILCS 140/1 *et. seq.*, as amended.

Between June 4 and June 22, 2010, the University of Illinois (University) received five FOIA requests from media outlets seeking information from the University relating to the possible expansion of the Big Ten Conference.

Specifically on June 4, 2010, Bill Rabinowitz, on behalf of the Columbus Dispatch, submitted a FOIA request to the University seeking copies of the following documents:

“...any emails, memos or other written communication to and from your university’s president regarding the proposed expansion of the Big Ten athletic conference from December 2009 until the present; any emails, memos or other written communication to and from your university’s athletics director regarding the proposed Big Ten expansion; the athletics department financial report filed with the NCAA in January 2010. It’s also known as the NCAA EADA but is not the report filed with the U.S. Department of Education.”

On June 4, 2010, Jodi Cohen, on behalf of the Chicago Tribune, submitted a FOIA request to the University seeking copies of the following documents:

“...the following public records related to Big Ten expansion proposals: All documents and correspondence, including e-mail communications, that have occurred between Big Ten Commissioner Jim Delany and the following University of Illinois officials: Interim President Stanley Ikenberry, Interim Chancellor Robert Easter and/or Athletic Director Ron Guenther...from January 1, 2010 to the present.”

On June 6, 2010, David Mercer, on behalf of the Associated Press, submitted a FOIA request to the University seeking copies of the following documents:

“...copies of or access to all of emails sent and received by [interim university President Stanley Ikenberry/interim Chancellor Robert Easter/Athletic Director Ron Guenther], is office staff and incoming President Michael Hogan regarding university athletics or the topics of Big 10, Big 12 and Pac 10 expansion from April 1, 2010 through June 6, 2010...”

On June 9, 2010 Patrick Pfingsten, on behalf of the Champaign-based radio station WDWS-AM submitted a FOIA request to the University seeking copies of the following documents:

“...any e-mails, memos or written communication received or sent by [Robert Easter or Ron Guenther/Staley Ikenberry] regarding Big Ten expansion since October 1, 2009...”

The University submitted a pre-authorization request to this Office on June 15, 2010 with respect to Mr. Rabinowitz' request and on June 22, 2010 with respect to the requests of Ms. Cohen, Mr. Mercer, and Mr. Pfingsten. In both letters, the University asserts that the information that it seeks to withhold is exempt under Section (7)(1)(c) and Section 7(1)(f) of FOIA.

In its letter, the University states that it seeks to withhold the following information pursuant Section 7(1)(c):

1. The name of a student at another university who sent the University President a March 22, 2010 e-mail regarding a proposed project;
2. The name of a private citizen who contacted the Commissioner of the Big Ten Conference and all Big Ten University Presidents in an April 26, 2010 letter to express his concern with regard to universities within the Big East joining the Big Ten; and
3. The names of employees at other universities furnished in a June 3, 2010 Committee on Institutional Cooperation (CIC) draft letter and in a June 3, 2010 response e-mail to that draft.

In the same notice, the University further states that it seeks to withhold the following information pursuant to Section 7(1)(f):

1. Draft of a June 3, 2010 collaborative letter by the CIC circulated for review and comment; and
2. Comments on the letter.

This Office sent a further inquiry letter on June 23, 2010 specifically with regard to Mr. Rabinowitz's request and requested that the University provide us with unredacted copies of the responsive documents that the University seeks to withhold and a detailed factual basis for each exemption. On July 2, 2010 the University responded to our further inquiry letter with documents that are responsive to the requests of Ms. Cohen, Mr. Mercer, Mr. Rabinowitz and Mr. Pfingsten.

The letter also contains an explanation as to why the information should be exempt from disclosure pursuant to Section 7(1)(c) and Section 7(1)(f). In the June 15 letter, the University

explains that the name of the student furnished in the March 22 e-mail is also protected under Section 7(1)(a).

On June 22, 2010, Paula Lavigne, on behalf of ESPN, submitted a FOIA request to the University seeking copies of the following documents:

“...all written correspondence including emails, faxes, phone notes, and other documents to and/or from the university athletic director, business/finance directors, presidents, chancellor, head football coach, and head basketball coach regarding membership realignment of the Big 12, Big Ten or Pac 10 conferences. This also includes correspondence addressed to any of those individuals emailed or faxed to an administrative assistant. The time span for our request is May 1, 2010, to present.”

