



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 22, 2017

Via electronic mail
Mr. Derek Van Buer
230 Thornbrook Road
DeKalb, Illinois 60115
dvanbuer@gmail.com

RE: FOIA Request for Review – 2017 PAC 48851

Dear Mr. Van Buer:

The Public Access Bureau has received the enclosed response to your Request for Review from the Northern Illinois University (University).

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2016). Please send a copy of your reply to the University as well.

If you have questions about this matter, please contact me at (217) 785-7438.

Very truly yours,

A handwritten signature in black ink that reads "Christopher R. Boggs". The signature is written in a cursive style and includes a small flourish at the end.

CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

Enclosure

cc: *Via electronic mail*
Mr. Tom O'Grady
Assistant General Counsel
Northern Illinois University
DeKalb, Illinois 60115
togrady1@niu.edu



**Northern Illinois
University**

Office of General Counsel

Altgeld Hall 330
DeKalb, Illinois 60115-2028
Phone: 815-753-1774
Fax: 815-753-7818

www.niu.edu/generalcounsel

August 15, 2017

Mr. Christopher R Boggs
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL 62706

Re: 2017 PAC 48851

Dear Mr. Boggs:

Northern Illinois University (NIU or University) is in receipt of your letter regarding the above referenced matter. This matter has been referred to the University's Office of General Counsel for appropriate review and response. This letter serves as that response.

The Request for Review stems from a FOIA request made by Mr. Derek Van Buer. Mr. Van Buer originally made the following request:

Payment History by Vendor Name Report that is part of the PeopleSoft Financial modules. If you don't have this report, then a report with similar information. The period is April 1, 2013, to February 28, 2017. The business unit I want for the report is NIU Foundation (not NIU). If possible, please remove the bank name field, the bank account number field, and vendor id field, as these are the only fields that may be redacted. Please provide me this information in Microsoft Excel like FOIA Response 5718. Please add voucher amount, voucher id, and invoice number as additional fields because multiple vouchers are processed as one check. These fields were added to FOIA 5746.

You asked the University for a detailed written explanation of the factual and legal bases for the University's assertion including the extent to which the University and/or its Foundation has complied with Mr. Van Buer's previous requests for similar information.

It is important to note that the records that Mr. Van Buer has requested are the records of the NIU Foundation ("Foundation") an independent 501(c)(3) entity, incorporated under the General Not-for-Profit Act of the State of Illinois. It is governed by a Board of Directors, who are not appointed by Northern Illinois University or any other branch of State government. While the President of NIU is included on the Foundation's Board of Director she is without voting rights.

As such, the Foundation is not a public body. Section 2 of the Illinois Freedom of Information Act states:

- (a) "Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act.

Furthermore, the records that Mr. Van Buer is requesting do not fall under the definition of public records under Section 2(c) of the FOIA.

"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. (emphasis added)

The plain language of section 2(c) requires that the record itself pertain to the transaction of public business, having been or being used by, received by, in the possession of or under the control of any public body." As was explained to Mr. Van Buer, the records do not pertain to the business of NIU or the State of Illinois. They are the records created by, belonging to and under the control the Foundation and pertain to the business of the Foundation. The Foundation is not a public body as defined under FOIA. Additionally, the "Travel Expense Log" requested by Mr. Van Buer is not prepared by or for the University. The University is not in possession of those records. The Foundation's "records are its own property and the Foundation has the authority to keep all of its own records and data confidential consistent with the law. The records although housed on NIU servers, are under the control and possession of the Foundation not NIU. The records belong to the Foundation and they have control over how those records are accessed and used.

Mr. Van Buer has previously requested the "Payment History by Vendor Name Report" for NIU. The University is a public body and the records of NIU are considered public records NIU provided those records to Mr. Van Buer. The University has consistently accommodated Mr. Van Buer's valid FOIA request for public records of the University.

