

**IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS
CHANCERY DIVISION**

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 500)
Washington, DC 20024,)
)
Plaintiff,)
)
vs.)
)
THE ILLINOIS SENATE)
c/o Secretary of the Senate)
401 State Capitol)
Springfield, IL 62706,)
)
and)
)
EMIL JONES, JR., in his official)
capacity as President of the)
Illinois Senate,)
327 State Capitol)
Springfield, IL 62706,)
)
Defendants.)
_____)

Case No.:

**COMPLAINT IN CHANCERY FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, Judicial Watch, Inc., by and through its attorney, and prays that this Court render a declaratory judgment in its favor and grant it injunctive relief under the Freedom of Information Act, 5 ILCS § 140/1, *et seq.* For its Complaint, Plaintiff states as follows:

1. Plaintiff Judicial Watch, Inc. is a non-profit, educational organization that promotes integrity, transparency, and accountability in government, among other goals, by

obtaining public documents under state and federal “open records” laws, analyzing those documents, and disseminating them to the public.

2. Defendants are the Illinois Senate, a “public body” as that term is defined by 5 ILCS § 140/2(a), and Illinois Senate President Emil Jones, Jr., who is being sued in his official capacity as the “head” of the Illinois Senate, as that term is defined by 5 ILCS § 140/2(e).

3. Pursuant to Senate Rule 2-7(b)(1), the Secretary of the Senate is the custodian of all bills, papers, and records of the Illinois Senate. Pursuant to Senate Rule 2-5(b), the President of the Senate is chief administrative officer of the Illinois Senate.

4. On February 25, 2008, Plaintiff sent a letter to the Secretary of the Senate requesting that the Illinois Senate allow it access to the following categories of public records:

- i. Any and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
- ii. Any and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
- iii. Any and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
- iv. Any and all agreements by or between Senate President Emil Jones, Jr., House Speaker Michael J. Madigan, and/or Governor Rod Blagojevich concerning or relating to any member initiative or earmarked appropriation for Fiscal Year 2008.

A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.

5. For purposes of the request, the terms “gubernatorial or legislative member initiative” was defined as the following:

An appropriation for a grant or distribution to a specific unit of local government, specific school district, specific-not-for-profit organization, or specific non-governmental entity for infrastructure improvements or operating expenses. Appropriations that are part of a statewide program and are based on generally applicable standards of eligibility are not gubernatorial or legislative member initiatives. Infrastructure improvements include without limitation capital improvements, capital projects, planning, construction, reconstruction, equipment, utilities, vehicles, and all costs associated with economic development, community programs, educational programs, public health, and public safety.

See Exhibit A.

6. Also for purposes of the request, the term “earmarked appropriation” was defined as the following:

An appropriation that is: requested by only one member of the Illinois General Assembly; not specifically authorized by an authorizing committee; not awarded through a competitive process or formula; not subject to Illinois Senate or Illinois House of Representative hearings or debate; or serves only a local or special interest.

See Exhibit A.

7. On information and belief, the Illinois Senate maintains, possesses, and/or has control over public records, as that term is defined by ILCS § 140/2(c), responsive to one or more categories of records requested by Plaintiff in its February 25, 2008 request.

8. By letter dated March 11, 2008, the Illinois Senate granted itself an additional seven (7) working days to respond to Plaintiff’s request. A true and correct copy of the Illinois Senate’s March 11, 2008 letter is attached hereto and incorporated herein as Exhibit B.

9. On March 20, 2008, the Illinois Senate denied Plaintiff's FOIA request. A true and correct copy of the denial is attached hereto and incorporated herein as Exhibit C.

10. On April 7, 2008, Plaintiff appealed the denial of its request to Illinois Senate President Emil Jones, Jr., in his capacity as the "head" of the Illinois Senate. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated herein as Exhibit D.

11. On April 25, 2008, Illinois Senate President Jones rejected Plaintiff's appeal and affirmed the previous denial of its request. A true and correct copy of Plaintiff's appeal is attached hereto and incorporated herein as Exhibit E.

