



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 1, 2014

PUBLIC ACCESS OPINION 14-006
(Request for Review 2014 PAC 28539)

FREEDOM OF INFORMATION ACT:
Duty to Disclose Public Records in
the Possession of a Public Body

Mr. Willie Preston
8019 South Paulina Street, Apartment 1
Chicago, Illinois 60620

Ms. Maria E. Mazza, Esq.
Associate General Counsel
Chicago State University
9501 South King Drive / ADM 318
Chicago, Illinois 60628

Dear Mr. Preston and Ms. Mazza:

This binding opinion is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons discussed below, this office concludes that Chicago State University violated section 3 of FOIA (5 ILCS 140/3 (West 2012)) by failing to provide public records in its possession in response to Mr. Willie Preston's FOIA request.

BACKGROUND

Mr. Preston submitted an undated FOIA request to the University seeking "the specific amount of money that was collected the night of January 26, 2013[,] in relation to the Homecoming dance, as well as how that money was then housed and subsequently appropriated."¹ On March 11, 2014, the University acknowledged receipt of Mr. Preston's FOIA

¹Letter from Willie Preston (undated).

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request "dated March 4, 2014[.]" and extended its time for response by five business days pursuant to sections 3(e)(v) and 3(e)(vi) of FOIA (5 ILCS 140/3(e)(v), (e)(vi) (West 2012)).² On March 18, 2014, the University responded to Mr. Preston's request:

[t]he records which are the subject of your request are not records of a "public body" under the Act, as the Student Government Association [(SGA)] is not a public body as defined in the Act. [Citation.] Consequently, the records are not subject to disclosure pursuant to the Act.³

On March 20, 2014, the Public Access Bureau received Mr. Preston's Request for Review of that denial, in which he claimed that "the specific public records [he] requested had little, if anything, to do with SGA because [he] requested records concerning thousands of dollars collected by the University in the University's name due to fees that were being charged related to the 2013 Chicago State University Homecoming Dance."⁴

On March 31, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the University and asked it to provide un-redacted copies of the responsive records for this office's confidential review, and a detailed explanation of whether any of the responsive records were prepared by or for, or had been or were being used by, received by, in the possession of, or under the control of the University.⁵ On April 16, 2014, this office received the requested records and the University's written response, which stated, in part:

The records include the SGA's Treasurer's Report dated February 8, 2013, which shows the amount collected from the Homecoming dance, and the SGA's list of expenses paid from its account. Such documents were prepared by the SGA. ***Copies were provided to the University's Director of Student Activities.*** Also, enclosed is a copy of the deposit of the funds from the Homecoming dance into

²Letter from Maria E. Mazza, Esq., Associate General Counsel, Chicago State University, to Willie Preston (March 11, 2014).

³Letter from Maria E. Mazza, Esq., Associate General Counsel, Chicago State University, to Willie Preston (March 18, 2014).

⁴Letter from Willie Preston to Public Access Counselor (March 20, 2014).

⁵Letter from Josh Jones, Assistant Attorney General, Public Access Bureau, to Maria E. Mazza, Esq., Associate General Counsel, Chicago State University (March 31, 2014).

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the SGA account, *which was handled by the University's Director of Student Activities.*⁶ (Emphasis added.)

Subsequently, an Assistant Attorney General in the Public Access Bureau clarified with the University whether the University was asserting that the responsive records were not subject to disclosure, and, if so, on what basis.⁷ On April 17, 2014, the University responded:

Yes, the University maintains that the responsive records are not subject to disclosure because the records at issue are not records of a "public body" under the FOIA, as the Student Government Association is not a public body as defined in Section 2(a) of the Act, and, thus, are not subject to disclosure.⁸

On May 19, 2014, the Public Access Counselor extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5 of FOIA (5 ILCS 140/9.5 (West 2012)).⁹

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2012). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2012)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2012)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." Section 2(c) of FOIA (5 ILCS 140/2(c) (West 2012)) defines "public records" as:

⁶Letter from Maria E. Mazza, Esq., Associate General Counsel, Chicago State University, to Josh Jones, Assistant Attorney General, Public Access Bureau (April 16, 2014).

⁷E-mail from Josh Jones, Assistant Attorney General, Public Access Bureau, to Ms. Mazza (April 16, 2014).

⁸E-mail from Maria E. Mazza, Esq., Associate General Counsel, Chicago State University (April 17, 2014).

⁹Letter from Josh Jones, Assistant Attorney General, Public Access Bureau, to Willie Preston and Maria E. Mazza, Esq., Associate General Counsel, Chicago State University (May 19, 2014).

