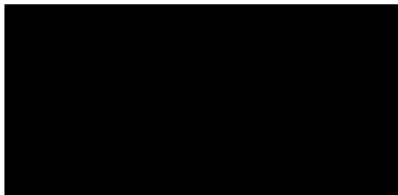




OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 14, 2015



*Via electronic mail*  
Mr. Thomas P. Hardy  
Executive Director and  
Chief Records Officer  
University of Illinois  
108 Henry Administration Building  
506 South Wright Street, MC-370  
Urbana, Illinois 61801  
foia@uillinois.edu

RE: FOIA Request for Review – 2015 PAC 35091

Dear [REDACTED] and Mr. Hardy:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the University of Illinois (University) improperly redacted portions of records furnished to [REDACTED] in response to her April 10, 2015, FOIA request.

On that date, [REDACTED] submitted a FOIA request to the University seeking: "any and all intake records, transfer records, daily care logs, animal health records, treatment and progress reports, veterinary reports, necropsy reports, photographs, and videos related to [laboratory animal number 2662] (January 1, 2013-present)" and "any IACUC-approved protocols for any project to which this animal has been assigned[.]"<sup>1</sup> On May 1, 2015, the University provided [REDACTED] with 47 pages of protocol records with portions redacted and

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<sup>1</sup>Letter from [REDACTED] to Thomas P. Hardy (April 10, 2015).

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withheld the animal's medical records in their entirety, citing sections 7(1)(a), 7(1)(b), 7(1)(d)(vi), 7(1)(g), 7(1)(i), 7(1)(j)(iv), and 7(1)(v) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(d)(vi), (1)(g), (1)(i), (1)(j)(iv), (1)(v) (West 2014)).

On May 5, 2015, this office received ██████████ Request for Review contesting the University's response. On May 13, 2015, this office forwarded a copy of the Request for Review to the University, asked it to provide unredacted copies of the records for our confidential review, and requested that it provide a detailed explanation for each asserted exemption. On May 27, 2015, this office received the University's response together with unredacted copies of the records. The University withdrew its assertion of section 7(1)(a) of FOIA, but alleged that the animal's medical records are exempt in full under sections 7(1)(b) and 7(1)(j)(iv) of FOIA. The University also asserted that portions of the Protocol for Animal Use are exempt under sections 7(1)(d)(vi), 7(1)(g), 7(1)(v) of FOIA. ██████████ did not reply to that response.

#### ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any 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." 5 ILCS 140/1.2 (West 2012). FOIA requires that "each public body shall make available to any person for inspection and copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." 5 ILCS 140/3(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014. The exemptions from disclosure are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

#### Medical Research Records

Section 7(1)(j)(iv) of FOIA exempts from disclosure:

(j) The following information pertaining to educational matters:

\* \* \*

(iv) course materials or research materials used by faculty members.

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The University asserts that the animal's medical records are exempt from disclosure pursuant to section 7(1)(j)(iv) of FOIA as faculty research materials for a research project to test new medical devices. The University states that:

The veterinarians who are charged with caring for the animals and providing veterinary support for the research are all faculty members who use the requested animal health records, treatment and progress reports to carry out their duties. These medical records are maintained by the University as documentation of this research. They contain information on the device being tested, the dog's reaction to the same, the veterinarian's impressions and notes, and modifications made to the research.<sup>2</sup>

Black's Law Dictionary defines "research" as "[s]erious study of a subject with the purpose of acquiring more knowledge, discovering new facts, or testing new ideas." Black's Law Dictionary (10th ed. 2014), at 1500. "Materials" is defined as "[i]nformation, ideas, data, documents, or other things that are used in reports, books, films, studies, etc." Black's Law Dictionary (10th ed. 2014), at 1124. The University asserts that the animal's medical records contain "raw research data" and "notes, opinions, and reactions of the veterinarians" about an animal's reaction to the device being tested.<sup>3</sup> This office has reviewed the medical records and concludes that the information withheld consists of data and observations used by faculty members in the testing of a medical device or drug, and therefore constitute research materials exempted from disclosure by section 7(1)(j)(iv) of FOIA. Because those medical records are exempt under section 7(1)(j)(iv) of FOIA, we need not determine whether they are also exempt under sections 7(1)(b), 7(1)(f), or 7(1)(i).

