



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

September 24, 2018

VIA ELECTRONIC MAIL  
Mr. Christopher C. Horner  
Competitive Enterprise Institute  
1310 L Street, NW 7<sup>th</sup> Floor  
Washington, District of Columbia 20005  
chris.horner@cei.org

RE: Freedom of Information Act Request  
2018 FOIA 054884

Dear Mr. Horner:

Thank you for writing to the Office of the Illinois Attorney General with your request for information pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)).

In a facsimile received on September 17, 2018, you requested "copies of the described documents **and any accompanying information, including also any attachments:**"

- 1) [I]n its "Employee Secondment Agreement between the Illinois Attorney General's Office and the State Energy & Environmental Impact Center at NYU School of Law" signed by Ann Spillane on January 16, 2018, OAG stated, *inter alia*, "**The AGO has determined** that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the AGO do not constitute an impermissible gift under applicable law or regulation." (Secondment Agreement, C.3, page 3 of 5) (emphasis added). **Please provide us** a copy of that determination or any assertion of such a determination, and all correspondence relating thereto, **dated, produced, sent or received between August 25, 2017 and January 22, 2018, inclusive.** (Bold and italics in original.)

RESPONSE: Please be advised that this office has conducted a search of its records, and we have located no records responsive to this portion of your request.

In the facsimile received on September 17, 2018, you also state:

- 2) IL OAG submitted an **application** to the New York University Center for State Impact or State Energy & Environmental Impact Center at NYU School of Law, on or about September 15, 2017. It would have been sent to David Hayes and/or Elizabeth (Liz) Klein. **Please provide us** a copy of that application. It will *most likely* have been **dated, produced, sent and/or received between August 25, 2017 and September 15, 2017, inclusive[.]** (Bold and italics in original.)

RESPONSE: This portion of your request is granted in part and denied in part. We have redacted a unique identifier as "private information," as that term is defined in section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2016)). "Private information" is exempt from disclosure under section 7(1)(b) of FOIA. 5 ILCS 140/7(1)(b) (West 2017 Supp.). Specifically, we have redacted a signature. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 12046, issued June 23, 2011.

Additionally, in your facsimile received on September 17, 2018, you state:

- 3) On October 6, 2017, NYU's Elizabeth Klein forwarded to IL OAG's James Gignac, Matthew Dunn, and Thor Inouye "the retainer agreement that we discussed, which could be facilitated between the Center and your office to help facilitate confidential discussions about particular substantive matters." **Please provide us** a copy of that agreement as sent that day, and as executed. E-mail Subject, NYU Law Fellow Program – Follow Up. (Bold in original.)

RESPONSE: Please be advised that this office has conducted a search of its records, and we have located Elizabeth Klein's October 6, 2017, e-mail with attachments. We have located no executed agreement responsive to your request.

With regard to the record we are providing, your request is granted in part and denied in part. We have redacted information pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2017 Supp.)), as an unwarranted invasion of personal privacy. An "unwarranted invasion of personal privacy" is "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." 5 ILCS 140/7(1)(c) (West 2017 Supp.).

Specifically, we have redacted the name of an individual who applied for a fellowship position but was not hired. The disclosure of information identifying an individual who unsuccessfully applied for a public position would constitute an unwarranted invasion of personal privacy. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28867, issued September 26, 2014, at 2; Ill. Att'y Gen. PAC Req. Rev. Ltr. 30331, issued June 17, 2015. The fact that an unsuccessful applicant sought a new position is highly personal. Disclosure of such information could adversely affect the unsuccessful applicant's current job, as well as this office's ability to attract qualified applicants in the future. Further, "unsuccessful candidates \* \* \* have a reasonable expectation of privacy that outweighs any public interest in information regarding their identities." Ill. Att'y Gen. PAC Pre-Auth aId12478, issued April 12, 2011. Accordingly, the name of a fellowship applicant who was not selected is exempt from disclosure under section 7(1)(c) of FOIA.

Some responsive records, however, are being withheld pursuant to sections 7(1)(c) and 7(1)(f) of FOIA. 5 ILCS 140/7(1)(c), (f) (West 2017 Supp.).

#### Section 7(1)(c)

As noted above, section 7(1)(c) of FOIA exempts from disclosure information that, if released, would constitute an unwarranted invasion of personal privacy. An "unwarranted invasion of personal privacy" is "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." 5 ILCS 140/7(1)(c) (West 2017 Supp.).

Specifically, we have withheld materials related to fellowship candidates that have not been selected. The disclosure of records identifying an individual who unsuccessfully sought a fellowship position would constitute an unwarranted invasion of personal privacy. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28867, issued September 26, 2014, at 2; Ill. Att'y Gen. PAC Req. Rev. Ltr. 30331, issued June 17, 2015. The fact that an unsuccessful candidate sought a new position is highly personal. Disclosure of such information could adversely affect the unsuccessful

candidate's current job, as well as this office's ability to attract qualified candidates in the future. Further, "unsuccessful candidates \* \* \* have a reasonable expectation of privacy that outweighs any public interest in information regarding their identities." Ill. Att'y Gen. PAC Pre-Auth ald112478, issued April 12, 2011. Accordingly, records related to seven fellowship candidates are exempt from disclosure under section 7(1)(c).

Section 7(1)(f)

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated[.]" The record that we have determined is exempt from disclosure under this section consists of a preliminary draft exchanged between this office and other parties with similar interests in a personnel matter. The record contains legal thoughts and opinions related to the matter under review and was created for the purpose of planning courses of action with regard to hiring a legal fellow. The record is predecisional. It is exempt under the rationale that public bodies must be able to evaluate information with other parties that may be similarly affected by the information to explore possible courses of action confidentially before making final determinations that should be shared with the public. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012; *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (2003) ("as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process"). Accordingly, one responsive record is exempt from disclosure under section 7(1)(f).

You have a right to have the partial denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a) (West 2016). You may file your request for review with the PAC by writing to:

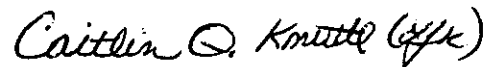
Sarah Pratt  
Public Access Counselor  
Office of the Illinois Attorney General  
500 South 2nd Street  
Springfield, Illinois 62706  
Fax: (217) 782-1396  
publicaccess@atg.state.il.us

If you choose to file a request for review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a) (West 2016). Please note that you must include a copy of your original FOIA request and of this partial denial letter when filing a request for review with the PAC.

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You also have the right to judicial review of your partial denial by filing suit in the appropriate Illinois court. 5 ILCS 140/11 (West 2016).

Very truly yours,

A handwritten signature in cursive script that reads "Caitlin Q. Knutte (off)".

CAITLIN Q. KNUTTE  
Assistant Attorney General  
Senior FOIA Officer

CQK:lk

Attachments