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all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

Under the plain language of this definition, records in the possession or control of a public body which pertain to the transaction of public business are public records. It is undisputed that the University is a public body, and the University's response to this office confirmed that its Director of Student Activities had received copies of the records at issue. The appropriateness of the University's denial, therefore, hinges on whether the responsive records pertain to the transaction of public business.

In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, 992 N.E.2d 629 (2013), the Illinois Appellate Court construed the meaning of "public business" for purposes of FOIA. The Court noted that the statute does not define the term, but found its meaning to be plain and unambiguous, "to qualify as a public record a communication must first pertain to 'business or community interests as opposed to private affairs.'" *City of Champaign*, 2013 IL App (4th) 120662, ¶ 31, 992 N.E.2d at 636-37, citing Merriam-Webster's Collegiate Dictionary 941 (10th ed. 2000).

The University contends that the responsive records are not public records because SGA is not a public body. Contrary to the University's assertion, however, it is not necessary to determine whether the SGA is a public body in order to resolve the question of whether the University is obligated to produce the records in question.

Within the University's Department of Student Affairs is the Office of Student Activities, which, among other things, "provides oversight to the Student Government Association (SGA)."¹⁰ Further, the Student Activities Guide to Clubs & Organizations publication illustrates that the University ultimately controls the funding of student associations such as the SGA:

¹⁰Chicago State University, Department of Student Affairs, Student Activities, <http://csu.edu/dosa/studentactivities/>

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Student organizations are allocated funds from the Chicago State University, Student Activities Center, based on budget requests submitted during the preceding Spring semester and an evaluation of financial spending from the previous fiscal year. ***All student organization funds are maintained in the Student Activities Center Account. All unexpended and unencumbered funds in the accounts of organizations and clubs on the last day of the fiscal year revert to the Student Activities Center.***¹¹ (Emphasis added.)

The University has confirmed that its Director of Student Affairs deposited money collected from the homecoming dance into SGA's account.

The Guide further provides, with respect to off-campus events sponsored by student organizations, that:

No contracts should be signed, or deposits made, without the approval of the Student Activities Center. Contracts for services may also require approval from the University's Legal Department. Please Note: No student clubs/orgs may enter the University into a legally binding agreement. All contracts for services must go through the University's purchasing/procurement process.

It is clear that all student organization funds must be held in an account of the Student Activities Center, which is a University agency. Thus, records relating to the funds that are deposited by a student organization into the Student Activities Center Account pertain to the transaction of public business. Whether the SGA is a public body is not relevant to this analysis. The University controls the Student Activities Center Account and possesses the records at issue, therefore the records pertain to the transaction of public business by the University. Accordingly, this office concludes that the University violated the requirements of FOIA by failing to provide copies of the public records responsive to Mr. Preston's FOIA request.

¹¹Chicago State University, Department of Student Affairs, Guide to Clubs & Organizations (Spring 2013), at 15, available at <http://csu.edu/dosa/studentactivities/documents/ClubsandOrgsGuidelinesManual.pdf>

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FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On March 4, 2014, Mr. Willie Preston submitted a FOIA request to Chicago State University seeking records pertaining to the amount of money collected by the University related to the 2013 Homecoming dance, of which the Student Government Association was a sponsor.
- 2) On March 18, 2014, the University denied that request, asserting that although it possessed copies of the records Mr. Preston requested, they were records of the Student Government Association, which is not a "public body" for purposes of the Freedom of Information Act, and not the University's records.
- 3) On March 20, 2014, Mr. Preston submitted a Request for Review of the University's response. Mr. Preston's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2012)).
- 4) On March 31, 2014, the Public Access Bureau determined that further action was warranted and asked the University to explain whether the responsive records were prepared by or for, or had been or were being used by, received by, in the possession of, or under the control of the University.
- 5) On April 16, 2014, the Public Access Bureau received the University's written response stating that the records in question belonged to the Student Government Association, but that copies were provided to the University's Director of Student Activities.
- 6) On May 19, 2014, the Public Access Bureau properly extended the period in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA, to July 1, 2014. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 7) Chicago State University is a public body to which the provisions of FOIA are applicable. The records in question are in the possession and control of the University and pertain to the transaction of public business by the University, for purposes of section 2(c) of FOIA.

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Therefore, it is the opinion of the Attorney General that the University improperly denied Mr. Preston's Freedom of Information Act request in violation of the requirements of that Act. Accordingly, the University is directed to take immediate and appropriate action to comply with this opinion by providing Mr. Preston with all responsive records, subject only to permissible redactions under section 7 of FOIA (5 ILCS 140/7 (West 2012), as amended by Public Acts 98-463, effective August 16, 2013; 98-578, effective August 27, 2013).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Willie Preston as defendants. *See* 5 ILCS 140/11.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General