

FILED
SIXTH JUDICIAL CIRCUIT

**IN THE CIRCUIT COURT OF CHAMPAIGN, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

NOV 17 2014

[Signature]
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

STEVEN SALAITA,)
)
 Plaintiff,)
)
 v.)
)
 THE BOARD OF TRUSTEES OF THE)
 UNIVERSITY OF ILLINOIS,)
)
 Defendant.)

2014 MR 920

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COMPLAINT

NOW COMES Plaintiff, STEVEN SALAITA, by his undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to force Defendant THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS to produce public records about its highly publicized firing of SALAITA from a tenured faculty position at the University of Illinois Urbana-Champaign ("University") for exercising his free speech rights.

INTRODUCTION

1. 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.

2. 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 activity that affect the conduct of government and the lives of the people. *Id.*

3. 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 140/1.2.

4. While a public body may object to a request on the basis that it is unduly burdensome, it may do so only if the burden outweighs the public interest in disclosure, and may not assert the provision if it did not properly respond to the request in writing by the statutorily required deadline. 5 ILCS 140/3(d), (g).

5. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ILCS 140/11(j).

6. Under 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. FOIA’s underpinnings of government transparency and citizen oversight of public officials, strongly favor the public disclosure of documents related to SALAITA’S firing. The University’s actions have garnered national attention because the principles at stake – academic freedom and faculty governance – are bedrock traditions of the American system of higher education, considered vital to the pursuit of knowledge and truth. Many have also criticized the University for bowing to pressure from private donors to reverse its hiring decision, allowing wealthy supporters to trump the views of the faculty in the department he would have joined, and the faculty on the search committee that decided to hire him. Despite the clear public interest in disclosure of this information, as evidenced by widespread media coverage and academic debate,

and including a boycott of the University by more than 5,000 academics nationwide, the University has refused to produce records in response to this request on the basis of “undue burden.”

BACKGROUND

8. Plaintiff STEVEN SALAITA is a resident of Virginia.

9. Defendant THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS is a public body located in Champaign County, Illinois.

10. The University holds itself out as committed to academic freedom, and states that: “It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict the member’s exercise of these freedoms in the member’s area of scholarly interest.”

11. The University’s policies further state: “As a citizen, a faculty member may exercise the same freedoms as other citizens without institutional censorship or discipline.”

12. According to the United States Supreme Court: “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *See Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (internal citations omitted).

THE UNIVERSITY’S DECISION TO TERMINATE SALAITA

13. SALAITA was born in Bluefield, West Virginia. He received his Bachelor’s degree in Political Science and his Masters degree in English, he earned a Ph.D from the

University of Oklahoma in 2003 with a concentration on Native American Studies, and Theory and Modernity. He joined the English department at Virginia Tech as an Assistant Professor in 2006, and became a tenured faculty member just three years later, in 2009. Over his career, SALAITA has written six books, published dozens of articles and book chapters, and spoken at conferences and invited lectures all around the world.

14. In October 2013, the University of Illinois offered SALAITA a tenured faculty position in its American Indian Studies Program. SALAITA accepted the offer, and thereafter resigned from his tenured faculty position at Virginia Tech.

15. In July 2014, in response to the killing by Israeli military forces of approximately 1500 Palestinian civilians, including more than 500 children, SALAITA posted a number of messages to his personal Twitter account critical of the State of Israel's policies and actions.

16. Some have agreed with SALAITA and applauded his comments; some found his messages offensive and criticized them; and others disagreed with his statements but defended his right to make them.

17. On July 22, 2014, in response to a question about Professor Salaita's Twitter messages, the University said the following to the Urbana News-Gazette: "Faculty have a wide range of scholarly and political views, and we recognize the freedom-of-speech rights of all of our employees."

18. Also in late July 2014, however, various donors contacted the University and threatened to withdraw their funding unless the University terminated SALAITA.

19. Chancellor Wise thereafter sent SALAITA a letter dated August 1, 2014 informing him that his appointment to a tenured position would not be recommended to the Board of Trustees, in effect firing him from the position he had accepted and been promised.

20. Neither Chancellor Wise nor any other University official spoke to SALAITA, the faculty in the American Indian Studies Program that he was about to join, or the members of the search committee that had recommended his hiring, before suddenly reversing course and refusing to complete his appointment.

21. Due to the implications of the University's decision on the free speech rights of scholars, academic freedom, and faculty involvement in governance, sixteen of the University's departments voted "no confidence" in the University's leadership, including Chancellor Phyllis Wise, President Robert Easter, and the Board of Trustees; thousands of scholars from around the world announced their intention to boycott the University; a large number of students have protested the University's actions; and the matter has been the subject of substantial press statewide, nationally, and around the world, including the Champaign-Urbana News Gazette, the Chicago Tribune, the New York Times, and London's the Guardian. The story has also been tracked by influential media sites in academia such as the Chronicle of Higher Education and Inside Higher Ed. By way of example only, declarations from interested media outlets interested in the records requested by this FOIA request are attached as Exhibit A.

22. SALAITA's sudden and unprecedented firing, and the issues of academic freedom and the influence of private money on public educational institutions that it has raised, are matters of tremendous public interest and go to the core of why this state has a FOIA statute: "To enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." 5 ILCS 140/1.

