



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

December 3, 2010

Lisa Madigan
ATTORNEY GENERAL

Ms. Robin Kaler
Associate Chancellor, Public Affairs
University of Illinois
rkaler@illinois.edu

Re: FOIA Pre-Authorization Request 2010 PAC 5640

Dear Ms. Kaler:

The Office of the Public Access Counselor (Office) has reviewed the Pre-Authorization Request submitted to this Office by the University of Illinois (University) and the responsive documents submitted by the University on February 23 and October 14, 2010.

On January 15, 2010, Tony Bleill, a staff reporter for *The Champaign News-Gazette* (*The News Gazette*) submitted a Freedom of Information Act (FOIA) request seeking the following information:

1. Phone records, beginning May 1, 2009 through October 1, 2009, for former women's basketball assistant coach Tamika Louis' office phone and her university-issued cell phone, including text message accounts;
2. The final employment contract for Tamika Louis;
3. Tamika Louis' most recent evaluations and her letter of dismissal;
4. All correspondence (including electronic communications) to and from the NCAA regarding the University of Illinois women's basketball program from June 1, 2009 through December 31, 2009;
5. All correspondence to and from the Big Ten Conference regarding the University of Illinois women's basketball program from June 1, 2009 through December 31, 2009;
6. All correspondence (including electronic communications) between Tamika Louis and head coach Jolette Law from May 1, 2009, through October 1, 2009; and

7. University of Illinois Police records involving Tamika Louis from May 1, 2009, to December 31, 2009.

On February 1, 2010, the University submitted a Pre-Authorization Request to this Office. In the Request, the University sought our approval to withhold certain documents from disclosure pursuant to 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.” *Id.* 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.* The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy. *Id.*

The University also sought our approval to withhold several e-mails relating to the University’s women’s basketball program and the Big Ten Conference together with the performance evaluation of Tamika Louis 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.”

On February 5, 2010 the University supplied *The News Gazette* with a redacted copy of a August 20, 2009 incident report and Ms. Louis’ final employment contract.

In an October 12, 2010 e-mail to this Office the University clarified its position with regard to Ms. Louis’s letter of dismissal and also sought to withhold it from disclosure pursuant to Section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n)) which exempts from inspection and copying “[r]ecords relating to a public body’s adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed” and the Personnel Records Review Act, (820 ILCS 40/8). In the same e-mail, the University reaffirmed its intention to deny Ms. Louis’ phone records pursuant to Section 7(1)(c) and the performance evaluation pursuant to Section 7(1)(f).

Determinations

Section 3(a) of FOIA (5 ILCS 140/3(a)) provides that “[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act.” Under Section 1.2 of FOIA (5 ILCS 140/1.2), “[a]ll records in the custody of a public body are presumed to be open to inspection and copying.” This section further states that “[a]ny public body that asserts that a record is exempt from disclosure has the burden of proving by *clear and convincing evidence* that it is exempt.” (Emphasis added.)

Phone Records

The University's request for approval to withhold records relating to the use of Ms. Louis' office phone and her university-issued cell phone (including text message accounts) is denied. For purposes of Section 7(1)(c), the question of whether a legitimate public interest exists is only pertinent when disclosure of such information would constitute a highly unwarranted invasion of personal privacy. The first part of the analysis under Section 7(1)(c) is to determine whether such information can be considered highly personal or its release would be objectionable to a reasonable person.

The University argues that disclosure of the phone records that include the phone call's destination could lead to the identity of a student athlete. This Office finds that there is nothing highly personal or objectionable about the disclosure of phone records made by a public employee from a public telephone. Additionally, a public body cannot characterize non-personal information as personal simply because an individual might piece together information obtained through FOIA with information obtained from other sources in order to draw a reasoned inference based on the available facts.

Further, this Office concludes there exists a legitimate public interest in disclosure of the phone records. Section 2.5 (5 ILCS 140/2.5) of FOIA that provides that "[a]ll records *relating* to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." (Emphasis added.) Phone calls and text messages made by a public employee through publicly-funded services would fall squarely within Section 2.5. Therefore, the University is obligated to release the phone records to *The News Gazette*. The University may redact the telephone numbers pursuant to Section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b)), which exempts from inspection and copying "private information," as defined therein.¹

Performance Evaluation

The University seeks to withhold a May 2008 self-evaluation of Ms. Louis pursuant to Section 7(1)(f). This Office has reviewed the performance evaluation submitted to this Office and we have concluded that the evaluation reflect opinions by Ms. Louis with regard to her own performance at the University. Accordingly, we find that this information properly falls within the scope of Section 7(1)(f) and may be withheld by the University.²

¹ Section 2(c-5) defines private information as 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)

² The University has indicated that this self-evaluation is the only evaluation of Ms. Louis that the University has in its possession.