In the instant case, Mr. Van Buer is requesting the records of a 501(c)(3) entity and not a public body. The records are not created by the Foundation. Since the records are in

possession or control of the Foundation, the FOIA office reached out to the Foundation to see if they would supply the records to Mr. Van Buer. Unlike the University's "Payment History by Vendor Name Report", the similar report of the Foundation would need to be reviewed by Foundation employees to ensure that the information they were potentially sharing would be appropriate. The time estimate from the Foundation needed to complete the review for this request of almost four years of documents was estimated at 1,085 hours with an estimated a cost of \$10,850. The Foundation asked the University to reach out to Mr. Van Buer to inquire whether he could narrow his request. Even though Foundation is not subject to FOIA and there is no obligation on their part to follow 5 ILCS 140/3(g) and "in writing specifying the reasons why it would unduly burden its operation," the Foundation provided a detailed description of the process (See Mr. Cabrera's July 20th 2017 email to Mr. Van Buer) it would have to follow to comply with Mr. Van Buer's request. It is important to remember that this does not indicate work or hours of University employees, but employees of the Foundation.

In *Shehadeh v. Madigan*, 996 N.E.2d 1243 (2013) 120742, the Court concluded that the burden of filling a request outweighed the public interest in disclosure of the records. In that case the Attorney General's Office would have to review manually 9,200 files to confirm whether the records were responsive to the request and then the responsive records would have to be reviewed again for permissible redactions. The Court found the request to be "patently broad on its face." *Shehadeh*, 996 N.E.2d at 1248. In the instant case, the number of documents involved in the review process is approximately 16,279 documents. The Foundation however unlike the Attorney General's Office is not a public body. Since the Foundation is not a Public Body it would be inappropriate for them to be forced extend their resources in this manner.

Northern Illinois University is committed to complying with its obligations under the FOIA. The records pertaining to the instant FOIA request were not created by the University and are not in possession or control of the University. The University has gone above and beyond what is required by statute and acted in a reasonable and professional manner in this instance. The University requests that you find that the University has acted in accordance with the FOIA and applicable law.

Please let me know how the University can assist further in this matter. If you would like to discuss further, please contact me at 815-753-5454 or togrady1@niu.edu. Thank you.

NORTHERN ILLINOIS UNIVERSITY

/s/Thomas M. O'Grady

Thomas M. O'Grady
Assistant General Counsel

Tom O'Grady

From: Matt Cabrera
Sent: Tuesday, August 15, 2017 8:57 AM
To: Tom O'Grady
Subject: FW: FOIA Request - Northern Illinois University - D.Van Buer

From: Matt Cabrera
Sent: Thursday, July 20, 2017 4:47 PM
To: 'Derek Van Buer' <dvanbuer@gmail.com>
Cc: Joan Laurino <jlaurino@niu.edu>
Subject: RE: FOIA Request - Northern Illinois University - D.Van Buer

Dear Mr. Van Buer,

This email is in response to a FOIA request you submitted concerning the following:

Payment History by Vendor Name Report that is part of the PeopleSoft Financials modules. If you don't have this report, then a report with similar information. The period is April 1, 2013, to February 28, 2017. The business unit I want for the report is NIU Foundation (not NIU). If possible, please remove the bank name field, the back account number field, and vendor id field, as these are the only fields that may be redacted. Please provide me this information in Microsoft Excel like FOIA Response 5718. Please add voucher amount, voucher id, and invoice number as additional fields because multiple vouchers are processed as one check. These fields were added for FOIA 5746.

We received the following response from the Foundation:

We received your July 6th FOIA request regarding the Payment History by Vendor Name Report for April 1, 2013, to February 28, 2017. Please advise us if it is possible to narrow your request (e.g., payments relating to a specific payee).

Here are the specifics, FYI:

- *Total lines on query: 20,909*
- *Total individual vouchers-approximately 16,279 (cancelled, closed, unselected vouchers removed) nothing redacted in the initial review*
- *In order to provide this information, it will be required for staff to pull and review all information prior to submission. The following is a reasonable estimate of the time that would take in this case:*
- *Based on approximately 15 vouchers/hour, which would include printing and reviewing: approx. 1,085 hours*
- *At a minimum and based on 1,085 hours, we would have to pay a student approx\$10/hour for a total of \$10,850*
- *If we have to pull away from other priorities in order to fulfill this request, this request would greatly impair the team's ability to meet other deadlines*
- *If students are unavailable, the costs would easily triple.*

Joan Laurino
Deputy FOIA Officer