COUNT I

(Violation of the Illinois Freedom of Information Act, 5 ILCS § 140/1, *et seq.*)

12. Plaintiff reaffirms paragraphs 1-11 as if fully restated herein.

13. Plaintiff is being irreparably harmed by Defendants' failure to produce the requested public records, as Plaintiff is being denied its legal right to inspect public records under the Illinois Freedom of Information Act, 5 ILCS § 140/1, *et seq.*

14. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court:

A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILSC §140/1, *et seq.*;

B. Enjoin Defendants from continuing to withhold access to any and all non-exempt public records responsive to Plaintiff's February 25, 2008 request and further enjoin Defendants to produce any and all such records to Plaintiff without further delay;

C. Enjoin Defendants to prepare, forthwith, an affidavit declaring that they have fully and completely complied with Plaintiff's February 25, 2008 request and further declaring that any and all non-exempt public records responsive to the request have been produced to Plaintiff;

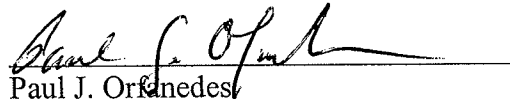
D. Order Defendants to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's February 25, 2008 request that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption;

E. Award Plaintiff reasonable attorney's fees and costs; and

F. Order such other and further relief as the Court finds just and equitable.

Dated: July 31, 2008

Respectfully submitted,



Paul J. Orlandes

Ill. Bar No. 6205255

JUDICIAL WATCH, INC.

501 School Street, S.W., Suite 500

Washington, DC 20024

Tel.: (202) 646-5172

Fax.: (202) 646-5199

Attorneys for Plaintiff

EXHIBIT A

Judicial Watch, Inc.

501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: Secretary of the Senate

FROM: Paul J. Orfanedes

DATE: February 25, 2008

TELECOPY NUMBER: 217-782-0813

NUMBER OF PAGES (Including Cover Page): 4



Judicial Watch

Because no one is above the law!

VIA FACSIMILE (217-782-0813)
AND CERTIFIED U.S. MAIL

February 25, 2008

Secretary of the Senate
Capitol Building, Room 401
Second and Capitol Streets
Springfield, IL 62706

Re: Illinois Freedom of Information Act Request

Dear Sir/Madam:

Judicial Watch, Inc. and Americans for Prosperity Foundation hereby request that the Illinois Senate produce the following public records pursuant to the provisions of the Illinois Freedom of Information Act, 5 Ill. Comp. Stat. Ann. 140/1 *et seq.*:

1. Any and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
2. Any and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
3. Any and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
4. Any and all agreements by or between Senate President Emil Jones, Jr., House Speaker Michael J. Madigan, and/or Governor Rod Blagojevich concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.

For purposes of this request, the term “gubernatorial or legislative member initiative” shall mean the following:

An appropriation for a grant or distribution to a specific unit of local government, specific school district, specific-not-for-profit organization, or specific non-governmental entity for infrastructure improvements or operating expenses. Appropriations that are part of a statewide program and are based on generally applicable standards of eligibility are not gubernatorial or legislative member initiatives. Infrastructure improvements include without limitation capital improvements, capital projects, planning, construction, reconstruction, equipment, utilities, vehicles, and all costs associated with economic development, community programs, educational programs, public health, and public safety.

See, e.g., 95th Ill. Gen. Assem. Senate Bill 1601, 2007 Sess.

Also for purposes of this request, the term “earmarked appropriation” shall mean the following:

An appropriation that is: requested by only one member of the Illinois General Assembly; not specifically authorized by an authorizing committee; not awarded through a competitive process or formula; not subject to Illinois Senate or Illinois House of Representative hearings or debate; or serves only a local or special interest.

Please produce the requested record(s) to Judicial Watch, Inc. at its Washington, DC office, located at 501 School Street, S.W., Suite 500, Washington, DC 20024, within seven (7) working days of your receipt of this request. 5 Ill. Comp Stat. Ann. 140/3(c). If the requested record(s) cannot be produced within seven (7) working days, please notify us in writing of the reason(s) for the delay and the date by which the requested record(s) will be available.

