



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

Lisa Madigan
ATTORNEY GENERAL

December 21, 2010

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

RE: FOIA Pre-Authorization Request - 2010 PAC 8314
FOIA Pre-Authorization Request - 2010 PAC 8542

Dear Ms. Kaler:

We have received and reviewed two written notices from the University of Illinois of its intention to deny disclosure of certain information pursuant to Section 7(1)(f) of the Freedom of Information Act (FOIA).

Specifically, on June 16, 2010, Dennis Toeppen submitted a Freedom of Information Act (FOIA) request to the University seeking the following information:

"all communications, documents, records for the period of 1/1/10 to present, to which Bill Adams, Chancellor Easter, Michael Delorenzo or Barbara O'Connor are a party, which in any way relate to UIPD complaints, UIPD Barbara O'Connor, or which contain my name."

On July 6, 2010, the University submitted a Pre-Authorization Request to our Office and sought our approval to withhold certain internal memoranda from disclosure. Specifically, the University asserted that the memoranda 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."

On July 19, 2010, this Office initiated further review of the matter and requested the University supply this Office with a copy of the records it seeks to keep exempt from disclosure pursuant to

Section 7(1)(f).¹ On August 3, 2010, the University supplied this Office with all documents responsive to Mr. Toeppen's June 16, 2010 FOIA request.

On July 6, 2010, Dennis Toeppen submitted an additional FOIA request to the University seeking the following information:

"any and all communications or documents to which John Connor (housing), Kirsten/Kirsten Ruby (housing), Stan Ikenberry, Chancellor Easter, or any Vice Chancellor or Associate Chancellor is a party, which in any way relates to UGuide or UGuide distribution."

On July 19, 2010, the University submitted a second Pre-Authorization Request to our Office and sought our approval to withhold a single e-mail that is also responsive to Mr. Toeppen's June 16, 2010 request. On December 21, 2010, the University supplied this Office with all documents responsive to Mr. Toeppen's July 6, 2010 FOIA request.²

Determination

The Office's use of the exemption in Section 7(1)(f) with regard to the internal memoranda is approved.

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).

This Office has reviewed the internal memoranda and determined that they contain opinions and recommendations by the University with respect to formulating a course of action with regard to certain matters relating to Mr. Toeppen's FOIA request.

Additionally, there is no evidence that this information has been publicly cited and identified by the head of the public body. 5 ILCS 140/7(1)(f).

Based on this analysis, the University has met its initial burden of demonstrating that the internal memoranda is exempt from disclosure under Section 7(1)(f) of FOIA.

¹ The University also asserted that certain documents are exempt pursuant to Section 7(1)(m) of FOIA which exempts from inspection and copying Section 7(1)(m) of FOIA (5 ILCS 140/7(1)(m)) which exempts from inspection and copying "communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by and for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies." Application of Section 7(1)(m) does not require prior approval by the Public Access Counselor.

² The University informed this Office in a December 21, 2010 e-mail that it planned on supplying the remainder of the documents that are not exempt from disclosure upon receipt of this Office's determination letter. Please be advised that Section 9.5(b) of FOIA (ILCS 140/9.5(b)) permits a public body to withhold information that the public body claims is exempt under Section 7(1)(c) or Section 7(1)(f) of FOIA. All non-exempt information must be disclosed to the requester upon receipt of the initial FOIA request subject to the timeframe set forth in Section 3(d) of FOIA.

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

Sincerely,

Cara Smith
Public Access Counselor

By:



Matthew C. Rogina
Assistant Public Access Counselor

cc: Dennis Toeppen
dt09@66.net

Christopher Harris
University of Illinois
csharris@illinois.edu

8314 pre-auth 7(1)(f) prelim draft univ
8542 pre-auth 7(1)(f) prelim draft univ