



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*

**ANSWER:** Paragraph 2 is a statement of the law which requires no answer. To the extent that an answer is required and that the law is accurately stated, Defendant admits the allegations contained in paragraph 2.

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.

**ANSWER:** Paragraph 3 is a statement of law which requires no answer. To the extent that an answer is required and that the law is accurately stated, Defendant admits the allegations contained in paragraph 3.

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).

**ANSWER:** Paragraph 4 is a statement of law which requires no answer. To the extent that an answer is required and that the law is accurately stated, Defendant admits the allegations contained in paragraph 4.

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).

**ANSWER:** Paragraph 5 is a statement of law which requires no answer. To the extent that an answer is required and that the law is accurately stated, Defendant admits the allegations contained in paragraph 5.

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."

**ANSWER:** Paragraph 6 is a statement of law which requires no answer. To the extent that an answer is required and that the law is accurately stated, Defendant admits the allegations contained in paragraph 6.

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.

**ANSWER:** Defendant denies the allegations contained in paragraph 7.

### PARTIES

8. Plaintiff STEVEN SALAITA is a resident of Virginia.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and denies those allegations on that basis.

9. Plaintiff CENTER FOR CONSTITUTIONAL RIGHTS is a New York non-profit organization.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 and denies those allegations on that basis.

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

**ANSWER:** Defendant admits that it is a public body and that it has a campus and maintains offices in Champaign County, Illinois.

### FOIA REQUESTS AND DENIALS

11. On September 17, 2014, the University received a request for a variety of records concerning the University's decision to terminate SALAITA, and concerning academic freedom and faculty governance issues more generally at the University ("First Request"). Exhibit A.

**ANSWER: Defendant denies that it terminated Salaita but admits the remaining allegations contained in paragraph 11.**

12. The first request was made by SALAITA.

**ANSWER: Defendant denies the allegations contained in paragraph 12.**

13. In the alternative, the First Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER: Defendant admits the allegations contained in paragraph 13.**

14. The records requested in the First Request all concern University policies and actions regarding academic hiring and firing, and fall within the scope of FOIA.

**ANSWER: Defendant denies the allegation that all requested records concern University policies and actions regarding hiring and firing. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 14 and denies those allegations on that basis.**

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

**ANSWER: Defendant admits that it took a five-day extension to respond to the request and that it asserted section 3(g) of the Freedom of Information Act in response to the request, claiming that the request was unduly burden and inviting the requester to narrow the request. Defendant denies the remaining allegations contained in paragraph 15 and specifically denies any implication that it violated section 3(g).**

16. Upon information and belief, collecting, reviewing, and producing the records sought in the First Request will take less than the equivalent of one full-time month of work.

**ANSWER: Defendant denies the allegations contained in paragraph 16.**

17. On October 15, 2014, the University received a new request that cut eight of the nine categories of records sought in the First Request, and left only a single category: the email communications of 15 University officials from a three-month period. The Second Request was further limited to the only 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 request, the Second Request was further limited to exclude email domains that likely contained form protest emails sent by individuals through political action websites ("Second Request"). Exhibit D.

**ANSWER:** Defendant denies that it fired Salaita and further denies that the communication received on October 15, 2014, identified in the Amended Complaint as Exhibit D, was a new request under the Freedom of Information Act, but affirmatively states that it was a proposed narrowing of the request received on September 17, 2014. Defendant admits that the proposed narrowing contains the items described in paragraph 17.

18. The Second Request was made by SALAITA.

**ANSWER:** Defendant denies the allegations contained in paragraph 18.

19. In the alternative, the Second Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER:** Defendant denies that the communication received on October 15, 2014, was a new request, but affirmatively states that it was a proposed narrowing of the request received September 17, 2014. Defendant admits that the proposed narrowing was made by the Center for Constitutional Rights and the remaining allegations contained in paragraph 19.

20. Upon information and belief, collecting, reviewing, and producing the records sought in the Second Request will take less than the equivalent of one full-time month of work.

**ANSWER:** Defendant denies the allegations contained in paragraph 20.

21. 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, 2015, to try to reach an agreement regarding the Second Request, or at least obtain a written response from the University as required by FOIA. Exhibit E.

**ANSWER:** Defendant admits that on October 15, 2014, it received the communication identified in the Amended Complaint as Exhibit D. Defendant denies that the communication received on October 15, 2014, was a new request, but affirmatively states that it was a proposed narrowing of the request received September 17, 2014. Defendant further denies that it was required to provide a written response to the proposed narrowing and denies that it violated the Freedom of Information Act. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 21 and deny those allegations on that basis.