23. In addition, one of the central figures in SALAITA's firing, Chancellor Wise, has recently been appointed to the transition team of Governor-elect Bruce Rauner. As a result, she

has the ability to shape state policy at all levels. The public has a right to see records that would shed light on the extent to which Wise allows private donors to influence her views on public issues, and in turn how that may impact the advice she provides to one of the most powerful politicians in the state on a wide range of issues.

SALAITA'S FOIA REQUESTS

24. On September 17, 2014, SALAITA requested a variety of records concerning the University's decision to terminate him, and concerning academic freedom and faculty governance issues more generally at the University. Exhibit B.

25. The records requested all concerned University policies and actions regarding academic hiring and firing, and fell squarely within the purpose of FOIA.

26. After taking a five-day extension to respond, the University asserted Section 3(g), claimed that the request was unduly burdensome, and invited SALAITA to narrow his request. Exhibits C and D. The responses did not address the public's interest in the records, even though Section 3(g) plainly applies only if the burden outweighs the public interest in disclosure.

27. The public interest in disclosure more than justified the work involved in collecting and producing the records sought in SALAITA's September 17 request. Nevertheless, on October 15, 2014, SALAITA issued a new, narrowed request. The narrowed request cut eight of the nine categories of records sought, and left only a single category: the email communications of 15 University officials from a three-month period. The request was further limited to only the email communications that contained one of 14 keywords specifically selected to target emails related to outside influences that affected the decision to fire SALAITA. Moreover, at the University's insistence, the request was further limited to exclude email domains that likely contained form protest emails sent by individuals through political action websites. Exhibit E.

28. Email communications, such as the ones targeted by the narrowed request, are clearly public records subject to FOIA. 5 ILCS 140/2(c). Further, the records related to the obligation, receipt and use of public funds, and the FOIA statute (and Illinois Constitution) command that all such records are subject to inspection and copying by the public. 5 ILCS 140/2.5. FOIA also makes clear that the 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(c). Thus, there can be no question that the email communications sought in SALAITA's requests are a proper subject for a FOIA request. The University has at no point claimed otherwise, either verbally or in writing.

29. SALAITA's attorneys reached out by phone and email to the University and the University's outside counsel Perkins Coie (a 950-lawyer firm with 19 offices) once the University instructed SALAITA's attorneys that communications about his FOIA request would be handled by outside counsel, on October 20, October 23, October 29, October 31, and November 4 to try to reach an agreement regarding the request or at least obtain a written response from the University as required by FOIA. Exhibit F (email correspondence).

30. Despite these repeated efforts by SALAITA to resolve this matter amicably or at least to obtain a legally sufficient response to his October 15 request, the University has not provided a written response that complies with FOIA Section 3(d). Instead, it has vaguely objected orally that the request would require the review of 8,000-10,000 emails, though the number is likely far less once emails are de-duplicated through tools that are surely available to the University's highly-sophisticated outside counsel.

31. The University wrongly contends that public disclosure of this information is not worth the effort to collect and produce the highly-tailored set of email communications requested, a project that would take a week or two of effort at most.

32. Nevertheless, on November 5, 2014, SALAITA asked the University to identify the actual number of emails for review after de-duplicating the 8,000-10,000 emails, and offered to be flexible in providing the University the time it needed to comply with the request. To that end, SALAITA made an additional narrowed request. For 14 of the 15 custodians, the additional narrowed request limited the timeframe of his request from three months to just over two months. For the only other custodian, Chancellor Wise, the additional narrowed request reduced the timeframe from three months to just over one month. SALAITA also expressed a willingness to make further modifications if the University had a proposal to narrow the requests to address specific burden concerns with any of the 14 keywords. Exhibit G.

33. The University has not responded orally or in writing to SALAITA's November 5 letter and additional narrowed request.

34. As a result of its failure to provide the required written responses to SALAITA's October 15 and November 5 requests, under FOIA Section 3(d), the University has waived the right even to assert the undue burden provision of Section 3(g).

COUNT I – WILLFUL VIOLATION OF FOIA

35. The above paragraphs are incorporated by reference.

36. THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS is a public body under FOIA.

37. The records sought in SALAITA's October 15 and November 5 FOIA requests are public records of THE BOARD OF TRUSTEES OF THE UNIVERISTY OF ILLINOIS.

38. THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS has violated FOIA by refusing to produce the requested records and by refusing to produce a timely, written response as required.

39. The public interest in disclosure of the requested records outweighs the burden on THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS to collect and produce them.

40. THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS' violation was willful and intentional and in bad faith.

WHEREFORE, SALAITA asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS has violated FOIA;
- iii. order THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS to produce the requested records under FOIA;
- iv. enjoin THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS from withholding non-exempt public records under FOIA;
- v. order THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS to pay civil penalties for its willful and intentional violations;
- vi. award SALAITA reasonable attorneys' fees and costs; and
- vii. award such other relief the court considers appropriate.

RESPECTFULLY SUBMITTED,

Attorneys for Plaintiff

Jon Loevy
Anand Swaminathan
Gretchen Helferich
LOEVY & LOEVY
312 North May St., Suite 100
Chicago, IL 60607
(312) 2435900
anand@loevy.com
gretchen@loevy.com
Atty. No. 6305088