



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

Lisa Madigan
ATTORNEY GENERAL

August 2, 2010

Mr. Thomas Hardy
Freedom of Information Officer
University of Illinois
Via e-mail:
hardyt@uillinois.edu

RE: FOIA Pre-approval Request – 2010 PAC 7336, 7704, and 7852

Dear Mr. Hardy:

We have received from the University of Illinois (University) three written notices of its intention to assert the Section 7(1)(c) exemption in response to three separate Freedom of Information Act (FOIA) requests, the first dated April 27, 2010 submitted by Julie Wurth, reporter for the News Gazette, the second dated May 14, 2010 submitted by Jodi S. Cohen, Higher Education Reporter for the Chicago Tribune, and the third dated May 25, 2010 submitted by Patrick Phingsten, News Anchor for WDWS-AM, WHMS-FM (collectively referred to hereinafter as "Requesters"). These three requests each sought documents relating to the University's recently-completed presidential search.¹

With respect to each of these three requests, the University has indicated that it intends to disclose responsive records, but that it intends, pursuant to Section 7(1)(c), to redact from such records references to: (1) "[n]ames and personal identifiers of job applicants"; (2) "[i]nformation such as the name of the University an applicant is currently employed by, the address of an on-campus travel agency used to arrange airfare, and the airport of departure when it is small

¹ The News Gazette request sought "copies of all payments or reimbursements, and supporting documentation, to members of the University of Illinois presidential search committee, Michael Baer and/or staff for Isaacson, Miller [including, but not limited to,] vouchers, itineraries and receipts, and covers the period from Oct. 1 to the present." The Chicago Tribune request sought "[a]ll documentation, from October 1, 2009 to the present, showing expenditure of funds related to University of Illinois' presidential search. This could include, but not be limited to, copies of all payments or reimbursements, along with supporting documentation, to members of the search committee or the search firm. It also could include [and] direct payments from the university to vendors for such items as airfare, entertainment or other expenses." The WDWS-AM, WHMS-FM request sought "[a]ll bills, travel expenses, vouchers, itineraries provided to the University by applicants, search committee members, or search firm Issacson-Miller. (October 1, 2009 to Present)[.] Our request also applies to airfare, hotel, or other travel-related expenses." Unlike the first two requests, this request also sought "[a]ll applicants and/or applications received during recently concluded search for position of University of Illinois President. (October 1, 2009 to May 20, 2010)".

enough to clearly point to a specific candidate"; and (3) [n]ames of private citizens who work for trustees in a non-University capacity". Section 7(1)(c) of the Freedom of Information Act permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "unwarranted 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." It also 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."

First, the University has indicated that it intends to redact not only the names of applicants for the position of University president, but their job applications as well. We previously addressed this issue in File No. 2010 PAC 6805 and determined that:

Applications for employment generally contain information that is personal in nature and the release of which would be objectionable to a reasonable person. Further, in many cases, the fact that an individual is seeking new employment and has applied for a position is information that a reasonable person would view as highly personal and the release of that information is likely to be viewed as objectionable by most such individuals. Publication of an individual's application for a position can negatively impact that individual's current employment and the release of personal information about applicants may also negatively impact a public body's ability to attract qualified applicants for open positions. Accordingly, as a result of our review, we have determined that the University may properly decline to disclose under subsection 7(1)(c) the names of applicants for the position of University President and the applications submitted by those individuals.

Likewise, we have determined that the University has met its burden to justify redacting the names and the applications of all non-hired applicants in response to these FOIA requests. We have also determined, however, that the University has not met its burden to justify redacting the name and application of the selected applicant, Michael J. Hogan. The reasoning adopted in File No. 2010 PAC 6805 does not apply to the disclosure of the name and application of Mr. Hogan. The University has announced its selection of Mr. Hogan for the position. As a result, the public interest in disclosure of Mr. Hogan's name and application is significantly greater than it is with regard to all other applicants, just as his privacy interest is diminished now that he has been selected for and accepted the position.

