

# Illinois Freedom of Information Act



Introduction to FOIA for the University of Illinois System

# Contact Information

Kirsten Ruby – Director, External Relations and Communications (ERC)

kruby@uillinois.edu 217-333-6400

Matt Sullard – Associate Director, FOIA Administration

sullard@uillinois.edu 217-333-6400

Scott Rice – Deputy University Counsel

serice@uillinois.edu 217-333-0560

[www.uillinois.edu/ERC/FOIA](http://www.uillinois.edu/ERC/FOIA)

## FOIA Coordinators

Jaclyn Banister – UIUC Public Affairs

jaclynb@uillinois.edu 217-333-5010

Andrew Marlan – UIC Public Affairs

marlan@uic.edu 312-355-3333

Heather Toth – ERC

heathert@uillinois.edu 217-333-6400

Andi Babosh – ERC

ababos2@uic.edu 217-333-6400



# Today's Topics

- Commitment to Transparency
- What FOIA Is
- What FOIA is Not
- What is a Public Record?
- Structure & Statistics
- The FOIA Flow Chart
- FOIA Request Received – Now What?
- FOIA Facts
- Unduly Burdensome
- FOIA Takeaways & FAQs
- Example
- Best Practices



# Commitment to Transparency

- Every review of a FOIA request begins with the foundation that **all records** of **any type** in possession by a public body **and its employees** are public records, open to inspection & production
  - As state employees, **all** University employees have an obligation to do their part in locating needed records
- Under the Illinois Freedom of Information Act (FOIA) any written communication to / from a University employee **regarding University business** is a public record and may be subject to disclosure

# What FOIA Is

- Illinois Freedom of Information Act
  - All **public records** are open to the public for inspection and copying, unless an exemption applies
  - Public policy behind FOIA is to hold public bodies accountable to the citizens
  - The University **is required** to produce any responsive records it does have, unless an exemption applies
- FOIA contains several explicit examples of what is a public record, plus rules and processing obligations
  - **All** records created in furtherance of the University's business, **no matter the author**, are public records

# What FOIA is Not

- FOIA is not a records creation or retention law
  - There is no obligation to create records to satisfy a request
    - This includes records already deleted prior to receiving a request
    - Note: once a request is received, responsive records may NOT be deleted
    - Note: accessing / exporting data does not count as “creating” for this purpose
  - Document retention should follow University Records and Information Management Services (RIMS) guidelines
- FOIA is not a Question & Answer law
  - Despite the name, FOIA provides a right to inspect or receive copies of records
  - FOIA does not provide a right to have questions answered where they do not identify a record to be produced
  - This includes follow-up questions or questions seeking interpretation of records



# What is a Public Record?

"Public records" means **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.