Judicial Watch, Inc. and Americans for Prosperity Foundation request that the above-referenced records be furnished without charge pursuant to 5 Ill. Comp. Stat. 140/6. Judicial Watch, Inc. and Americans for Prosperity Foundation are both 501(c)(3) non-profit educational organizations that seek to promote transparency in government and combat waste, fraud, and abuse in government spending, among other goals. They are undertaking a detailed review of public spending practices in Illinois, including member initiatives and/or earmarked appropriations, about which substantial questions have been raised. *See, e.g.*, “Secret deals passed state budget; Governor’s memos pledged pet projects,” *Chicago Tribune*, June 21, 2006 at 3. The principal purpose of this request is to enable Judicial Watch, Inc. and Americans for Prosperity Foundation to access and analyze the requested information, then disseminate the results of their findings to the public. Waiver or reduction of the fee is therefore in the public

Secretary of the Senate
February 25, 2008
Page 3

interest, as the principle purpose of the request is to access and disseminate information regarding the health, safety, welfare, and legal rights of the public in general. Neither organization makes this request for the principal purpose of securing any personal or commercial benefit. Thus, a waiver or reduction of fees is in the public interest. In the event any fee is to be charged for copying the requested records, please advise us in advance if the expected cost of the copying is likely to exceed \$150.00.

If you do not understand this request, or any portion thereof, or if you feel you require clarification of this request, or any portion thereof, please contact us at (202) 646-5172.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes

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Judicial Watch, Inc.

501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: Secretary of the Senate

FROM: Paul J. Orfanedes

DATE: February 25, 2008

TELECOPY NUMBER: 217-782-0813

NUMBER OF PAGES (Including Cover Page): 4

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 Capitol Building, Room 401
 Second and Capitol Streets
 Springfield, IL 62706

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EXHIBIT B



OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

Via United States Mail

March 11, 2008

Mr. Paul J. Orfanedes
Judicial Watch
501 School Street, SW
Suite 795
Washington, DC 20024

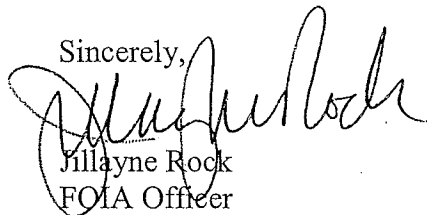
Re: FOIA Request (February 25, 2008)

Dear Mr. Orfanedes:

On February 29, 2008, this Office received your Freedom of Information Act letter, dated February 25, 2008, and directed to the Secretary of the Senate.

By this letter, we are extending the response date by 7 days, pursuant to 5 ILCS 140/3(d)(v) and 5 ILCS 140/3(d)(vii) of the Act. A response to your request will be forthcoming by March 20, 2008.

Sincerely,



Jillayne Rock
FOIA Officer

JR:sjg

EXHIBIT C



OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

Via United States Mail

March 20, 2008

Mr. Paul Orfanedes
Judicial Watch
501 School Street, SW
Suite 795
Washington, D.C. 20024

Re: FOIA Request (February 25, 2008)

Dear Mr. Orfanedes:

On February 29, 2008, this Office received your Freedom of Information Act letter, dated February 25, 2008, and directed to the Secretary of the Senate. A notice of extension was mailed by my office on March 11, 2008, indicating that we would provide a response by March 20, 2008. We are responding to your request despite the fact that it was improperly addressed to the Secretary of the Senate, who is not designated as a recipient of such requests. 5 ILCS 140/4(b). We reserve the authority to object to any further FOIA requests that are made to the Secretary of the Senate, and this response is made without waiver of that authority. In your letter, you request:

- “1. Any and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
2. Any and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
3. Any and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
4. Any and all agreements by or between Senate President Emil Jones, Jr., House Speaker Michael J. Madigan, and/or Governor Rod Blagojevich concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.”

Paul J. Orfanedes
March 11, 2008
Page 2

Regarding your first request, for “records concerning . . . member initiative or earmarked appropriations”, any records that may exist would not be records of the public body but instead the personal records of individual members of the General Assembly or General Assembly staff.

Individual members of public bodies are not, themselves, public bodies. See Quinn v. Stone, 211 Ill. App. 3rd. 809, 570 NE 2d. 676 (1st Dist., 1991). In this regard, and especially relevant within the context of your request, Representative Bowman, one of the primary sponsors of the Freedom of Information Act observed, in response to concerns that the that the Act would open the records and files of individual members of the General Assembly to disclosure observed:

“Our own personal correspondence is precisely that. It is our personal correspondence. They are not the *General Assembly records*. And preliminary notes and *other memoranda* are exempt under the provisions of this Bill. Period.” Transcript of floor debate, May 25, 1983. (emphasis added).

