



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

Lisa Madigan
ATTORNEY GENERAL

January 11, 2011

Mr. Derek Schnapp
Public Relations Director
University of Illinois at Springfield
One University Plaza, MS PAC 565
Springfield, IL 62703

RE: FOIA Pre-approval Request- 2010 PAC 10621

Dear Mr. Schnapp:

We have received from the University of Illinois at Springfield a written notice of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request submitted by [REDACTED] counsel for [REDACTED]. [REDACTED] request sought records pertaining to fifteen specified categories of information relating to: (1) the resignation of [REDACTED] from the position of UIS Human Resource Director; (2) other UIS employees who have received a Notice on Non-reappointment from UIS since January 1, 2009, and (3) UIS's budget. UIS has indicated that it intends to withhold certain documents responsive to this request, pursuant to Section 7(1)(c). UIS also claims that certain records and record excerpts contained within the 150 pages of responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by UIS.

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."

Section 7(1)(f) of the Freedom of Information Act (5 ILCS 140/7(1)(f)) allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents in which opinions are expressed, or policies or actions 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.

Determinations

UIS seeks to withhold responsive Notice of Appointment Forms, pursuant to Section 7(1)(c). 5 ILCS 140/7(1)(c). Although we have previously determined that Section 7(1)(c) can properly be invoked as a basis for withholding employment application materials, we have also determined that Section 7(1)(c) will generally not serve as a legitimate basis for withholding the application materials for those candidates selected for public employment positions. Likewise, in this case, the public interest in disclosure of the information contained in UIS's Notice of Appointment Forms outweighs any privacy interest the selected candidates have in this information. Therefore, we have determined that UIS has not met its burden to justify withholding responsive Notice of Appointment Forms on this basis.

UIS also seeks to withhold certain responsive records, and excerpts of other responsive records, from disclosure on the basis that they are preliminary drafts, recommendations, memoranda or other documents in which opinions are expressed, or policies or actions are formulated by UIS personnel. In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248. The court noted that no previous Illinois cases interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998).

Based on our review of the Notice of Non-reappointment forms over which UIS has asserted the Section 7(1)(f) exemption, we have determined that UIS has not met its burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f). The Notice of Non-reappointment forms with which UIS has furnished our office appear to be finalized and executed letters and, thus, Section 7(1)(f) does not apply to these records.

Based on our review of the remaining responsive records over which UIS has asserted the Section 7(1)(f) exemption, these records consist of preliminary draft and evaluative documents generated for use by UIS in making decisions regarding the subjects at issue, which appear to fall within the scope of the Section 7(1)(f) exemption. Further, there is no evidence to suggest that the withheld excerpts have been publicly cited or identified by the head of the public body. Accordingly, UIS has met its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

Finally, UIS has also indicated that certain information within these records is exempt under Section 7(1)(a), Section 7(1)(b) and Section 7(1)(m) of FOIA. 5 ILCS 140/7(1)(a), (b), (m). Please note that FOIA only requires public bodies to submit a Notice of Intent to Deny and


request for pre-authorization with regard to assertion of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials). Where information is specifically exempt under other sections of the Act, public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization. As such, this letter takes no position with regard to UIS's assertion of Section 7(1)(a), Section 7(1)(b) and Section 7(1)(m) in this instance.

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

By:


Matthew M. Sebek
Assistant Public Access Counselor

cc:


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