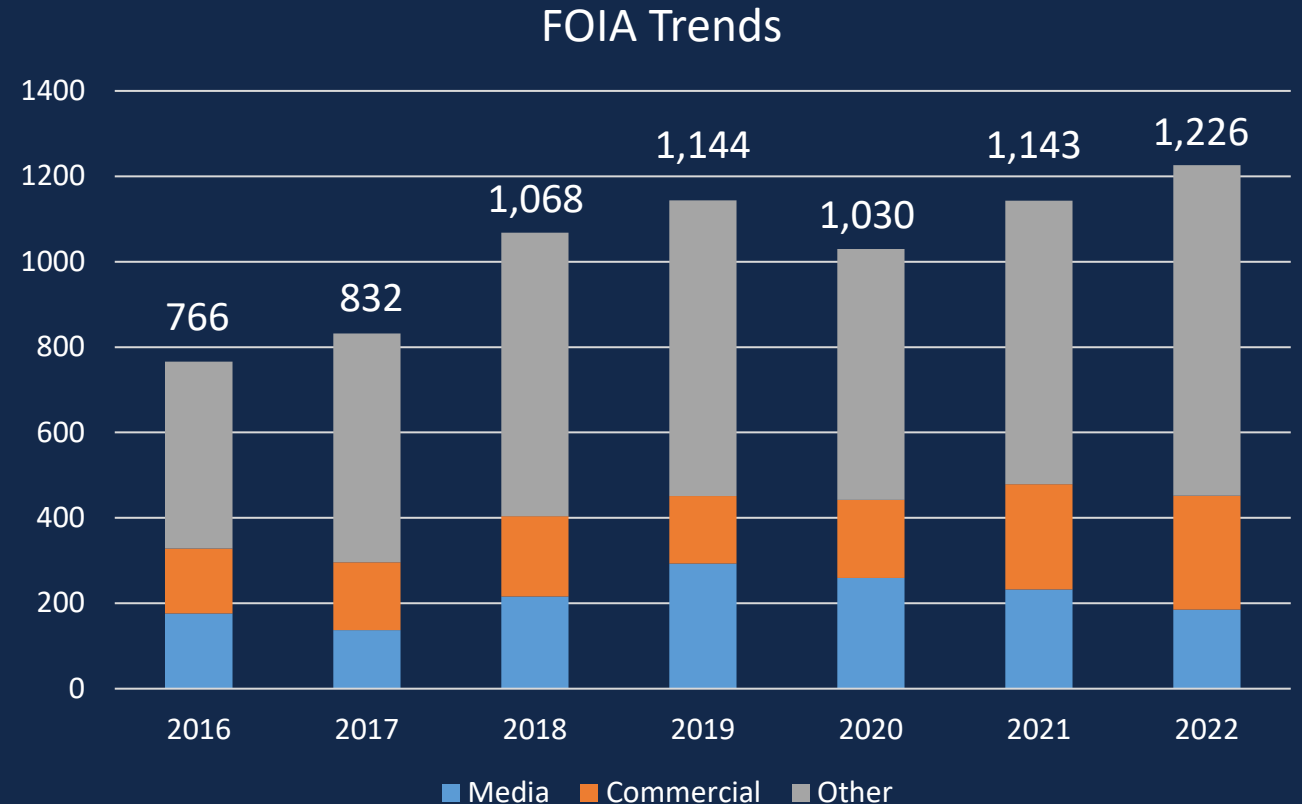
– 5 ILCS 140/2(c)

## Examples:

- Tangible documents
- Electronically stored information
- Audio/video recordings
- Texts/IMs
- Photos
- Emails
- Presentations
- Disciplinary records
- **Communication regarding public business on private devices or accounts**
  - Using a private device, such as personal cell phone or tablet, does **NOT** protect a record if it involves public business
  - Documents possessed by third parties performing a governmental function

# Structure & Statistics

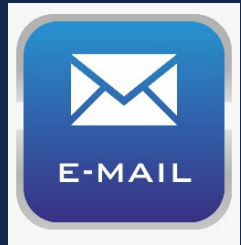
- All FOIA requests are processed centrally through University External Relations and Communications
  - ❖ 1,226 total FOIA requests received in 2022
  - ❖ Over 150,000 pages reviewed
  - ❖ Projecting approx. 1,800 FOIA requests in 2023
- The FOIA Office works with University Public Affairs offices to process FOIA requests directed to that University



If you receive a FOIA request directly, email it to [foia@uillinois.edu](mailto:foia@uillinois.edu)



# The FOIA Flow Chart



**FOIA Request  
Received in FOIA  
Inbox (or Office)**



**Assigned to  
Coordinator for  
Processing**



**Coordinator  
Contacts Unit(s)  
for Responsive  
Records**



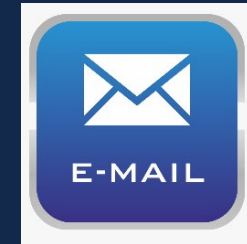
**Unit(s) Provide All  
Responsive Records  
to Coordinator**



**Coordinator Reviews  
Records for FOIA  
Exemptions & Redactions;  
consults with unit(s)**



**Coordinator Drafts Letter to  
Requestor, Explaining Any  
Exemptions Used (& Rights)**



**Coordinator  
Sends Reply to  
Requestor**

# The FOIA Flow Chart

- **Five business days** to respond – may be extended for an additional five days if needed.