22. The University has not provided a written response to the Second Request that complies with FOIA Section 3(d). Instead, the University has stated orally that the Second Request would require the review of 8,000-10,000 emails. The University's estimated number of emails to review does not reflect the de-duplication of emails using commonly available software.

**ANSWER:** Defendant admits that it has stated that responding to the proposed narrowing, identified in the Amended Complaint as Exhibit D, would require the review of 8000 to 10,000 emails. Defendant denies the remaining allegations contained in paragraph 22.

23. On November 5, 2014, SALAITA's counsel 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, the University received on November 5, 2014, an additional narrowed request ("Third Request"). Exhibit F.

**ANSWER:** Defendant admits that on November 5, 2014, its outside counsel received the communication identified in the Amended Complaint as Exhibit F, and that the substance of that communication included those matters alleged in paragraph 23. Defendant denies



**that the communication was a third FOIA request and affirmatively states that it was a second proposed narrowing of the original request.**

24. For 14 or 15 custodians, the Third Request limited the timeframe of the 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's counsel 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 15 keywords.

**ANSWER: Defendant denies that the communication received on November 5, 2014, identified in the Amended Complaint as Exhibit F, was a new request under the Freedom of Information Act, but affirmatively states that it was a proposed narrowing of the original request. Defendant admits that the proposed narrowing contains the items described in paragraph 24.**

25. The University has not responded orally or in writing to the Third Request.

**ANSWER: Defendant denies the allegations contained in paragraph 25.**

26. The Third Request was made by SALAITA.

**ANSWER: Defendant denies that the communication received on November 5, 2014, identified in the Amended Complaint as Exhibit F, was a new request under the Freedom of Information Act. Defendant admits that the communication identified its subject matter as "Steven Salaita FOIA Requests" and that said communication refers to "Mr. Salaita's pending FOIA requests." Defendant denies the remaining allegations contained in paragraph 26.**

27. In the alternative, the Third Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER: Defendant denies that the communication received on November 5, 2014, identified in the Amended Complaint was a new request under the Freedom of Information Act. Defendant admits the remaining allegations contained in paragraph 27.**

28. Upon information and belief, collecting, reviewing, and producing the records sought in the Third Request will take less than the equivalent of one full-time month of work.

**ANSWER: Defendant denies the allegations contained in paragraph 28.**

29. As a result of its failure to provide the required written responses to the Second and Third Requests, under FOIA Section 3(d), the University has waived the right to assert the undue burden provision of Section 3(g).

**ANSWER: Defendant denies the allegations contained in paragraph 29.**

30. In response to the parties' dispute regarding SALAITA's standing to enforce the First, Second, and Third Requests, on January 13, 2015, SALAITA requested from the University the same records requested in the Third Request ("Fourth Request"). Exhibit G.

**ANSWER: Defendant admits that on January 13, 2015, Salaita requested the same records as the communication identified in the Amended Complaint as Exhibit F. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 30 and denies those allegations on that basis.**

31. The University denied the Fourth Request on the basis of undue burden. Exhibit H.

**ANSWER: Defendant admits that it denied the request received on January 13, 2015, identified in paragraph 30 of the Amended Complaint as Exhibit G on the basis of undue burden.**

32. Upon information and belief, collecting, reviewing, and producing the records sought in the Fourth Request will take less than the equivalent of one full-time month of work.

**ANSWER: Defendant denies the allegations contained in paragraph 32.**

33. The requested records sought in each of the First, Second, Third, and Fourth Requests are public records subject to FOIA.

**ANSWER: Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records subject to FOIA and denies that allegation on that basis. Defendant denies the remaining allegations contained in paragraph 33.**



34. The requested records sought in each of the First, Second, Third, and Fourth Requests relate to the receipt and use of public funds.

**ANSWER:** Defendant admits that some of the records in dispute in this litigation may relate to the receipt and use of public funds, but denies that all such records are so related. Defendant denies the remaining allegations contained in paragraph 34.

35. The requested records sought in each of the First, Second, Third, and Fourth Requests relate to an issue that has been covered in local, national, and international press.

**ANSWER:** Defendant admits that the records in dispute in this litigation relate to an issue that has been covered in the press. Defendant denies the remaining allegations contained in paragraph 35.

36. Journalists intend to review any records produced in response to the First, Second, Third and Fourth Requests for possible publication of stories regarding some or all of the content.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 and denies those allegations on that basis.

