



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 11, 2011

Ms. Robin Kaler
Associate Chancellor for Public Affairs
University of Illinois
507 E. Green Street, Suite 313
Champaign, IL 61820

RE: FOIA Pre-Authorization Request - 2010 PAC 6509

Dear Ms. Kaler:

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

On March 15, 2010, Mr. Dennis Toeppen submitted a FOIA request for:

[A]ny and all documents and communications related to "Illinois Citation and Complaint 45377" including, but not limited to, police report, officer notes, dash-cam video, audio recordings of any and all radio calls, resultant ARMS entry, and any communications between UIUC employees regarding this matter.

Please also provide me with personnel records for officer [sic] Whittington, copies of any and all complaints received regarding Whittington, any and all reprimands received by Whittington, Whittington's ARMS contacts for the period 1/1/80 to present, and any and all emails to which Whittington is a party for the period 1/1/2000 to present.

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Mr. Toeppen later modified his request, narrowing it to records regarding Officer Whittington from January 1, 1995, to present. He also added a request for "copies of all citations (tickets) issued by Whittington for the period 1/1/1995 to present."

On March 29, 2010, the University sought pre-authorization from our office to withhold the names of individuals contained in the citations issued by Officer Whittington and certain records in Officer Whittington's personnel file under section 7(1)(c) of FOIA. Section 7(1)(c) 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 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."

On April 5, 2010, we determined that further inquiry was necessary and asked the University to provide our office with unredacted copies of the documents and to clearly indicate which information it wished to withhold under section 7(1)(c). On April 9, 2010, the University provided this office with copies of unredacted documents related to Mr. Toeppen's request for citations issued by Officer Whittington, together with a list of the documents contained in Officer Whittington's personnel file. The University did not furnish copies of the documents from the personnel file or specify which documents in that list it intended to withhold.

DETERMINATION

Citations

The University's request for approval of its decision to withhold the names of individuals contained in responsive documents pursuant to section 7(1)(c) is denied. After review of the materials provided, our office has determined that disclosure of these names would not be considered an unwarranted invasion of personal privacy. A ticket, citation or notice to appear is a document by which the prosecution for a violation of an ordinance or statute is commenced, and is therefore available for public inspection unless sealed by the court.¹

Personnel File

¹We note that this information would normally be available for public inspection in the circuit clerk's office pursuant to subsection 16(6) of the Clerks of Courts Act (*see* 705 ILCS 105/16(6) (West 2008)). To the extent that the University maintains copies of these documents, however, it is required to furnish them to the requester.

The University's request to withhold certain documents contained within Officer Whittington's personnel file is approved in part and denied in part. In response to our further inquiry letter asking the University to "clearly indicate what information within those records [it] intend[ed] to withhold as an unwarranted invasion of personal privacy," the University provided only a list of documents contained within Officer Whittington's personnel file. It is unclear from this list which documents the University seeks to withhold. Therefore, the University has not met its burden of proving that the records are exempt from disclosure under FOIA. *See* 5 ILCS 140/1.2 (West 2009 Supp.).

We note, however, that the University may withhold any dates of birth contained within the responsive records pursuant to section 7(1)(c). The Public Access Counselor has previously determined that the disclosure of dates of birth in records such as these would constitute a clearly unwarranted invasion of personal privacy. This type of information is highly personal by its very nature and the subject's right to privacy outweighs any legitimate public interest in disclosing this information. *See, e.g., Oliva v. United States*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991) (holding that, under Exemption 6 of the Federal Freedom of Information Act (5 U.S.C. §552(b)(6)), "dates of birth[] are a private matter, particularly when coupled with * * * other information" and "would constitute a clearly unwarranted invasion of personal privacy"); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, ___ S.W.3d ___, 54 Tex. Sup. Ct. J. 245 (2010) (state employees have a "nontrivial privacy interest" in their dates of birth under the Texas Public Information Act (*see* Tex. Gov't Code §§552.101, 552.102), which substantially outweighs the negligible public interest in disclosure).

Additionally, the University may withhold any "private information" contained in the documents pursuant to section 7(1)(b) of FOIA.² 5 ILCS 140/7(1)(b) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. Application of section 7(1)(b) does not require prior approval by the Public Access Counselor.

47 of the records listed as being included in Officer Whittington's personnel file are evaluations. The Personnel Record Review Act (820 ILCS 40/0.01 *et seq.* (West 2008)) has been amended since the University initially submitted its written notice of its intention to deny portions of the request pursuant to section 7(1)(c) of FOIA. A provision was added that exempts public employee evaluations from disclosure under FOIA. *See* 820 ILCS 40/11 (West 2009 Supp.), as amended by Public Act 96-1483, effective 12-1-10. Because the amendment

²Section 2(c-5) of FOIA (5 ILCS 140/7(1)(b) defines "private information" to include unique identifiers, such as "a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses. Private information also includes home addresses and personal license plates, except as otherwise provided by law or when compiled without the possibility of attribution to any person." 5 ILCS 140/2(c-5) (West 2009 Supp.).

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expressly exempts these documents from disclosure under FOIA, it is not necessary to determine whether the evaluations would otherwise be exempt under the section 7(1)(c).

Accordingly, the University may issue a partial denial letter and release the redacted documents, if it has not already done so.

If you have any questions, please contact our office at (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,


REBECCA RIDDICK
Assistant Attorney General
Public Access Bureau

cc: Dennis Toeppen
714 S. Sixth Street
Champaign, IL 61825

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