### **Protocol for Animal Use**

The University asserts that portions of the Protocol for Animal Use and modifications to the Protocol are exempt under sections 7(1)(b), 7(1)(d)(vi), 7(1)(g), 7(1)(v) of FOIA. Specifically, the University claims that the names of individuals, departments, private companies, and buildings were properly redacted under sections 7(1)(d)(vi) and 7(1)(v) of FOIA.

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<sup>2</sup>Letter from Thomas P. Hardy, Executive Director and Chief Records Officer, Office for University Relations, University of Illinois, to Matt Hartman, [Assistant Attorney General], Public Access Bureau (May 26, 2015), at 2.

<sup>3</sup>Letter from Thomas P. Hardy, Executive Director and Chief Records Officer, Office for University Relations, University of Illinois, to Matt Hartman, [Assistant Attorney General], Public Access Bureau (May 26, 2015), at 2-3.

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In addition, the University asserts that the names of the private company sponsors and the names of the drug or device being tested are exempt under section 7(1)(g) of FOIA.

#### **Section 7(1)(d)(vi) of FOIA**

Section 7(1)(d)(vi) of FOIA exempts "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would \* \* \* endanger the life or physical safety of law enforcement personnel or any other person[.]" The University has not asserted or established that any of the responsive records were created in the course of an administrative enforcement proceeding or possessed by a law enforcement agency for law enforcement purposes. Accordingly, the University has not sustained its burden of demonstrating that the records are exempt from disclosure under section 7(1)(d)(vi) of FOIA.

#### **Section 7(1)(v) of FOIA**

The University also redacted the names of individuals, departments, private companies, and buildings under section 7(1)(v) of FOIA, which exempts from disclosure:

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

The University's response states that the names of the individuals, departments, private companies, and buildings are considered secure information because "[g]iven the bomb threat previously received by the University, it is reasonable to conclude that public disclosure of the same will lead to the domestic terrorist threats described above and jeopardize the effectiveness of keeping the University community safe."<sup>4</sup>

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<sup>4</sup>Letter from Thomas P. Hardy, Executive Director and Chief Records Officer, Office for University Relations, University of Illinois, to Matt Hartman, [Assistant Attorney General], Public Access Bureau (May 26, 2015), at 5.

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Records that merely identify the names of people, departments, companies, and buildings are not vulnerability assessments, security measures, or response policies or plans within the scope of section 7(1)(v) of FOIA. Further, the redacted information provides no details concerning how the University maintains the safety of its personnel and facilities. Accordingly, we conclude that the University has not sustained its burden of demonstrating that the names of individuals, departments, corporations, and buildings are exempt from disclosure under section 7(1)(v) of FOIA.

### **Section 7(1)(g) of FOIA**

Section 7(1)(g) of FOIA exempts from disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

*See also BlueStar Energy Services, Inc. v. Illinois Commerce Com'n*, 374 Ill. App. 3d 990, 995 (1<sup>st</sup> Dist. 2007) ("The term *trade secret* in the context of FOIA has been interpreted to include information that (1) would either inflict substantial competitive harm or (2) make it more difficult for the agency to induce people to submit similar information in the future" (emphasis in original.))

The University states that its animal research involves "the University, a private company the University works with on the research and the project sponsor, which is another private company who is the owner of the drug and/or device that is being tested."<sup>5</sup> The University asserts that it has entered into a contractual agreement that requires the sponsor's name and the name of the device or drug being tested to be kept confidential, and that the disclosure of this information would cause competitive harm to the sponsor because "other companies would know the business practices of the sponsor, what types of research they were

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<sup>5</sup>Letter from Thomas P. Hardy, Executive Director and Chief Records Officer, Office for University Relations, University of Illinois, to Matt Hartman, [Assistant Attorney General], Public Access Bureau (May 26, 2015), at 3.