SEPTEMBER 2022						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13 FOIA	14 DAY 1	15 DAY 2	16 DAY 3	17
18	19 DAY 4	20 EXTEND	21 DAY 6	22 DAY 7	23 DAY 8	24
25	26 DAY 9	27 FINAL	28	29	30	1

- Additional time for commercial, recurrent, and voluminous requests - 21 business days
- If the request is deemed unduly burdensome, the FOIA Office informs the requestor and provides an opportunity to narrow the request
- Can extend the date longer than 10 days **ONLY IF** requestor agrees.

# FOIA Request Received – Now What?

\*\*If you received a FOIA request directly, forward it to the FOIA Office at [foia@uillinois.edu](mailto:foia@uillinois.edu)\*\*

- **Step 1 – Initial Contact**
  - The FOIA Office forwards a request to you as a person or unit that may have responsive records
- **Step 2 – First Thoughts**
  - Review the request, consider where responsive records may be located (eg, emails, physical documents, text messages, instant messages, reports, etc.)
  - Do the records exist?
  - Is the request manageable?
- **Step 3 – Send Records**
  - If responsive records exist & gathering them is manageable, send **ALL** responsive records to the FOIA Office for review, even if you think some may be exempt
  - Include any concerns, background, or context the FOIA Office may need
- **Step 4 – Production**
  - The FOIA Office reviews the records for exemptions and redacts / withholds as appropriate
  - Records and accompanying letter are prepared and sent to the requestor
  - Legal counsel is consulted, if necessary

# FOIA Facts - Common Requests & Requestors

## Common Requests

- Athletics contracts
- Bid information and contracts
- **Course Syllabi**
- COVID / SHIELD finances & communications
- Disciplinary records
- **Emails**
- Employee lists
- Grade distributions
- Police reports
- Salary information
- Student directory information
- Water well records

## Common Requestors

- News / Media
- (Former) Students
- (Former) Employees
- (Prospective) Vendors
- Data research companies
- Law firms
- Not-for-profit organizations
- Private citizens

# FOIA Facts - Exemptions

- FOIA provides many exemptions

- An exemption allows or requires the redaction or withholding of information
  - Redaction – a record contains some exempt material, but the rest of the record must still be produced with exempt information redacted
  - Withholding – a record may be withheld in its entirety (less common)

- Section 7 exemptions

- Exemptions listed by type(s) of information (a) – (mm)

- Section 7.5 exemptions

- Exemptions listed by reference to other statutes (a) – (hhh)

## NOT a Public Record:

- Unrecorded phone calls
- Face-to-face conversations
- Questions or inquiries
- Documents that no longer exist
  - Note: Records must be retained and disposed of in accordance with state law and university policy
  - Requested records may not be disposed of until the request is fulfilled

# FOIA Facts - Common Exemptions

- **Exemption (a)** Information prohibited from release under State or federal law
  - FERPA – student information (Directory information may be released, according to University definitions)
  - HIPAA – medical information held by a medical facility
- **Exemption (c)** Personal information
  - Disclosure would be a “clearly unwarranted invasion of personal privacy”
  - Highly personal or objectionable to a reasonable person
  - Case-by-case test weighing whether the subject’s right to privacy outweighs legitimate public interest in disclosure
    - Race
    - Date of Birth
    - Private calendar appointments
    - Job interview candidates
- **Exemption (b)** Private information
  - Unique identifiers
    - Social security #,
    - Driver’s license #
    - Employee identification number (includes UIN)
    - Personal financial info
    - Passwords / access codes
    - Medical records
    - Personal telephone #
    - Personal email addresses
    - Home addresses



# FOIA Facts - Common Exemptions

- **Exemption (f)** Deliberative process
  - **Pre-decisional** and deliberative information
  - Preliminary...
    - Drafts
    - Notes
    - Recommendations
    - Memoranda
    - Other records
  - ...in which opinions are expressed, or policies or actions are formulated
  - Policy encourages frank discussion
- **Exemption (j)** Educational matters
  - Test questions
  - Scoring keys
  - Faculty evaluation materials
  - Student discipline
  - **Course or research materials used by faculty**
    - Includes **course syllabi**