In addition, if the Illinois Senate as a public body possessed these records, they would be exempt from the Act pursuant to 5 ILCS 140/7(1) (f), which refers to “[p]reliminary drafts, notes, recommendations, *memoranda and other records in which opinions are expressed or policies or actions are formulated* The exemption provided in this paragraph (f) *extends to all those records* of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.” 5 ILCS 140/7 (1) and (f) (emphasis added).

Your second and third request for “any and all communications” would be exempt from the Act for all the reason stated above plus would amount to a wholesale intrusion into and upon the deliberative process. Additionally, Article 1, Section 6 of the Illinois Constitution provides that the people have the right to privacy and to be free from the interceptions of their communications by eavesdropping devices or other means. The Freedom of Information Act, itself, provides that it is “not intended to be used to violate individual privacy” 5 ILCS 140/1.

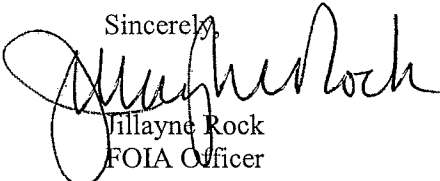
Courts nationwide have recognized what Representative Bowman by implication, and Section 7 (f) categorically, states: records and communications which reveal “the substance or direction of the judgment and mental processes of” a legislator are not subject to disclosure. “Disclosure of such records would interfere with the flow of information to the government official and intrude on the deliberative process.” Rogers v. Superior Court, 19 Cal. App. 4th 469, 23 Cal. Rpt. 412 (1993). The Rogers court refused to order the disclosure of telephone numbers with whom a city council member had spoken, observing that such disclosure would be the “functional equivalent of revealing the substance and direction of the judgment and mental processes of the City Council member,” and thus be a patent violation of the deliberative process privilege. Id. at 417 (quoting Times Mirror Co. v. Superior Ct., 53 Cal. 3d 1325 (1991)).

Paul J. Orfanedes
March 11, 2008
Page 3

The Illinois Supreme Court has recognized that “[p]ublic officials must be able to gather maximum amount of information and discharge their official duties without infringing on the rights of privacy.” Lopez v. Fitzgerald, 76 Ill. 2d 107, 120 (1979) (quoting People ex. rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 1092-93). In Lopez, the court noted that it “is important to consider whether the disclosure would constitute an invasion of privacy...whether it would discharge frankness and whether it would cut off sources of information upon which a government relies.” Id. at 120 (quoting Better Broadcasting, at 1092-93).

Finally, with respect to your fourth request for “any and all agreements” please be advised that the Illinois Senate is not in possession of such documents.

This decision may be appealed to Illinois Senate President Emil Jones, Jr. Such appeal must be in writing and should be clearly marked “Freedom of Information Act Appeal.” The appeal must clearly identify the record or records that are the subject of the appeal, and any and all reasons why this decision should not be sustained, with specific statutory and case citations supporting your belief that the denial is incorrect.

Sincerely,

Jillayne Rock
FOIA Officer

JR:sjg

EXHIBIT D

Judicial Watch, Inc.

501 School Street, S.W.
Suite 500
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: The Hon. Emil Jones, Jr.

FIRM: PRESIDENT, ILLINOIS SENATE

FROM: Paul J. Orfanedes

DATE: April 7, 2008

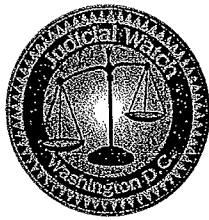
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Our Reference No.: 500

FREEDOM OF INFORMATION ACT APPEAL

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Judicial Watch

Because no one is above the law!

**VIA FACSIMILE (217-782-3242) AND
CERTIFIED U.S. MAIL**

April 7, 2008

The Hon. Emil Jones, Jr.
President, Illinois Senate
327 State Capitol
Springfield, IL 62706

Re: Freedom of Information Act Appeal

Dear President Jones:

Judicial Watch, Inc. and Americans for Prosperity Foundation hereby appeal the March 20, 2008 determination by Jillayne Rock, Freedom of Information Act Officer for the Illinois Senate, denying our February 25, 2008 Freedom of Information Act ("FOIA") request. A copy of Ms. Rock's determination is enclosed for your convenience.