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engaging in, whether they were testing a new drug or device or testing an existing drug or device but for a new purpose."<sup>6</sup>


Unlike circumstances in which trade secrets and commercial or financial information is provided in the course of bidding on a government contract or in response to a government agency's investigation, the name of the drug or device being tested was provided as part of joint research by the University and the sponsor. This name however, is a working name that does not identify the specific chemical compound or device. The University's assertion that disclosure of the name would cause competitive harm to the sponsor or make it less likely for private companies to engage in joint research with the University is largely conclusory and devoid of supporting facts. *See Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007, 1020 (1st Dist. 1994) (holding that public body failed to demonstrate that a list of all vendors of lottery tickets in the City of Chicago and their sales data were not exempt under section 7(1)(g)). Further, the records in question relate to public funds and therefore are expressly subject to disclosure pursuant to section 2.5 of FOIA (5 ILCS 140/2.5(West 2012)), which provides: "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." *See also* article VIII, section 1(c) of the Illinois Constitution of 1970: "[R]ecords of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law." These provisions illustrate the General Assembly's recognition of a strong public interest in the disclosure of information such as the identity of companies that contract with public bodies to perform research and the type of drug or device that is researched pursuant to the contracts. Accordingly, we conclude that the University has not sustained its burden of demonstrating by clear and convincing evidence this information is exempt from disclosure pursuant to section 7(1)(g) of FOIA.

### Section 7(1)(b) of FOIA

The University also withheld business addresses, business and emergency contact telephone numbers, business e-mail addresses, and signatures under section 7(1)(b), which exempts from disclosure "private information." Section 2(c-5) of FOIA defines "private information" as "unique identifiers" including "**home or personal telephone** numbers," "**home** address", and "**personal** email addresses." (Emphasis added.) In addition, the Public Access Bureau has also previously determined that signatures constitute "unique identifiers" for the purposes of section 7(1)(b) of FOIA, and are therefore exempt as private information. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18410, issued April 5, 2012. Accordingly, the University properly

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<sup>6</sup>Letter from Thomas P. Hardy, Executive Director and Chief Records Officer, Office for University Relations, University of Illinois, to Matt Hartman, [Assistant Attorney General], Public Access Bureau (May 26, 2015), at 4.

  
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redacted individuals' signatures and personal emergency contact telephone numbers. However, because business information does not uniquely identify any individual or constitute "home" or "personal" information, we conclude that business addresses, business telephone numbers, and business e-mail addresses were improperly redacted under section 7(1)(b) of FOIA.

In accordance with the conclusions expressed in this letter, this office requests that the University disclose an unredacted copy of the Protocol for Animal Use and modifications to the protocol with only emergency contact numbers and signatures redacted. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,

  
MATT HARTMAN  
Assistant Attorney General  
Public Access Bureau

35091 f 71jiv proper 71div 71v 71g improper 71b proper/improper univ

## Jedlicka, Kathleen

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**From:** Jedlicka, Kathleen  
**Sent:** Tuesday, July 14, 2015 4:09 PM  
**To:** 'novickrebecca@gmail.com'; 'foia@uillinois.edu'  
**Cc:** Hartman, Matthew  
**Subject:** PAC Request for Review 35091  
**Attachments:** 35091 f 71jiv proper 71div 71v 71g improper 71b proper improper univ.pdf

Please find the attached correspondence from AAG Hartman. Please contact us if you have any questions. Thank you.

Katie Jedlicka  
Administrative Clerk  
Public Access Bureau  
Office of the Attorney General, Lisa Madigan  
500 South 2nd Street  
Springfield, IL 62706

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