



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 8, 2016

Mr. Bill Lukitsch
Southern Illinois University
Daily Egyptian – MC 6887
Carbondale, Illinois 62901

Mr. Douglas J. McCarty
Associate General Counsel
Southern Illinois University
Office of the General Counsel
Anthony Hall, Room 318
Mail Code 4307
1265 Lincoln Drive
Carbondale, Illinois 62901

RE: FOIA Request for Review – 2016 PAC 40002

Dear Mr. Lukitsch and Mr. McCarty:

This determination 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 discussed below, the Public Access Bureau concludes that Southern Illinois University (University) did not improperly deny Mr. Bill Lukitsch's FOIA request.

Mr. Lukitsch submitted an undated FOIA request, on behalf of the *Daily Egyptian*, to the University seeking the employment contract, termination record, and reinstatement record of Dr. Bakul Davé. On February 2, 2016, the University furnished a redacted copy of the employment contract but denied the termination and reinstatement records in their entirety pursuant to section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2014), as amended by Public Acts 99-298, effective August 6, 2015; 99-346, effective January 1, 2016), which exempts from disclosure: "Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption *shall not extend to the final outcome of cases in which discipline is imposed.*" (Emphasis added.) Mr. Lukitsch disputes the denial of

Mr. Bill Lukitsch
Mr. Douglas J. McCarty
April 8, 2016
Page 2

those records, contending that the University disciplined the employee who was the subject of the adjudication.

On February 11, 2016, this office sent a copy of the Request for Review to the University and asked it to provide copies of the withheld records for our confidential review and a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(n) exemption. In particular, this office asked the University to describe any formal or informal proceedings relating to the relevant termination and reinstatement and to clarify whether or not those proceedings resulted in discipline. On February 25, 2016, the University furnished the requested materials and its written response. The University's response to this office emphasized that the term "final outcome" is undefined in section 7(1)(n), and contended that the imposition of discipline was not the final outcome of the adjudication at issue in this matter. The University provided this office with additional information supporting that assertion on a confidential basis pursuant to section 9.5(d) of FOIA (5 ILCS 140/9.5(d) (West 2014)).¹ Mr. Lukitsch did not reply to the non-confidential version of the University response.

DETERMINATION

All public records in the possession or custody of a public body are presumed to be open to inspection and copying (5 ILCS 140/1.2 (West 2014)), and exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997); *see also* 5 ILCS 140/1 (West 2014). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014).

This office has reviewed the records in question, which show that the University adjudicated an employee disciplinary case in accordance with the applicable collective bargaining agreement. The University's response to this office included confidential information supporting its assertion that the imposition of discipline was not the "final outcome" of the case. Based on that confidential response and information in the records that were provided confidentially, we agree that the final and enforceable decision in this matter was not the imposition of discipline. Further, in light of the final outcome of the adjudication, which we are precluded from describing in this determination because the records were provided confidentially,² no discipline was imposed in the case for purposes of section 7(1)(n) of FOIA.

¹Section 9.5(d) of FOIA provides that the Public Access Counselor shall forward a copy of the public body's response "to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy."


²Section 9.5(c) of FOIA (5 ILCS 140/9.5(c) (West 2014)) provides: "To the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of this Act, the Public Access Counselor shall not further disclose that information."

Mr. Bill Lukitsch
Mr. Douglas J. McCarty
April 8, 2016
Page 3

Because the termination and reinstatement records at issue in this matter relate to the University's adjudication of an adjudication that did result in discipline, this office concludes that the University did not improperly withhold those records pursuant to section 7(1)(n) of FOIA.

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 (312) 814-6756. This letter serves to close this file.

Very truly yours,


STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

40002 f.71n proper univ