**COUNT I – WILLFUL VIOLATION OF FOIA – FIRST REQUEST – SALAITA**

37. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraphs 1 through 36 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 38.

39. The First Request was made by SALAITA.

**ANSWER:** Defendant denies the allegations contained in paragraph 39.

40. The records sought in the First Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits the remaining allegations contained in paragraph 40.

41. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 41.

42. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 42.

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

**ANSWER:** Defendant denies the allegations contained in paragraph 43.

**COUNT II (ALTERNATIVE) – WILLFUL VIOLATION OF FOIA – FIRST REQUEST -- CENTER FOR CONSTITUTIONAL RIGHTS**

44. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraphs 1 through 43 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 45.

46. The First Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER:** Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a

belief as to the truth of the allegation that all requested records are public records and denies that allegation on that basis. Defendant admits the allegations contained in paragraph 46.

47. The records sought in the First Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER: Defendant admits the allegations contained in paragraph 47.**

48. 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.

**ANSWER: Defendant denies the allegations contained in paragraph 48.**

49. 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.

**ANSWER: Defendant denies the allegations contained in paragraph 49.**

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

**ANSWER: Defendant denies the allegations contained in paragraph 50.**

**COUNT III – WILLFUL VIOLATION OF FOIA – SECOND  
REQUEST – SALAITA**

51. The above paragraphs are incorporated by reference.

**ANSWER: Defendant realleges the answers contained in paragraphs 1 through 50 above and restates them as though they were fully set forth herein.**

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

**ANSWER: Defendant admits the allegations contained in paragraph 52.**

53. The Second Request was made by SALAITA.

**ANSWER:** Defendant denies the allegations contained in paragraph 53.

54. The records sought in the Second Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Second Request was a second request under the Freedom of Information Act. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits the remaining allegations contained in paragraph 54.

55. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 55.

56. 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 produced them.

**ANSWER:** Defendant denies the allegations contained in paragraph 56.

57. THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS' violation was wilful and intentional and in bad faith.

**ANSWER:** Defendant denies the allegations contained in paragraph 57.

**COUNT IV (ALTERNATIVE) – WILLFUL VIOLATION OF FOIA – SECOND REQUEST – CENTER FOR CONSTITUTIONAL RIGHTS**

58. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraph 1 through 57 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 59.

60. The Second Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Second Request was a second request under the Freedom of Information Act. Defendant admits the remaining allegations contained in paragraph 60.

61. The records sought in the Second Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Second Request was a second request under the Freedom of Information Act. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits the remaining allegations contained in paragraph 61.

62. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 62.

63. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 63.

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

**ANSWER:** Defendant denies the allegations contained in paragraph 64.



**COUNT V – WILLFUL VIOLATION OF FOIA – THIRD REQUEST – SALAITA**

65. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraphs 1 through 64 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 66.

67. The Third Request was made by SALAITA.

**ANSWER:** Defendant denies the allegations contained in paragraph 67.

68. The records sought in the Third Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Third Request was a third request under the Freedom of Information Act. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits the remaining allegations contained in paragraph 68.

69. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 69.

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

**ANSWER:** Defendant denies the allegations contained in paragraph 70.

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

**ANSWER:** Defendant denies the allegations contained in paragraph 71.

**COUNT VI (ALTERNATIVE) – WILFUL VIOLATION OF FOIA –  
THIRD REQUEST – CENTER FOR CONSTITUTIONAL RIGHTS**

72. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraphs 1 through 71 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 73.

74. The Third Request was made by CENTER FOR CONSTITUTIONAL RIGHTS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Third Request was a third request under the Freedom of Information Act. Defendant admits the remaining allegations contained in paragraph 74.

75. The records sought in the Third Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Defendant denies that the document identified in the Amended Complaint as the Third Request was a third request under the Freedom of Information Act. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits the allegations contained in paragraph 75.

76. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 76.

77. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 77.

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

**ANSWER:** Defendant denies the allegations contained in paragraph 78.

**COUNT VII – WILLFUL VIOLATION OF FOIA –  
FOURTH REQUEST – SALAITA**

79. The above paragraphs are incorporated by reference.

**ANSWER:** Defendant realleges the answers contained in paragraphs 1 through 78 above and restates them as though they were fully set forth herein.

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

**ANSWER:** Defendant admits the allegations contained in paragraph 80

81. The Fourth Request was made by SALAITA.

**ANSWER:** Defendant admits that the document identified in the Amended Complaint as the Fourth Request was a request under the Freedom of Information Act, but denies that it was the fourth such request. Defendant admits the remaining allegations contained in paragraph 81.

