



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

February 25, 2011

Mr. Derek Schnapp  
Director of Public Relations  
University of Illinois at Springfield  
Dschn1@uis.edu

RE: Pre-Authorization Request - 2011 (PAG-12379)

Dear Mr. Schnapp:

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

On January 28, 2011, [REDACTED] submitted a FOIA request to UIS seeking the following information:

all written documents and reports relating to the March 2009 incident involving members of the women's softball team and coaches [REDACTED] and [REDACTED] other than those exempt from disclosure as "preliminary notes." The concept of "preliminary notes" implies that one or more final documents were produced using those "preliminary notes." This request is for any final documents that were prepared.

On February 11, 2011, UIS submitted its Pre-Authorization Request to this Office. In its written request, UIS stated that it is redacting certain information contained in a September 8, 2009 settlement agreement and a March 23, 2009 letter 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." 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.*

Further, it is our understanding based on the language of [REDACTED] FOIA request that she is *not* seeking information that otherwise would be exempt from disclosure under Section 7(1)(f) and which has been previously approved as exempt by this Office in No. 2010 PAC 5354 and No. 2010 PAC 9999.

### Determination

UIS' request for approval of its use of the exemption in Section 7(1)(c) to withhold the information sought by [REDACTED] is approved in part and denied in part.

### Settlement Agreement

In No. 2010 PAC 9999, this Office concluded that UIS was required to provide a copy of the settlement agreement between UIS and a student in response to a January 4, 2010 FOIA request submitted by the *State-Journal Register*.<sup>1</sup> In that matter, we noted the following with regard to the redaction of certain information within the agreement:

Section 2.20 of FOIA (5 ILCS 140/2.20) requires that "all settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted." The *SJR*'s request sought "all records, documents and correspondence, written and electronic, including but not limited to emails letters, notes and reports *concerning* the conduct of [REDACTED] and [REDACTED] during a trip to Florida in March 2009 with the women's softball team." (Emphasis added.)

Upon review of the settlement agreement, this Office finds that it is clearly responsive to the *SJR*'s request. On January 6, 2011, our office contacted UIS and informed the university of our finding that the settlement agreement must be disclosed pursuant to FOIA. Based on that conversation, UIS has agreed to release the settlement agreement to the *SJR*, subject to the redactions of the student name and the name of the notary public that appears on the document.

In accordance with our determination letter in No. 2010 PAC 9999, UIS may redact the name of the student and the name of the notary public contained in the agreement.

### March 23, 2009 letter

UIS also seeks to withhold a March 23, 2009 letter sent by the student's attorney to UIS. Section 2.5 of FOIA (5 ILCS 140/2.5) states that all "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.) While we acknowledge that disclosure of certain parts of the letter could be highly personal and objectionable to the student and may be redacted pursuant to Section 7(1)(c), there exists a legitimate public interest in the disclosure of certain portions of the letter that do not relate directly to the student.

<sup>1</sup> On January 4, 2010, Mr. Bruce Rushton, a staff reporter with the *SJR*, sought copies of "all records, documents and correspondence, written and electronic, including but not limited to emails letters, notes and reports concerning the conduct of Joe Fisher and Roy Gilmore during a trip to Florida in March, 2009 with the women's softball team. Furthermore, I request that all records, documents and correspondence, including but not limited to emails, letters, notes, and reports concerning communications deemed inappropriate between any student(s) and Jay Davis."

Specifically, the letter references concerns by the student's attorney about possible courses of action taken by UIS in response to the incident. This letter also appears to be the initial correspondence between UIS and the student's attorney that resulted in the September 8 settlement agreement. Clearly, certain portions of the letter are of substantial public interest and relate to the obligation, receipt and use of public funds.

UIS may, however, redact the name of the student, any personally identifying information about the student and any specific references to the alleged incident pursuant to Section 7(1)(c).<sup>2</sup>

We note that UIS has also asserted Section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a)), which precludes the disclosure of information that is "specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Specifically, UIS asserted that the letter may be exempt pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA). 20 U.S.C. 1232(g)(4)(a). Application of Section 7(1)(a), however, does not require pre-approval from the Office of the Public Access Counselor.

### Conclusion

Based on our analysis, UIS has met its initial burden demonstrating that certain portions of the letter and settlement agreement are exempt under Section 7(1)(c). UIS, however, has not met its initial burden to withhold the letter in its entirety and must provide the letter to [REDACTED] subject to the redactions specified above.

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

Sincerely,

[REDACTED]  
Matthew C. Rogina  
Assistant Public Access Counselor

cc:

[REDACTED]  
Mr. Mark Hennis  
University of Illinois-Springfield  
mhenss@uis.edu

*12379 pre-auth al dl 7(1)(c) priv univ*

<sup>2</sup> Due to the nature of the attorney/client privilege, the identity of the student's attorney *would not* be considered personally identifying information.