



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 25, 2024

Via electronic mail

Via electronic mail

Ms. Adrienne Nazon
Vice President, External Relations and Communications
Chief Records Officer
University of Illinois System
506 South Wright Street
Urbana, Illinois 61801
FOIA-OUR@mx.uillinois.edu

RE: FOIA Request for Review – 2023 PAC 79406

Dear [REDACTED] and Ms. Nazon:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2023 Supp.)).

On December 10, 2023, [REDACTED] submitted a FOIA request to the University of Illinois (University) seeking copies of all records pertaining to any Title IX investigations performed in connection with a 2016 incident involving the sexual assault of a student by a former employee; the request included any testimony or information gathered from personnel and any disciplinary actions taken. On December 18, 2023, the University responded that it did not locate any responsive records.

That same day, [REDACTED] submitted a Request for Review challenging the University's response. [REDACTED] provided an article and other information related to the assault case and explained that the former employee was a recruiter for international students.

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She contended that the University was required by Title IX of the Education Amendments Act of 1972 (20 U.S.C. §§ 1681-1688) to perform an investigation of the assault.

On December 21, 2023, this office forwarded a copy of the Request for Review to the University and asked it to provide a detailed description of its search for responsive records. On January 3, 2024, this office received a complete version of the University's written response for this office's confidential review and a redacted version for this office to forward to [REDACTED]

[REDACTED]¹ On January 8, 2024, this office forwarded a copy of the University's redacted response to [REDACTED] she replied that same day.

DETERMINATION

FOIA provides that "[a]ll 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). When presented with a FOIA request, a public body must perform a reasonable search under the particular circumstances of the matter. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶ 31 (the crucial issue is whether the search was reasonably calculated to discover the requested documents). However, "[a] requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982); *see also American-Arab Anti-Discrimination Committee v. United States Dep't of Homeland Security*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007) (agency's explanation of why it did not maintain the type of records requested was sufficient to demonstrate that its response to the request did not violate FOIA).

In its redacted response to this office, the University stated that its FOIA staff forwarded [REDACTED] request to several individuals and asked them to search for responsive records. Those individuals were the University's Associate Vice Chancellor for Human Resources, Assistant Director for Access & Equity, and Chief of the University of Illinois Springfield Police Department. The University also consulted with its Campus Counsel. The University stated that during the search, "it was determined that the assailant in this incident was not a University employee at the time the incident was reported to the University."² The University asserted that since the individual was not "affiliated with the University at that time, the University did not have 'substantial control' over him and had no authority to conduct a Title

¹See 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.").

²Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois, to Teresa Lim, Supervising Attorney, Public Access Bureau, Illinois Attorney General's Office (January 3, 2024), at 2.

IX investigation.³ Additionally, the University stated that it searched its Access & Equity Office files for records referencing the incident and located no testimony, sanctions, or other records responsive to the request. The University stated that "[n]o other agency within the University would have conducted a Title IX investigation."⁴ In the confidential portion of its response, the University provided additional details regarding its search.

The University's explanation of its search indicates that the University does not possess records concerning a Title IX investigation of the incident. The University consulted with administrators and counsel who would be knowledgeable of Title IX matters. According to those staff members, the University did not perform a Title IX investigation related to the recruiter because of jurisdictional issues. The University also did not find responsive records in the files of the office that handles such investigations. In reply to this office, [REDACTED] expressed concern that the University did not provide adequate oversight of the recruiter and directed this office to a student news article that reported that the Office of Admissions and College of Business and Management paid the recruiter a \$30,000 annual salary. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of FOIA and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2022)). *See* 15 ILCS 205/7(c)(3) (West 2022). Although the former recruiter appears to have been paid by the University at some point, the University stated he was not employed around the time of the incident, and this office does not have the authority to review whether the University was required to perform a Title IX investigation or otherwise complied with federal education laws. Because the available information indicates that the University consulted with relevant personnel and searched locations that would be expected to maintain responsive records, this office concludes that the University's response to the request did not violate FOIA.

³Letter from Kirsten Ruby, Director of External Relations and Communications and Chief Records Officer, University of Illinois, to Teresa Lim, Supervising Attorney, Public Access Bureau, Illinois Attorney General's Office (January 3, 2024), at 2.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

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