Incident Report

On February 5, 2010 the University submitted to *The News Gazette* a copy of an August 20, 2009 incident report in which the names of the witnesses were redacted. The University seeks approval to withhold the names pursuant to Section 7(1)(c). In this regard, we note that the University may redact witnesses' names pursuant to Section 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(d)(iv)), which exempts from disclosure information that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative or law enforcement, or penal agencies..." Application of Section 7(1)(d)(iv) does not require prior approval by the Public Access Counselor.

E-mails

The University's request for approval to withhold the e-mails pursuant to Section 7(1)(f) is approved. Pursuant to Section 7(1)(f), the University has sought to exempt the following categories of e-mail from disclosure:

1. All correspondence (including electronic communications) to and from the NCAA regarding the University of Illinois women's basketball program from June 1, 2009 through December 31, 2009;
2. All correspondence to and from the Big Ten Conference regarding the University of Illinois women's basketball program from June 1, 2009 through December 31, 2009; and
3. All correspondence (including electronic communications) between Tamika Louis and head coach Jolette Law from May 1, 2009, through October 1, 2009.

On February 25, 2010, the University supplied this Office with approximately 600 e-mails within these categories. This Office has reviewed the e-mails and we have concluded that they contained preliminary recommendations and opinions, drafts and memoranda regarding the University's women's athletic program and the Big Ten Conference.

Dismissal Letter

The University seeks to withhold from disclosure the University's September 23, 2009 dismissal letter to Ms. Louis pursuant to Section 7(1)(c) and Section 7(1)(n). As noted above, 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 privacy." 5 ILCS 140/7(1)(c).

In *Gekas v. Williamson*, 393 Ill.App.3d 573 (4th Dist. 2009), the Court considered a FOIA request under the then Section 7(1)(b)(ii) of FOIA (5 ILCS 140/7(1)(b)(ii) West 2006) by a citizen against a deputy sheriff seeking the disclosure of citizen complaints filed against the deputy. *Gekas*, 393 Ill.App.3d 573, 574. The Court analyzed the personal privacy exemption as it applied to the deputy's personnel files and decided that records concerning the performance of

public duties by a police officer do not have the personal privacy connotations of an employment application, tax form or a request for medical leave, for example. *Gekas*, 393 Ill.App.3d 573, 583. Accordingly, the Court concluded that information in the sheriff's personnel files is not personal information and its disclosure would not constitute an invasion of personal privacy. *Gekas*, 393 Ill.App.3d 573, 575. Likewise, the letter of dismissal sent by the University to Ms. Louis relates to her duties as a University employee and its disclosure cannot be considered an invasion of personal privacy under Section 7(1)(c) or *Gekas*.

Section 9.5(b) of FOIA (5 ILCS 140/9.5(b), added by Public Act 96-542, effective January 1, 2010) requires that a public body that receives a request for records and asserts that the records are exempt from disclosure under, *inter alia*, Section 7(1)(c) of FOIA, to provide written notice of its intention to deny the request in whole or in part to both the requester and the Public Access Counselor. Because Section 9.5(b) is limited to Section 7(1)(c) and Section 7(1)(f) of FOIA, we decline to discuss the applicability of Section 7(1)(n) to this matter.

Conclusions

In summary, this Office finds the following:

1. The telephone records requested do not fall within the scope of Section 7(1)(c) and must be disclosed to *The News Gazette*. The University may, however, redact the phone numbers contained in the phone records pursuant to Section 7(1)(b).
2. The May 2008 self-evaluation of Ms. Lewis reflects the opinions of University personnel and properly falls within the scope of Section 7(1)(f). The University may withhold the evaluation.
3. The University may redact witness names contained in the incident report pursuant to Section 7(1)(d)(iv).
4. The e-mails supplied to this Office properly fall within the scope of Section 7(1)(f) and may be withheld by the University.
5. The University must disclose the letter of dismissal to *The News Gazette* pursuant to Section 7(1)(c).

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

Ms. Robin Kaler and Tony Bleill
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Sincerely,

Cara Smith
Public Access Counselor

By:



Matthew C. Rogina
Assistant Public Access Counselor

cc: Tony Bleill
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