Our request sought production of the four categories of documents. No documents were produced in response to any of the categories.

The first category sought "[a]ny and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008." The terms "gubernatorial or legislative initiative" and "earmarked appropriation" were expressly defined.

In response, Ms. Rock declined to produce any responsive records, asserting that the records are personal records of individual members of the General Assembly or General Assembly staff. We disagree that records regarding expenditures of public funds are not public records within the meaning of 5 ILCS 140/2(c). FOIA defines the term "public records" to include "all records . . . having been prepared, or having been or being used, received, possessed, or under the control of any public body." 5 ILCS 140/2(c). Included within the definition is "information relating to any grant or contract made by or between a public body and another public body or private organization." 5 ILCS 140/2/(c)(xiv). In this regard, produced to us in response to a FOIA request to another public body was the attached "Senate Democrat FY 02 Member Project Authorization Form" regarding a \$100,000 initiative you sponsored for Chicago

President Emil Jones, Jr.

April 7, 2008

Page 2

State University. Such records concerning the use of public records are, quintessentially, the public's business.

In this regard, in *Quinn v Stone*, 211 Ill. App.3d 809, 570 N.E.2d 676 (1st Dist. 1991), a requester asked a Chicago alderman to make available records regarding the alderman's use of a monthly travel allowance. The Court held that the request should have been directed to the "public body" of which the alderman was a member -- the Chicago city council -- and the mayor. *Quinn*, 211 Ill. App.3d at 811-12, 570 N.E.2d at 677-78. The Court did not hold that the records were not public records. In fact, it expressly declared, "By holding that plaintiff has pursued her statutory remedy against the wrong person, we do not in any way intend to decide whether or not plaintiff has a right to the information requested." *Id.*

Ms. Rock also asserted that responsive records may constitute personal correspondence. However, we did not limit this request to correspondence, personal or otherwise. The request encompasses all records concerning or relating to gubernatorial or legislative member initiatives or earmarked appropriations, whether such records constitute correspondence or not.

It nonetheless is erroneous to assert that correspondence between members of the General Assembly regarding the expenditure of public funds are not public records. Again, such records are, quintessentially, the public's business. *See, e.g.*, 5 ILCS 140/2/(c)(xiv).

Finally, Ms. Rock also asserted with respect to this first category that any responsive records are exempt from production under 5 ILCS 140/7(1)(f). This particular exemption applies to predecisional documents only. *See, e.g., Harwood v. McDounough*, 344 Ill. App.3d 242, 248, 799 N.E.2d 859, 864-65 (1st Dist. 2003). It is the parallel provision to the "deliberative process" privilege exemption of the federal Freedom of Information Act. *Id.* It does not apply to records that reflect final governmental decisions. While we appreciate that predecisional documents regarding gubernatorial or legislative member initiatives or earmarked appropriations might be subject to a claim of exemption under 5 ILCS 140/7(1)(f), certainly any documents that concern or reflect final decisions regarding such initiatives or appropriations do not fall within the scope of the exemption. In addition, FOIA requires that, when a particular record contains both exempt and non-exempt material, the exempt material must be segregated from the non-exempt material, and the non-exempt material must be disclosed. 5 ILCS/8. Any non-exempt records or material must be produced.

The second category sought "[a]ny and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008." Ms. Rock declined to produce the requested records, asserting that such records are in your exclusive control and you are not a "public body."

President Emil Jones, Jr.

April 7, 2008

Page 3

Again, we disagree that communications between the head of one public body -- the President of the Illinois Senate -- and the head of another public body -- the Speaker of the Illinois House -- regarding expenditures of public funds are not public records within the meaning of 5 ILCS 140/2(c). For the same reasons the "deliberative process" privilege exemption does not constitute a blanket prohibition on the production of records responsive to the first category of requested documents, it does not bar the production of all communications responsive to the second category of responsive documents. All non-exempt, responsive documents or materials must be produced.

The third category sought "[a]ny and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008." Any such communications should be produced for the same reasons non-exempt communications between members and communications between you and the Governor and/or the Office of the Governor concerning expenditures of public funds on gubernatorial or legislative member initiatives or earmarked appropriations must be produced.

