

IN THE THIRD JUDICIAL CIRCUIT
STATE OF ILLINOIS
COUNTY OF MADISON

ROBERT E. DORMAN)	
Plaintiff)	
v.)	2022MR000292
)	
SOUTHERN ILLINOIS UNIVERSITY)	
EDWARDSVILLE)	
Defendant)	

COMPLAINT

COMES NOW the Plaintiff, ROBERT E. DORMAN, Pro Se for his complaint against the Defendant, SOUTHERN ILLINOIS UNOVERSITY EDWARDSVILLE, and pursuant to 5 ILCS 140/1 et seq., and in support of his complaint states as follows:

FREEDOM OF INFORMATION ACT

1. Pursuant to 735 ILCS 5/2-101, venue for this action lies in this court in that a) The Defendant Southern Illinois University Edwardsville (herein after referred to as "Defendant") is a public body in Madison County, and b) the activity of which Plaintiff alleges occurred is in Madison County.
2. Plaintiff Robert E. Dorman, is a resident of Madison County.
3. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (FOIA). 5 ILCS 140/1.
4. Restraints on access to information, to the extent permitted by FOIA are limited

exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards and other aspects of government activities that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

5. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/3.
6. Under the FOIA Section 11(h), "except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way".
7. Plaintiff has requested public information in the form of public records from Defendant which Defendant has denied in violation of Act the as described below and Plaintiff now respectfully asks the Court for relief by ordering the requested records released.
8. On November 16, 2022 Plaintiff propounded upon Defendant via email the following Freedom of Information Act request :

Under the provisions of the Freedom of Information Act, I am requesting an electronic copy of the audio of the March 13, 2002 predisciplinary hearing with officer Chris Slusser and a an electronic copy of the investigative report. The public interest in Mr. Slussers record as a peace officer far outweigh any potential claimed exemption which would not be appropriate as the incident has concluded with determination of his resignation.

Understandably the letters he accessed contain deeply personal information that he enjoyed sharing, but I am not requesting them and respect the victims rights.

9. On November 22, 2022 Defendant improperly denied the request by claiming an exemption under Section 7(1)(n) in an email (Exhibit A) to Plaintiff:

Your request for the above-stated information, received on November 16, 2022, pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., has been received and reviewed by Southern Illinois University Edwardsville (SIUE). Your request is being denied. Phyleccia Reed Cole, Senior System Counsel, was responsible for the decision to deny the request pursuant to the exemption stated below.

Pursuant to Section 7(1)(n) of the Act, records related to a public body's adjudication of employee grievances or disciplinary cases are exempt from disclosure, except the final outcome of cases in which discipline was imposed. There was no discipline imposed in the matter related to your request, and thus the requested documents are exempt from disclosure.

Pursuant to 5 ILCS 140/9_5(a), you have a right to have the denial of your request reviewed by the Illinois Public Access Counselor (PAC). A Request for Review with the PAC can be filed by writing to: Sarah Pratt Public Access Counselor.

SECTION ILCS 140/11

10. Section 11 of the Act unambiguously provides relief for any person denied access to a public record by filing suit whereupon the public body has the burden of proving by clear and convincing evidence that the record is exempt and allows the court to impose a civil penalty for willful and intentional noncompliance.

Sec. 11.(a) **Any person denied access** to inspect or copy any public record by a public body **may file suit for injunctive or declaratory relief.**

Sec. 11(f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. **The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act. Any public**

body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence.

Sec. 11.(j) If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, **the court shall also impose upon the public body a civil penalty** of not less than \$2,500 nor more than \$5,000 for each occurrence.(Emphasis added)

11. The Defendant is wrong in withholding the requested records as they are not exempt under Section 7(1)(n) which is supported by Public Access Opinion 10-21.
12. Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." Black's Law Dictionary defines the word "adjudication" as "[t]he legal process of resolving a dispute; the process of judicially deciding a case." Black's Law Dictionary (11th ed. 2019), *available at Westlaw BLACKS*.
13. Black's Law Dictionary further defines an "adjudication hearing" as an "[a]gency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard." Black's Law Dictionary (11th ed. 2019), *available at Westlaw BLACKS*.
14. Applying similar definitions, the Illinois Appellate Court construed an "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 13, 7 N.E.3d 741, 745 (2014), *overruled in part on other grounds by Perry v. Dep't of Financial and Professional Regulation*, 2018 IL 122349, 106 N.E.3d 1016 (2018).
15. The court also emphasized that "[t]he phrase 'related to' must be read

narrowly," and held that the scope of section 7(1)(n) is limited to records generated during an adjudication; the exemption does not encompass records in Complaint Register (CR) files that document complaints against police officers and the underlying investigations. *Kalven*, 2014 IL App (1st) 121846, **i, i3**, 22, 7 N.E.3d at 743, 747.

16. The court explained that even though "a substantiated complaint can result in disciplinary proceedings being instituted against an officer, those proceedings are a different matter entirely.
17. The CRs are instead part of an investigatory process that is separate and distinct from disciplinary adjudications." *Kalven*, 2014 IL App (1st) 121846, **i\14**, 7 N.E.3d at 745.
18. In addition, the Attorney General has issued a binding opinion (Exhibit C) that distinguished an "adjudication" from an informal disciplinary proceeding. Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013, at 8 (concluding that the police chiefs interviews with witnesses, their fact-based observations, and additional evidence supporting the decision to suspend an employee were not exempt from disclosure pursuant to section 7(1)(n) because the informal disciplinary process fell short of a formalized legal process).
19. The Defendants response to this office asserted that the Denied records relate to Defendants adjudication of a SIUE Police Officer and, therefore, can be withheld in their entireties under section 7(1)(n).
20. Although the response provided no other explanation of the assertion that the matters to which the records relate were the subject of an adjudication[,]" the response stated that "There was no discipline imposed in the matter related to your request, and thus the requested documents are exempt from disclosure."
21. The records in question consist of: (1) an audio recording of Current Madison

County Treasurer and former SIUE State Police officer Chris Slusser's hearing the purpose of which was to investigate his involvement in the of unauthorized access a supervisor's personal briefcase; and the removal, theft, copying, and dissemination of personal correspondence without the supervisor's knowledge, and (2) the investigative reports by the hearing and the SIUE police department. (Exhibit B)

22. The records at issue in this matter are similar to the records described in *Kalven* that documented an investigation of complaints before any adjudication occurred, but one is also a police report.
23. There is no indication that the allegation of theft was generated in connection with a formal adjudication proceeding but rather was the result of a SIUE State Police Department criminal investigation.
24. Accordingly, Defendant has not sustained its burden of demonstrating by clear and convincing evidence that the withheld records are exempt.
25. The Act is unique in that it is designed to be enforced by the public. Any person who discovers non-compliance, through the court may fine the government for disobedience and to ensure compliance and receive legal fees and costs.

WHEREFORE, Plaintiff requests this Honorable Court order Defendant Madison County Board to produce the responsive document, plus costs, attorney fees and a \$5,000 civil penalty.

Respectfully Submitted,
Plaintiff, Robert. Dorman

\s\ Robert E. Dorman
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