Section 7 (5 ILCS 140/7) and Section 7.5 (5 ILCS 140/7.5)

# Unduly Burdensome

- May apply when complying with a request would
  - be unduly burdensome and
  - there is no way to narrow the request and
  - the burden on the public body outweighs the public interest in the information.
- If you receive a request that you believe is **not manageable**, you should
  - Provide the FOIA Office an estimate of potentially responsive records / pages / data
    - **Supports a burdensome designation**
  - Advise the FOIA Office of the type of records at issue and if they contain sensitive information (eg, student communications)
  - Estimate how long it would take to provide the responsive records
    - **Necessary to defend an Appeal to the Attorney General**
  - Include any important context (eg, personnel shortages, big projects going on, sensitive info, etc.) – to help the FOIA Office determine whether designating a request as unduly burdensome applies

## Unduly Burdensome

+ No Way to Narrow

+ Burden Outweighs Public Interest

Note: we are required to provide the requestor an opportunity to reduce the request to manageable proportions

# FOIA Takeaways & FAQs

- FOIA promotes transparency in public bodies, accountable to the public
- The University of Illinois System supports transparency and complies with FOIA
- The FOIA Office works with individual units and personnel to find responsive records and understand important context
- The **FOIA Office** processes approx. 1,500 requests annually, and is the office with the **expertise** to apply the law
  - To that end, the final decision to redact or withhold information lies with the FOIA Office
- Using personal email addresses / personal devices does **not** impact responsiveness
  - It's not about the medium used – it's about the subject matter contained in the records
  - If public business is contained on a personal account or device, **those records are subject to FOIA**
- Under FOIA, it does not matter:
  - Where the information is stored
  - Who owns the storage device
  - Why the request was made
  - Who the requester is
- The FOIA Office needs **all responsive records** to make the informed decision
  - All responsive records are reviewed for exemptions

**From:** [Ruby, Kirsten](#)  
**To:** [Weathers, Jillian Elizabeth](#)  
**Subject:** A few things  
**Date:** Monday, April 18, 2022 1:08:00 PM  
**Attachments:** [image001.png](#)

Hi Jill,

I hope Emma is feeling better!

Here's what I think about the candidates:

Ryne is not ready for this position.

Jody is out of her depth.

Bob didn't impress me.

This week's meeting was a total waste of time. All we do is hear complaints and there's never any action.

If you want to talk, my cell is 217-649-3333. I'll be home after I take Chipper to the vet.

Thanks,  
Kirsten

**Kirsten Ruby**  
*Director, External Relations and Communications*  
Office of External Relations and Communications  
University of Illinois System  
108 Henry Administration Building, MC370  
506 S. Wright St., Urbana, IL 61801  
217.300.4486 | [kruby@uillinois.edu](mailto:kruby@uillinois.edu)  
[uillinois.edu](http://uillinois.edu) | [Twitter](#) | [Facebook](#)

 UNIVERSITY OF ILLINOIS SYSTEM

Altogether Extraordinary™

*Under the Illinois Freedom of Information Act (FOIA), any written communication to or from University of Illinois employees regarding U of I business is a public record and may be subject to public disclosure.*

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**Kirsten Ruby**  
*Director, External Relations and Communications*  
Office of External Relations and Communications  
University of Illinois System  
108 Henry Administration Building, MC370  
506 S. Wright St., Urbana, IL 61801  
217.300.4486 | [kruby@uillinois.edu](mailto:kruby@uillinois.edu)  
[uillinois.edu](http://uillinois.edu) | [Twitter](#) | [Facebook](#)

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# Best Practices

- Remember before you write: we can withhold records **only when a FOIA exemption applies** – not just because it is embarrassing or regrettable
  - Sarcasm and snark don't translate well
  - Jokes and comments can be taken out of context
- **Label** documents and emails to serve as flags and reminders, eg:
  - Draft
  - Deliberative
  - Privileged
  - Work Product
- **Keep your email tidy**
  - Clear labels
  - Delete when appropriate
- **Keep private** information and discussions **on private** accounts and devices

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