The fourth category sought "[a]ny and all agreements by or between Senate President Emil Jones, Jr., House Speaker Michael J. Madigan, and/or Governor Rod Blagojevich concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008." Ms. Rock asserted that the "Illinois Senate is not in possession of such documents." This response would appear to indicate that such documents do, in fact, exist. Please confirm that this is the case and advise us where such records may be located. If such records are in the possession of individual members, they still constitute public records and must be produced. *See, e.g., Quinn*, 211 Ill. App.3d at 811-12, 570 N.E.2d at 677-78.

We trust that, in light of this appeal, any and all non-exempt, responsive records will be produced without further delay.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes

Enclosures



OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

Via United States Mail

March 20, 2008

Mr. Paul Orfanedes
Judicial Watch
501 School Street, SW
Suite 795
Washington, D.C. 20024

COPY

Re: FOIA Request (February 25, 2008)

Dear Mr. Orfanedes:

On February 29, 2008, this Office received your Freedom of Information Act letter, dated February 25, 2008, and directed to the Secretary of the Senate. A notice of extension was mailed by my office on March 11, 2008, indicating that we would provide a response by March 20, 2008. We are responding to your request despite the fact that it was improperly addressed to the Secretary of the Senate, who is not designated as a recipient of such requests. 5 ILCS 140/4(b). We reserve the authority to object to any further FOIA requests that are made to the Secretary of the Senate, and this response is made without waiver of that authority. In your letter, you request:

- “1. Any and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
2. Any and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
3. Any and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
4. Any and all agreements by or between Senate President Emil Jones, Jr., House Speaker Michael J. Madigan, and/or Governor Rod Blagojevich concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.”

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March 11, 2008
Page 2

Regarding your first request, for “records concerning . . . member initiative or earmarked appropriations”, any records that may exist would not be records of the public body but instead the personal records of individual members of the General Assembly or General Assembly staff.

Individual members of public bodies are not, themselves, public bodies. See Quinn v. Stone, 211 Ill. App. 3rd. 809, 570 NE 2d. 676 (1st Dist., 1991). In this regard, and especially relevant within the context of your request, Representative Bowman, one of the primary sponsors of the Freedom of Information Act observed, in response to concerns that the that the Act would open the records and files of individual members of the General Assembly to disclosure observed:

“Our own personal correspondence is precisely that. It is our personal correspondence. They are not the *General Assembly records*. And preliminary notes and *other memoranda* are exempt under the provisions of this Bill. Period.” Transcript of floor debate, May 25, 1983. (emphasis added).

In addition, if the Illinois Senate as a public body possessed these records, they would be exempt from the Act pursuant to 5 ILCS 140/7(1) (f), which refers to “[p]reliminary drafts, notes, recommendations, *memoranda and other records in which opinions are expressed or policies or actions are formulated . . .* The exemption provided in this paragraph (f) *extends to all those records* of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.” 5 ILCS 140/7 (1) and (f) (emphasis added).

Your second and third request for “any and all communications” would be exempt from the Act for all the reason stated above plus would amount to a wholesale intrusion into and upon the deliberative process. Additionally, Article 1, Section 6 of the Illinois Constitution provides that the people have the right to privacy and to be free from the interceptions of their communications by eavesdropping devices or other means. The Freedom of Information Act, itself, provides that it is “not intended to be used to violate individual privacy” 5 ILCS 140/1.

Courts nationwide have recognized what Representative Bowman by implication, and Section 7 (f) categorically, states: records and communications which reveal “the substance or direction of the judgment and mental processes of” a legislator are not subject to disclosure. “Disclosure of such records would interfere with the flow of information to the government official and intrude on the deliberative process.” Rogers v. Superior Court, 19 Cal. App. 4th 469, 23 Cal. Rpt. 412 (1993). The Rogers court refused to order the disclosure of telephone numbers with whom a city council member had spoken, observing that such disclosure would be the “functional equivalent of revealing the substance and direction of the judgment and mental processes of the City Council member,” and thus be a patent violation of the deliberative process privilege. Id. at 417 (quoting Times Mirror Co. v. Superior Ct., 53 Cal. 3d 1325 (1991)).