With respect to the personal identifiers of job applicants, the University has indicated that it intends to redact telephone numbers and addresses of the applicants. To the extent that the telephone numbers are the applicants' home or personal cell phone numbers and the addresses are their home addresses, they fall within the definition of "private information" in Section 7(1)(b) (5 ILCS 140/7(1)(b); *see also* 5 ILCS 140/2(c-5)) which does not require a public body to notify the Public Access Counselor before redacting this information. Thus, we decline to make a determination as to whether the University may properly redact this information pursuant to Section 7(1)(b). To the extent that the telephone numbers are work numbers (either office numbers or work cell phone numbers) and the addresses are work addresses, however, applying the same reasoning as applied to the question of whether the names and applications are exempt,

the University has met its burden to justify redacting this information for the non-hired applicants under Section 7(1)(c).

Second, the University has indicated that it intends to withhold “[i]nformation such as the name of the University an applicant is currently employed by, the address of an on-campus travel agency used to arrange airfare, and the airport of departure when it is small enough to clearly point to a specific candidate”. The University contends that the disclosure of such information could, in some cases, be used to determine the identities of the job applicants to the same extent as the disclosure of their names and addresses would. We have determined that the University has not met its burden to justify redacting (1) the name of the university that employs an applicant; (2) the address of on-campus travel agencies used to arrange airfare related to the University’s presidential search; or (3) any of the airports of departure related to the University’s presidential search, pursuant to Section 7(1)(c). Regardless of whether inferences may hypothetically be drawn from combining the disclosure of this information with other publicly available information, the disclosure of this information, in and of itself, does not constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c).

Third, the University intends to withhold “[n]ames of private citizens who work for trustees in a non-University capacity.” Specifically, the University has indicated that the name and e-mail address of an assistant to a University trustee appears in records responsive to this request because this assistant was involved in arranging meetings on that trustee’s schedule. The University concludes that because this assistant is not employed by or for the University, revealing her name and e-mail address would infringe on her personal privacy rights. We do not believe any privacy interest is implicated by the disclosure of this information and, thus, conclude that the University has not met its burden to justify redacting this assistant’s name and e-mail address pursuant to Section 7(1)(c). To the extent that the e-mail address at issue is the assistant’s personal e-mail address, and not her work e-mail address, however, we would direct the University to Section 7(1)(b) which exempts private information, defined by Section 2(c-5) to include “unique identifiers, including * * * personal e-mail addresses.”

In summary:

- The University has met its burden to justify redacting the names and the applications of all non-hired applicants for the position of University president.
- The University has not met its burden to justify redacting the name and application of the selected applicant, Michael J. Hogan.
- Home telephone numbers, personal cell phone numbers and home addresses of applicants do not properly fall within the 7(1)(c) exemption, and we decline to make a determination as to whether the University may redact this information pursuant to Section 7(1)(b). Work telephone numbers and addresses of the non-hired applicants, however, do fall within the 7(1)(c) exemption and the University has met its burden to justify redacting this information pursuant to this section of FOIA.
- The University has not met its burden to justify redacting (1) the name of the University at which any of the applicants is currently employed; (2) the address of on-campus travel agencies used to arrange airfare related to the University’s presidential search; or (3) any of the airports of departure related to the University’s presidential search.

- The University has not met its burden to justify redacting the name(s) and e-mail address(es) of private citizens who work for trustees in a non-University capacity pursuant to Section 7(1)(c).

In accordance with this letter, the University must release the requested records to the Requesters in a manner consistent with the determinations reached herein and within the time limits imposed by FOIA. Please note that, although section 9.5(b) of FOIA provides that times for response or compliance by the University under section 3 of this Act are tolled until the PAC concludes her inquiry into its notice of intention to deny under Section 7(1)(c), such tolling expires as of the date of the University's receipt of this PAC determination. Pursuant to Section 3 of FOIA, the University has only 5 business days from the date of its receipt of each of the three FOIA requests at issue (exclusive of any properly-asserted extension it may have taken prior to its submission of any of these notices of intent to deny) to produce the documents responsive to these requests, consistent with the determinations in this letter. This 5 day period encompasses both the time that elapsed between the University's receipt of each of these FOIA requests and the date of its submission of its notice of intention to deny as well as the time that will elapse from the date of its receipt of this determination to the date of production. See 5 ILCS 140/3; 5 ILCS 140/9.5(b). If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor



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