82. The records sought in the Fourth Request are public records of THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

**ANSWER:** Defendant admits that the document identified in the Amended Complaint as the Fourth Request was request under the Freedom of Information Act, but denies that it was the fourth such request. Due to the overly heavy burden that a search for and review of the records in dispute would require, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that all records are public records and denies that allegation on that basis. Defendant admits to remaining allegations contained in paragraph 82.

83. 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.

**ANSWER:** Defendant denies the allegations contained in paragraph 83.

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

**ANSWER: Defendant denies the allegations contained in paragraph 84.**

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

**ANSWER: Defendant denies the allegations contained in paragraph 85.**

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE APPLICABLE TO COUNTS I, III, AND IV**

For its First Affirmative Defense to Counts I, III, and V of the Amended Complaint, the University states that Salaita lacks standing.

1. Attached to the Amended Complaint are certain exhibits which are part of it for every purpose. Where an exhibit contradicts the allegations in a Complaint the exhibit controls.

2. Exhibit A to the Amended Complaint identifies therein as "First Request" consists of a cover email together with the FOIA request underpinning this litigation, both dated September 17, 2014.

3. The cover email in Exhibit A provides in part:

Please find attached a request... *by the* Center for Constitutional Rights. (Emphasis added.)

4. Although the FOIA request letter in Exhibit A contains a passing reference that the Center for Constitutional Rights represents Salaita, it contains no language indicating that the request was sent on Salaita's behalf. Rather, the person requesting records is identified as the Center for Constitutional Rights:

The Center for Constitutional Rights (CCR)... requests the following documents.

5. Section 11 of the Freedom of Information Act, 5 ILCS 140/11, authorizes "[a]ny person denied access to inspect or copy any public record by a public body [to] file suit for injunctive or declaratory relief."

6. Only persons who have submitted a request for documents have standing to bring suit under FOIA. If an attorney requesting documents fails to clearly state that the request is made on behalf of the attorney's client, the attorney is the real party in interest, and the client lacks standing to pursue a FOIA claim. *See SAE Production, Inc. v. FB*, 589 F.Supp.2d 76 (D.D.C. 2008) (FFOIA request from lawyer does not confer standing client).

#### **SECOND AFFIRMATIVE DEFENSE APPLICABLE TO ALL COUNTS**

For its Second Affirmative Defense to all counts of the Amended Complaint, the University states that compliance with any request or proposed narrowing of the request would be unduly burdensome.

1. Section 3(g) of the Freedom of Information Act, 5 ILCS 140/3(g), provides, in part, as follows:

(g) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.



\* \* \*

2. The University has estimated that compliance with the proposed narrowed request would require the review of more than 8,400 potentially responsive emails, not including other types of documents, a process that would exceed one-month of staff time.

3. Requiring the University to respond to the requests at issue, even the proposed narrowed request, would impede the University's staff ability to respond to other FOIA requests and perform its other duties in a timely fashion.

4. Furthermore, the same records are subject to discovery by Salaita in a case filed in the United States District Court for the Northern District of Illinois on January 29, 2015, entitled *Salaita v. Kennedy, et al.*, Case No.1:15-cv-00924.

5. The burden on the University of complying with the requests at issue outweighs the public interest in the information.

6. The University has extended to Plaintiff's an opportunity to narrow the requests.

7. Although there has been some proposed narrowing of the original request, compliance with the proposed narrowing does not reduce the burden to manageable proportions.


WHEREFORE, the Board of Trustees of the University of Illinois prays that judgment be entered on its behalf and that it be awarded costs and other appropriate relief.

Dated: March 13, 2015

BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ILLINOIS

HINSHAW & CULBERTSON LLP

By:



Charles R. Schmadeke

One of Its Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing ANSWER TO AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES to be served upon:

Original filed with Champaign County Circuit Clerk

Copy mailed to:

Jon Loevy  
Anand Swaminathan  
Gretchen Helferich  
Loevy & Loevy  
312 North May Street, Suite 100  
Chicago, IL 60607

by causing the same to be placed in a sealed envelope, clearly addressed as aforesaid, with proper postage fully prepaid, and by depositing same into the United States Mail at Springfield, Illinois, on the 13th day of March, 2015 at 5:00 p.m.



J. William Roberts ARDC 2351714  
Charles R. Schmadelke ARDC 2489813  
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