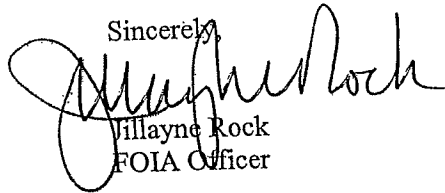
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The Illinois Supreme Court has recognized that “[p]ublic officials must be able to gather maximum amount of information and discharge their official duties without infringing on the rights of privacy.” Lopez v. Fitzgerald, 76 Ill. 2d 107, 120 (1979) (quoting People ex. rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 1092-93). In Lopez, the court noted that it “is important to consider whether the disclosure would constitute and invasion of privacy...whether it would discharge frankness and whether it would cut off sources of information upon which a government relies.” Id. at 120 (quoting Better Broadcasting, at 1092-93).

Finally, with respect to your fourth request for “any and all agreements” please be advised that the Illinois Senate is not in possession of such documents.

This decision may be appealed to Illinois Senate President Emil Jones, Jr. Such appeal must be in writing and should be clearly marked “Freedom of Information Act Appeal.” The appeal must clearly identify the record or records that are the subject of the appeal, and any and all reasons why this decision should not be sustained, with specific statutory and case citations supporting your belief that the denial is incorrect.

Sincerely,



Millayne Rock
FOIA Officer

JR:sjg

Senate Democrat FY 02 Member Project Authorization Form

Please complete for each project

*OK
mf*

Sponsorship Information

Legislative Sponsor(s): Senator Emil Jones District #: 14
Appropriation Amount: \$100,000
Bill # HB 6061 Article #: 3-DIV-FY 01 Section #: 48

Recipient Information

Name of Grantee: Chicago State University
Grantee's Address: 9501 S. King Drive - ADM 313
Chicago Illinois 60628 Cook
City Zip Code County
Contact Person for Grantee: Elnora D. Daniels
Title of Contact Person: President
Contact Person's Phone #: 773-995-2400 Fax #: 773-995-3849
(If Available)

Legislative Intent

Purpose of Grant (brief description)

The funds from this grant will be used for various capital improvements related to fire safety. The costs covered by this grant include, but are not limited to: construction, renovation, and any other necessary costs.

Authorization

Caucus Authorization

[Signature] Chief of Staff December 11, 2002
Name Title Date

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0089
CONNECTION TEL	9*500*12177823242
CONNECTION ID	
ST. TIME	04/07 17:02
USAGE T	01'17
PGS. SENT	8
RESULT	OK

Judicial Watch, Inc.

501 School Street, S.W.
Suite 500
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: The Hon. Emil Jones, Jr.

FIRM: PRESIDENT, ILLINOIS SENATE

FROM: Paul J. Orfanedes

DATE: April 7, 2008

TELECOPY NUMBER: (217) 782-3242

NUMBER OF PAGES (Including Cover Page): 8

Our Reference No.: 500

FREEDOM OF INFORMATION ACT APPEAL

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 Street, Apt. 1 **327 State Capitol**
 or PO Box N **Springfield IL 62706**
 City, State, Z

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Emil Jones Jr
Office of the Senate President
327 State Capitol
Springfield IL 62706

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
G. Rowland

B. Received by (Printed Name) **GARY ROWLAND**

C. Date of Delivery **APR 16 2008**

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7005 1160 0000 8541 8785**



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Search Results

Label/Receipt Number: 7005 1160 0000 8541 8785
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EXHIBIT E



OFFICE OF THE SENATE PRESIDENT
STATE OF ILLINOIS

EMIL JONES, JR.
SENATE PRESIDENT

16-600 JAMES R. THOMPSON CENTER
100 WEST RANDOLPH
CHICAGO, ILLINOIS 60601
312-814-2075

Via United States Mail

April 25, 2008

Mr. Paul J. Orfanedes
Judicial Watch
501 School Street, SW
Suite 795
Washington, D.C. 20024

Re: Freedom of Information Act Appeal dated April 7, 2008

Dear Mr. Orfanedes:

I am responding to your April 7, 2008 appeal of a denial of your February 25, 2008 Freedom of Information Act (hereafter "the Act") request. Your appeal was received by this Office via Certified Mail on April 16, 2008.

