



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

Lisa Madigan
ATTORNEY GENERAL

April 20, 2011

Mr. Thomas Hardy
FOIA Officer
University of Illinois
Hardyt@illinois.edu

RE: Pre-Authorization Request – 2011 PAC 13551

Dear Mr. Hardy:

We have received and reviewed the written notice from the University of Illinois (University) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(c) and Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

On April 8, 2011, Mr. Darshan Patel, a staff reporter with the *Daily Illini*, submitted a FOIA request to the University of Illinois seeking the following information regarding the search for a vice-president for the Urbana-Champaign campus:

“...the cost, thus far, to the University during the duration of the search, including how much was paid to the search firm and any other expenses incurred...any documentation of correspondence, including, but not limited to emails, between the search committee headed by Mr. Beck, the University administration and the search firm...”

On April 13, 2011, the University submitted a Pre-Authorization Request to the Office of the Public Access Counselor with regard to the *Daily Illini's* request and asserted that the names of private citizens and prospective candidates are exempt from disclosure under Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)), which 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.” 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.* With regard to Section 7(1)(c), the University seeks to withhold the name of a private citizen who communicated with the University’s search firm and the names of prospective candidates for the vice-presidential position.

The University also asserts that information contained within e-mails that express recommendations and opinions about the search are exempt from disclosure pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f), which 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." The University seeks to withhold e-mails between University personnel and its search firm Isaacson, Miller about the University's search for a new vice-president.

Determination

The University's request for approval of its decision to withhold the names of individuals pursuant to Section 7(1)(c) is approved in part and denied in part. The University's request for approval to withhold e-mails that contain recommendations and opinions about the search pursuant to Section 7(1)(f) is approved.

Section 7(1)(c)

The first step of the analysis under Section 7(1)(c) is to determine whether the requested information is highly personal or its disclosure would be objectionable to a reasonable person. Only if the information is found to be highly personal or its disclosure would be objectionable to a reasonable person does the public body need to consider the second step in the analysis and determine whether "the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

Pursuant to Section 7(1)(c), the University may redact the names of any candidates for the position that are referenced in the e-mails. The University has indicated that its search for a new vice-president remains ongoing. In No. 2010 PAC 6805, a Pre-Authorization Request involving a FOIA request submitted to the University of Illinois by *WLS-TV*, we noted the following with regard to applications for the presidency position:

Applications for employment generally contain information that is personal in nature and the release of which would be objectionable to the reasonable person. Further, in many cases, the fact that an individual is seeking new employment 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 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 Section 7(1)(c) the names of applicants for the position of University President and the applications submitted by those individuals.

Under this analysis, the names of applicants for consideration for the position of vice-president are likewise exempt from disclosure under Section 7(1)(c).

The University also seeks to redact the name of a private citizen who was contacted by the University's search firm. Upon review of the March 17, 2011 e-mail, it is unclear whether the

individual in question is being considered as a candidate for the position. The University may redact that individual's name only if the individual has presently indicated to the University that he or she wishes to be considered for the position.

Section 7(1)(f)

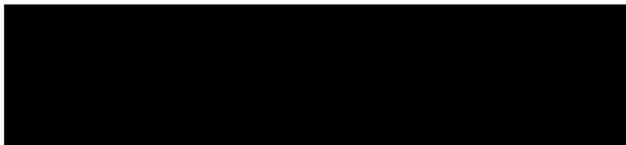
The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987). In some instances, Section 7(1)(f) also exempts from disclosure documents produced by outside consulting firms hired to advise public bodies on a particular course of action. *Harwood v. McDonough*, 344 Ill.App.3d 242, 248 (1st Dist. 2003).

Upon review of these e-mails, we conclude that they contain opinions and recommendations by University personnel and the search firm about prospective candidates for the University's search for its next vice-president which may properly be withheld pursuant to Section 7(1)(f).

Accordingly, the University has met its initial burden of demonstrating that disclosure of the names of candidates for consideration for the position of vice-president would constitute an unwarranted invasion of personal privacy under Section 7(1)(c). The University has also met its burden with regard to withholding the e-mails that express opinions and recommendations about the search for the next vice-president. However, the University has not met its burden with regard to withholding the name of a private citizen who worked with the search firm hired by the University unless that person is also a candidate for the position.

Should you have any questions, please contact me at (312) 814-5383. This correspondence shall close this file.

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Darshan Patel
The Daily Illini
patel174@illinimedia.com

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