

UNIVERSITY OF ILLINOIS

URBANA-CHAMPAIGN • CHICAGO • SPRINGFIELD

March 2, 2015

David Prochaska
Independent Media Center
[REDACTED]

Re: FOIA #15-131

Dear Mr. Prochaska:

I write to respond to your Freedom of Information request of February 15, 2015 and received in my office on February 16, 2015, in which you requested:

“...the following records from July 20, 2014 to the present:

1. All University Contracts with any and all outside legal firms, including but not limited to Clark Baird Smith LLP; Thomas, Mamer & Haughey LLP; Perkins Coie LLP, Hinshaw & Culbertson LLP, and Seyfarth Shaw LLP, that the University has retained and paid to represent it in any and all dealings that were/are in effect for the period from July 20, 2014 to the present pertaining to Prof. Steven Salaita.
2. Documentation of legal fees paid by and/or assessed to the University of Illinois to/by outside counsel, including but not limited to Clark Baird Smith LLP; Thomas, Mamer & Haughey LLP; Perkins Coie LLP, Hinshaw & Culbertson LLP, and Seyfarth Shaw LLP, for all issues, including but not limited to matter name, type, vendor and expenses, pertaining to Steven Salaita for services rendered from July 20, 2014 to the present.
3. The names of all matters handled by outside counsel, including but not limited to Clark Baird Smith LLP; Thomas, Mamer & Haughey LLP; Perkins Coie LLP, Hinshaw & Culbertson LLP, and Seyfarth Shaw LLP, that have gone, or are planned to go before any and all courts, including but not limited to Circuit Court Champaign County, and including but not limited to forum, matter name, date filed, and subtype, from July 20, 2014 to the present.”

Information responsive to your request is available and numbers 25 pages. Please note, these documents do not include the names of matters handled by outside counsel that are planned to go before any and all courts. This information is not formally available to us. We are most often unaware of claims filed in court until the University receive a summons. The documents do include a report of the matters that have been filed in a court as per the request.

The information redacted from these documents is exempt from disclosure under sections 7(1)(a) and (m) of the FOIA. Pursuant to subsection (a), the redacted information is privileged from disclosure under state and federal law, specifically by the attorney-client privilege and the attorney work product doctrine, as more fully explained below. In addition, the redacted information constitutes information exempt from production under subsection (m) since it constitutes “[c]ommunications between a public body and an attorney... representing the public body that would not be subject to discovery in litigation...”

The information that *has been* redacted from the documents is confidential under the attorney-client privilege and the attorney work product doctrine. The confidentiality of such information is protected by sections 7(1)(a) and (1)(m) of the FOIA, which exempt from disclosure:

7(1)(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

7(1)(m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body...

5 ILCS 140/7(1)(a),(m) (emphasis added). The attorney-client privilege and the attorney work product doctrine are both recognized under state and federal law as protecting from disclosure information that falls within their coverage. In addition, under Illinois Supreme Court Rule 201(b)(2), attorney work product materials and attorney client privileged communications are specifically not “subject to discovery in litigation”:

(2) *Privilege and Work Product*. All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party’s attorney.

Ill.S.Ct.R. 201(b)(2). As a result, information covered by the attorney-client privilege or the work product doctrine is exempt from disclosure in response to a FOIA request.

In the instant case, the individual entries on each invoice, describing in detail the work performed by each individual attorney or other member of the law firm’s staff on any given day, were redacted from the produced invoices as exempt from disclosure under sections 7(1)(a)

and (m). While attorney fee arrangements, including the general purpose of the work performed, are not generally protected from disclosure, “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, [such as researching particular areas of law], fall within the [attorney-client] privilege.” *The Diversified Group, Inc. v. Daugerdas*, 304 F.Supp. 2d 507, 514 (S.D.N.Y. 2003), quoting *Clarke*, 974 F.2d at 129 (emphasis added). As noted by the court in *Daugerdas*: “Illinois privilege rules regarding disclosure of attorney time records coincide with . . . federal common law principles See . . . *People ex rel. Ulrich v. Stukel*, 294 Ill.App.3d 193, 689 N.E.2d 319, 325, 228 Ill.Dec. 447 (1st Dist. 1997).” *Daugerdas*, at 514, fn.8

In *Ulrich*, the Illinois appellate court addressed the question of what information in a legal services invoice sought from the University of Illinois via a FOIA request might be exempt from disclosure under what was then section 7(1)(n) of FOIA (this section was renumbered as section 7(1)(m) when the FOIA was extensively amended, effective January 2010, but the content of the exemption remained the same). The Court noted in particular that “[c]ertain types of billing records may contain explanations for legal fees and may indicate the type of work done or matters discussed between the attorney and client. As such, they could reveal the substance of confidential attorney-client discussions, and be subject to valid claims of attorney-client privilege or exemption under section 7(1)(n). See *Matter of Witnesses Before the Special March 1980 Grand Jury*, 729 F.2d 489, 495 (7th Cir.1984).” *Ulrich*, 689 N.E.2d 319, 325.

The details redacted from the invoices provided to you in response to your FOIA request include such things as details related to telephone conversations between the law firm’s attorneys and in-house counsel for the University regarding the handling of the lawsuit; specific details regarding case planning and defense strategy in connection with the suit; and specific legal issues researched. This information is precisely the type of information that appears in a billing invoice for legal services that courts routinely acknowledge is protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine and is thus exempt from disclosure under both section 7(1)(a) and 7(1)(m).

Portions of the documents have also been redacted pursuant to section 7(1)(b) that exempts from disclosure “private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.” These items include unique identifiers, such as account, contract, internal file and federal identification numbers.

Notwithstanding these redactions, the documents provided contain all the information you seek in your FOIA request.

You have a right under law to seek review of this response by the Public Access Counselor in the Office of the Attorney General. They may be reached by phone at 217-782-1396, by email to publicaccess@atg.state.il.us, or by postal mail at the Public Access Bureau, 500 S. 2nd Street,

Springfield, Illinois 62706. You also have the right to seek judicial review under section 11 of this Act.

If I can help further, please call me at 217-333-6400.

Sincerely,

Thomas P. Hardy
Executive Director
and Chief Records Officer