You contend on appeal that the Senate's FOIA officer, Jillayne Rock, incorrectly denied production of the following requested documents:

- "1. Any and all records concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
2. Any and all communications between Senate President Emil Jones, Jr. and House Speaker Michael J. Madigan concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
3. Any and all communications between Senate President Emil Jones, Jr., Governor Rod Blagojevich, and/or the Office of the Governor concerning or relating to any gubernatorial or legislative member initiative or earmarked appropriation for Fiscal Year 2008.
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Each of the before mentioned categories of requested documents (hereafter referred to by numerical assignment) shall be addressed individually.

First, in regards to category 1 documents, you contend, contrary to Ms. Rock's denial of such documents on the basis that these records are not records of the public body, but are personal records of individual members of the General Assembly or General Assembly staff, that records regarding expenditures of public funds should be public records within the definition of "public records" as defined in 5 ILCS 140/2(c). Explicitly you cite "'all records . . . having been prepared, or having been or being used, received, possessed or under the control of any public body.'" 5 ILCS 140/2(c).

In this instance, the "public body" to which your request has been made is the Illinois State Senate. The Illinois State Senate, as a body, would not now nor would it in the past have received, possessed or controlled the requested documents, if they in fact do exist. Such documents, if they existed, would not have been prepared or used by the Illinois State Senate, as a body. *See* 5 ILCS 140/2(c).

Additionally, it is your contention that "correspondence between members of the General Assembly regarding the expenditure of public funds" are public records. The basis for your argument is 5 ILCS 140/2(c)(xiv), which provides that "information relating to any grant or contract made by or between a public body and another public body or private organization" is included in the definition of "public record". However, as previously stated, the records that you are requesting are not public records due to the lack of control and possession by this public body. 5 ILCS 140/2(c).

On a second note, I agree with your statement that the Act exempts predecisional communications from coverage. *See Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003). For that reason, the documents that you have requested would be exempt from the Act. The Act specifically exempts "all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents." 5 ILCS 140/7(1)(f). So although your argument may be applicable to other public bodies, in the instance of the Illinois State Senate, it is not, due to the statutorily provided exemption and other stated reasons.

The only document that would fall into the category of "final governmental decisions" and would possibly be applicable to your request would be Public Act 95-348, the Fiscal Year 2008 appropriations bill. The text of such document is located at www.ilga.gov, as well as transcripts for the floor debate and the vote taken for passage of that legislation.

In regards to category 2 and 3 documents, you requested communications between myself, Speaker Michael J. Madigan, and Governor Rod Blagojevich concerning member initiatives or earmarked appropriations for Fiscal Year 2008. These records, if they existed, would not be the records of the public body. They would be the records of an individual member of the General Assembly and thereby would not be considered "public records" under the Act. *See* 5 ILCS 140/2(c).

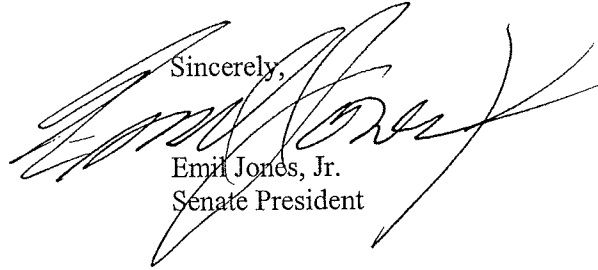
Paul J. Orfanedes
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Additionally, even though I am the head of a public body, the Illinois State Senate, holding such position does not mean that I am not afforded with the same protections regarding predecisional communications and privacy as any other individual member of the General Assembly. *See* 5 ILCS 140/7(1)(f) and 5 ILCS 140/1.

Finally, in regards to category 4 documents, as Ms. Rock stated, the Illinois State Senate is not in the possession of such documents. It is your contention that if such documents exist, even in the hands of individual Senators, they would fall within the definition of "public records". As previously stated, the Illinois State Senate would not have control or possession over such documents, if they did exist, and therefore they would not fall under the definition of "public records". 5 ILCS 140/2(c). Alternatively, if these documents did fall under the definition of "public records", then it is possible that one or more of the explicitly stated exceptions would apply. 5 ILCS 140/7.

You have a right to judicial review of this denial pursuant to Section 11 of the Act. 5 ILCS 140/11.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Emil Jones, Jr.', is written over the typed name and title.

Emil Jones, Jr.
Senate President

EJ:sjg