

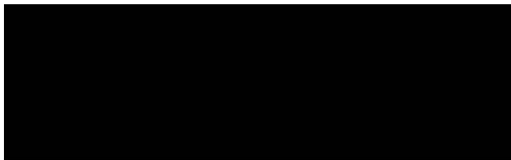


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 7, 2024

*Via electronic mail*



*Via electronic mail*

Mr. Matt Sullard  
Associate Director, FOIA Administration  
University of Illinois System  
506 Sough Wright Street  
Urbana, Illinois 61801  
sullard@uillinois.edu

RE: FOIA Request for Review – 2023 PAC 78934; University no. 23-1356

Dear [REDACTED] and Mr. Sullard:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022), as amended by Public Act 103-069, effective January 1, 2024).

On October 26, 2023, [REDACTED] submitted a FOIA request to the University of Illinois (University) seeking copies of the following records:

I am requesting the following information, aggregated by the combination of instructor and course name. Firstly, the count of students that filled out the survey. Additionally, for each non-open-ended question on the ICES Online survey, I am requesting the name of the question, and the mean and median answer to the question by the students.

500 South 2nd Street  
Springfield, Illinois 62701  
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street  
Chicago, Illinois 60603  
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C  
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For example, if the survey included the question "How much have you learned in this course?" (rated on a five-point scale from " Very Little ... A Great Deal"), I would want that the mean/median answers to this question were 3.8 and 3.6 for the course EXAMPLE 400 taught by PROFESSOR Y, and that 100 students filled out the survey including this question<sup>[1]</sup>

On November 2, 2023, the University extended its time to respond to ██████ request pursuant to two sub-sections of section 3(e) of FOIA (5 ILCS 140/3(e)(vi), (vii) (West 2022). On November 9, 2023, the University provided certain records responsive to ██████ FOIA request but stated that "[p]ortions of these records have been redacted or withheld pursuant to"<sup>2</sup> sections 7(1)(a) and 7(1)(j)(ii) (5 ILCS 140/7(1)(a), (1)(j)(ii) (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023) as well as section 7.5(q) of FOIA.<sup>3</sup> In invoking sections 7(1)(a) and 7.5(q), the University cited section 10 of the Personnel Record Review Act (PRRA) (820 ILCS 40/10 (West 2022)).<sup>4</sup>

That same day, ██████ submitted the above-referenced Request for Review to this office contesting the University's response. ██████ argued that he didn't "believe there is existing case law in the state of Illinois that covers invoking 140/7(1)(j)(ii) and would like to get clarity on what exactly this exception is meant to cover."<sup>5</sup>

On November 29, 2023, this office sent a copy of the Request for Review to the University and asked it to provide a representative sample of the records that were withheld and an unredacted copy of the records that were provided to ██████ for this office's confidential review. Additionally, this office asked the University to provide a detailed explanation of the factual and legal bases for the applicability of the cited exemptions to the withheld or redacted records.

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<sup>1</sup>E-mail from ██████ to Ruby, Kirsten (October 26, 2023).

<sup>2</sup>E-mail from Kirsten Ruby, Director, External Relations and Communications and Chief Records Officer, [University of Illinois,] to ██████ (November 9, 2023).

<sup>3</sup>5 ILCS 140/7.5(q) (West 2022), as amended by Public Acts 103-008, effective June 7, 2023; 103-034, effective June 9, 2023; 103-508, effective July 1, 2023.

<sup>4</sup>In a telephone conversation and a follow-up e-mail on November 28, 2023, with an Assistant Attorney General in the Public Access Bureau, Mr. Sullard informed this office that although the University's response letter referred to section 10 of the PRRA, it intended to assert section 11 of the PRRA (820 ILCS 40/11 (West 2022)).

<sup>5</sup>E-mail from ██████ to Public Access [Bureau] (November 9, 2023).

On December 8, 2023, the University provided this office with a confidential response and a non-confidential response, the latter suitable for this office to forward to [REDACTED].<sup>6</sup> On December 11, 2023, this office forwarded a copy of the University's non-confidential response to [REDACTED] he replied that same day asking whether the redacted section contained the argument which explained why the records were not being disclosed and contended that the non-confidential response did not contain arguments or knowledge he was not already aware of. On December 12, 2023, an Assistant Attorney General from the Public Access Bureau confirmed that the unredacted portions restated the history of the FOIA request process and that she could not describe what was in the redacted portions of the University's response. [REDACTED] did not otherwise submit a substantive reply regarding the University's response.

### DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2022); *see also Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). However, a "requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982). FOIA does not require a public body to compile data that it does not ordinarily keep. *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, 2014 IL App 4th 130427, ¶ 34; *see also Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (1989) (a public body is not required to create records in order to respond to a FOIA request); 5 ILCS 140/1 (West 2022) (FOIA "is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective[.]").

In *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, the Illinois Appellate Court analyzed how a FOIA request for "the **number** of claims or informal complaints filed against \* \* \* identified physicians" had to be handled. (Emphasis in original.) 2014 IL App (4th) 130427, ¶ 4. The court noted that FOIA does not obligate public bodies to answer questions or generate new records, and that "[a] request to inspect or copy must reasonably identify a public record and not general data, information, or statistics." *Chicago Tribune Co.*, 2014 IL App (4th) 130427, ¶ 33. Because the request would have required the public body to manually review its paper files and tally the number of initial claims made against the identified physicians rather than provide existing responsive records (the public body did not possess a record reflecting the number of claims), the court held that it was a general inquiry question, to which FOIA did not require a response. *Chicago Tribune Co.*, 2014 IL App (4th) 130427, ¶ 36.

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<sup>6</sup>See 5 ILCS 140/9.5(d) (West 2022), as amended by Public Act 103-069, effective January 1, 2024) ("The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.").

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In *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836, the Illinois Appellate Court analyzed a series of requests for information contained in databases. The *Hites* court distinguished requests for raw data maintained in a public body's database from requests seeking **information about the data** which would require the creation of new records. The court held that raw data that was previously compiled and available through computerized searches of the database constituted public records subject to disclosure, but that FOIA did not require the public body to create records reflecting totals that had not been previously compiled from that data. *Hites*, 2016 IL App (2d) 150836, ¶¶ 78-81.

This office has carefully reviewed the University's confidential response, and additional e-mail correspondence with the University, which clarified and confirmed that the University has not compiled the mean and median information ██████████ requested.<sup>7</sup> Although the University may possess the underlying data from which means and medians could be derived, FOIA does not require the University to perform calculations and/or analysis to compile records reflecting this information. Because the University is not obligated to create such records, this office will not address the applicability of the sections 7(1)(a), 7(1)(j)(ii), and 7.5(q) exemptions that the University cited in denying the request.

To avoid confusion, when the University responds to FOIA requests that seek multiple records, as ██████████ sought in this request, the University should respond in a manner that allows the requester to understand which parts it is granting, which parts it is denying, and which parts seek records it does not possess.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at [katherine.goldsmith@ilag.gov](mailto:katherine.goldsmith@ilag.gov). This letter serves to close this file.

Very truly yours,

██████████  
KATIE GOLDSMITH  
Assistant Attorney General  
Public Access Bureau

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<sup>7</sup>In a May 3, 2024, telephone conversation, Mr. Matt Sullard, Associate Director of FOIA Administration for the University, confirmed to the Assistant Attorney General assigned to this matter that this piece of information may be shared with ██████████