In its July 7, 2010 written notice to our Office, the University states that the following information with regard to Ms. Lavigne's request may be withheld under Section 7(1)(c):

1. The name of a student at another university who sent the University President a March 22, 2010 e-mail regarding a proposed project;
2. The name of a private citizen who contacted the Commissioner of the Big Ten Conference and all Big Ten Presidents in an April 26, 2010 letter to express his concern with regard to Big East universities joining the Big Ten;
3. The names of employees at other universities furnished in a June 3, 2010 CIC draft letter and in a June 3, 2010 response e-mail to that letter; and
4. The name of a private citizen who contacted all Big Ten Presidents in a June 10, 2010 e-mail to express his support behind Iowa State University joining the Big Ten.

In the same notice, the University further states that the following information may be withheld under Section 7(1)(f):

1. Draft of a June 3, 2010 collaborative letter by the CIC circulated for review and comment;
2. Comments on the aforementioned letter; and
3. A June 12 and June 13, 2010 e-mail chain between University personnel regarding discussions on a CIC meeting and the possible expansion of the Big Ten.

On July 15, 2010, this Office sent a further inquiry letter to the University with regard to Ms. Lavigne's request and requested the documents that it seeks to withhold along with a written explanation as to how they apply to Section 7(1)(c) and Section 7(1)(f).

The University responded to our letter on July 25, 2010 and provided us with documents previously supplied to Ms. Cohen, Mr. Mercer, Mr. Rabinowitz and Mr. Pfingsten and a June 10, 2010 e-mail from a private citizen regarding the inclusion of Iowa State University into the Big Ten and a June 12 and June 13, 2010 e-mail chain from University personnel regarding discussions on a CIC meeting and the possible expansion of the Big Ten.

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 disclosure is consented to in writing by the individual subjects of the information.” 5 ILCS 140/7(1)(c). The exemption defines “[u]nwarranted invasion of 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.” *Id.*

Section 7(1)(f) exempts from inspection and copying “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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).

Determinations

On August 17, 2010, a representative from this Office communicated with requesters representing the Chicago Tribune, the Columbus Dispatch, WDWS-AM, the Associated Press and ESPN. All five requesters agreed to allow the University to withhold the names of the private citizens who contacted the University with regard to the expansion of the Big Ten. During an August 17, 2010 conversation with two representatives from this Office, the University assured this Office that the content of those communications will be supplied to the requesters.

With regard to the proposed 7(1)(f) redactions, our Office finds the following:

1. The University’s intention to withhold the June 3, 2010 draft of a collaborative letter by the CIC circulated for review and comment is approved.
2. The University’s intention to withhold the responsive e-mails from CIC members regarding the June 3, 2010 draft letter is approved.
3. The June 12 and June 13, 2010 e-mail chain between University personnel regarding discussions on a CIC meeting and the possible expansion of the Big Ten is approved.

With regard to the June 3 draft letter, it is the conclusion of this Office that the document is preliminary in nature and was not intended to be a final product. During an August 17, 2010 conversation with representatives from this Office, the University informed us that the final product of the draft letter, along with the authors of the letter, will be supplied to the requesters. The University, however, may appropriately redact the signatures contained in the final draft pursuant to Section 7(1)(c). An individual’s signature is highly personal in nature, and disclosure of a signature could lead to a clearly unwarranted invasion of personal privacy. Accordingly, absent specific facts demonstrating a need for disclosure (such as the necessity for comparing with another signature, for example), a signature may be withheld from disclosure pursuant to Section 7(1)(c).

As to the June 3 correspondence in response to the draft letter, the e-mails express opinions about the draft letter. Finally, with regard to the June 13 and June 14 e-mail chain between University personnel, the e-mails express opinions by University personnel about the possible expansion of the Big Ten and reflect a course of action about a pending CIC meeting. Therefore, the University has sustained its burden under Section 7(1)(f) and may withhold the June 3 draft letter, the June 3 e-mail comments regarding the draft letter and the June 12 and 13 e-mail chain between University personnel.


Please be advised that any personal identifiers, including home addresses, telephone numbers and e-mail addresses may be redacted without prior approval from this Office pursuant to Section 7(1)(b).

Based on this analysis, the University has sustained its burden under Section 7(1)(f) and may withhold the aforementioned documents. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:


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Assistant Public Access Counselor

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