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June 27, 2018

To: UCCI Membership

Re: Recent Correspondence Regarding FOIA Requests

UCCI has recently received reports from membership that outside entities, separate and apart from the members' respective counties, have provided input on the handling of FOIA requests that are anticipated in the wake of the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31*. In order to help member counties comply with the requirements of FOIA, UCCI would like to provide you with following general principles of FOIA.

- 1. FOIA is a document production statute and not a question and answer forum.** "A request to inspect or copy must reasonably identify a public record and not general data, information, or statistics," and FOIA "does not compel the agency to provide answers to questions posed by the inquirer." *Chicago Tribune v. Dept. of Financial and Professional Regulation*, 2014 IL App (4th) 130427, ¶ 33. Moreover, Section 3.3 of FOIA plainly states "[FOIA] is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records."
- 2. A public body is not required to create new documents in order to respond to a request.** FOIA "is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained..." 5 ILCS 140/1. Therefore, a public body need not compile information from several existing documents to create a new document that is responsive to a request.
- 3. Withholding or redacting information pursuant to a FOIA request is discretionary.** Section 7 provides "When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, **the public body may** elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." 5 ILCS 140/7 (emphasis added). The one exception to this discretion is "contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure" appearing on payroll records submitted to the Prevailing Wage Act. 5 ILCS 140/2.10. Please note, other State statutes might create additional restrictions on disclosure of information.

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4. **Generally, public bodies do redact the private information of employees.** Private information is defined as “unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.” 5 ILCS 140/2. The Public Access Counselor has consistently concluded that a person's signature is a unique identifier, and may be redacted pursuant to Section 7(1)(b) of FOIA. See, *e.g.*, Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014, at 11.
5. **Unwarranted invasion of personal privacy is defined by FOIA and is not a subjective determination by the public body.** “Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.” 5 ILCS 140/7. FOIA is not intended to cause an unwarranted invasion of personal privacy. 5 ILCS 140/1. However, “[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” 5 ILCS 140/7. Therefore, the information must not be related to public duties and the public body must be able to articulate in its response both why disclosure would be highly personal or objectionable to a reasonable person and also how the right to privacy outweighs disclosure.
6. **A FOIA request and any related response along with the documents provided are public records in and of themselves.** As documents “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” the FOIA requests and responses are subject to disclosure. 5 ILCS 140/2. As a result, it may be beneficial to share requests with stakeholders of the public body in order to avoid any surprises caused by the public body's response. However, a public body should be careful to avoid any arrangement that may be construed as granting any person or entity “the exclusive right to access and disseminate any public record as defined in this Act” as prohibited by FOIA. 5 ILCS 140/3.

The above items are only to serve as a brief refresher on some salient aspects and requirements of FOIA. It is not a comprehensive analysis of FOIA's duties and obligations imposed upon counties as public bodies. All counties should consult with their State's Attorney in responding to any request for production of public records.

At the request and direction of UCCI this document was prepared by
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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.