



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 25, 2011

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

RE: Pre-Authorization Request – 2011 PAC 12868
Requester: Rachel Wells, *Illinois Times*

Dear Mr. Schnapp:

We have received and reviewed the notice from the University of Illinois Springfield of its intention to deny disclosure of certain information under Sections 7(1)(c) and 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(c), (f).

On March 4, 2011, Ms. Rachel Wells of *Illinois Times* requested the following records:

- UIS Campus Police records of alleged confrontation or harassment occurring on campus on Thursday, February 17, 2011, involving Coach Marne Fauser, Professor Emerita Barbara Hayler, [a certain parent of a UIS student], and/or Athletic Director Rodger Jehlicka.
- records of communication regarding the behavior of Professor Emerita Barbara Hayler, Athletic Director Rodger Jehlicka and/or Coach Marne Fauser on Thursday, February 17, 2011, before, during and/or after a girls basketball game, to and/or from any of the following University of Illinois employees: Rodger Jehlicka, Marne Fauser, President Michael Hogan, Chancellor Harry Berman, Vice Chancellor for Student Affairs Timothy Barnett, Barbara Hayler and [the parent].
- records of any disciplinary action taken against Rodger Jehlicka, Marne Fauser and/or Barbara Hayler on or since Thursday, February 17, 2011.

In its written notice, the University asserts that certain of the responsive records are exempt from disclosure under Section 7(1)(c) and 7(1)(f) of FOIA. Specifically, the University asserts that communications to and from individuals who are not University employees are exempt under

Section 7(1)(c). The University also asserts that internal communications between University employees are exempt under Section 7(1)(f).

Communications With Non-Employees

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.” 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.* Further, Section 7(1)(c) provides that the “disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” *Id.* Communications between public officers or employees and private persons are not *per se* exempt from disclosure under Section 7(1)(c). Only if the nature of the communication is such that disclosure will result in an unwarranted invasion of personal privacy will Section 7(1)(c) apply.

Based on our review of the documents the University seeks to withhold, we have determined that the University’s assertion of Section 7(1)(c) with respect to the communications between the University and the non-employee individuals is denied. One of these documents is a statement sent by Professor Emerita Barbara Hayler to several University employees. This statement focuses on the Professor’s concern about the behavior of a University employee. The information in this statement is not highly personal to Professor Hayler or to any other private individual, and a reasonable person would not find disclosure of this statement objectionable. Therefore, the University has not sustained its initial burden of proving that this statement is exempt under Section 7(1)(c).

Another of these documents is a letter emailed by the parent of a UIS student to President Michael Hogan on February 18. The bulk of this letter consists of information that is not highly personal, and a reasonable person would not find disclosure of the bulk of this letter objectionable. Therefore, the University may not withhold this letter in its entirety under Section 7(1)(c). However, the University may submit a new request for pre-authorization to withhold any specific portions of this letter that it believes are exempt under Section 7(1)(c).

The documents submitted to us for our review also contained communications from the University responding to the concerns expressed by Professor Emerita Hayler and the parent. These communications are not highly personal, and disclosure would not be objectionable to a reasonable person. Therefore, the University has not sustained its burden of proving that these emails are exempt from disclosure under Section 7(1)(c).

Internal Emails

The University asserts that the internal emails that are responsive to Ms. Wells’ request are exempt under Section 7(1)(f) because they consist of “open and frank discussions and are part of

the University's deliberative process concerning the alleged incident [referred to by the request]."

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 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).

Based on our review of the documents, we have determined that the University's use of the exemption in Section 7(1)(f) to withhold these documents is approved. These emails were part of the University's process of formulating actions, and the University asserts that these emails have not been publicly cited or identified by President Hogan. Therefore, we find that the University has sustained its initial burden of demonstrating that these emails are exempt under Section 7(1)(f).

The University may issue a partial denial letter directly to Ms. Wells and shall release the non-exempt documents to her in accordance with this letter. If you have any questions or concerns, feel free to contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Sincerely,



Sarah Kaplan
Assistant Public Access Counselor

cc: Rachel Wells
Staff Writer
Illinois Times
P.O. Box 5256
Springfield, IL 62705