Exhibit C

Legal Insurrection Foundation
18 Maple Avenue, #280
Barrington, RI 02806
Email: contact@legalinsurrection.com

December 22, 2020

Via Overnight Delivery

Hank Bennett
FOIL Appeals Officer
SUNY System Administration
353 Broadway, SUNY Plaza
Albany, New York 12246

Dear Mr. Bennett:

On December 4, 2020, I sent a Freedom of Information Law ("FOIL") Request (the "FOIL Request)(Exhibit A) on behalf of Legal Insurrection Foundation ("LIF") and Free Beacon LLC ("Free Beacon") to SUNY Upstate Medical University ("Upstate Medical"), which included thirteen (13) listed categories of records. In response to the FOIL Request, by letter dated December 11, 2020 ("Denial Letter") (Exhibit B), Michael Jurbala, AVP Internal Audit and FOIL Officer, on behalf of Upstate Medical, denied the FOIL Request in its entirety. By this letter (the "Appeal Letter"), we appeal the denial in its entirety, for the reasons set forth below.

I. THIS APPEAL LETTER IS TIMELY

Pursuant to Upstate Medical's "Appealing a Denial of Access" policy ("Upstate Medical FOIL Appeal Policy"), an appeal of a denial to a request under New York's FOIL must occur within thirty (30) days of the receipt of denial. This provision mirrors New York Public Officer Law § 89(4)(a), which states the following:

> any person denied access to a record may **within thirty days** appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, **who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought**. In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon.

N.Y. Pub. Off. Law § 89(4)(a) (McKinney)(emphasis added).

The Denial Letter was received on December 11, 2020. This Appeal Letter is being sent on December 22, 2020, which is within the thirty-day deadline in which notice of appeal must be sent to the FOIL Appeals Officer. If for any reason you believe this Appeal Letter is not timely

or does not comply with the requirements for an administrative appeal under Upstate Medical FOIL Appeal Policy or NY State law, please notify us immediately with an explanation of what you claim the deficiency to be.

II. UPSTATE MEDICAL'S REASONS FOR DENIAL OF FOIL REQUEST

In Upstate Medical's Denial Letter, it restated the 13 (thirteen) Requests under FOIL, but failed to note that the FOIL Request sought documents within a narrow, specific time range (from May 1, 2020, to the present). At the end of the Denial Letter, Upstate Medical noted the following as the sole basis for the denial:

> Please be advised that your request for "all records" (items# 1,6,7,12,13) or "all records received, reviewed, or created" (items# 2,3,4,5) or "all copies" (items# 8,9,10,11) is too broad in scope and does not reasonably describe the records sought. New York Public Officers Law section 89 (3) requires that the records requested by reasonably described.

We submit that our request for records was not too broad in scope and *did* reasonably describe the records sought. Upstate Medical has not demonstrated in the Denial Letter any effort to make a good faith attempt to locate the records requested, instead brushing off the FOIL Request based on inaccurate and unsubstantiated claims that the FOIL Request is not sufficiently specific. As set forth below, this does not meet the statutory requirements.

III. UPSTATE MEDICAL'S IMPROPER OBJECTIONS TO THE FOIL REQUEST

A. "TOO BROAD"

Upstate Medical states that the FOIL Request was "too broad" because LIF and the Free Beacon used the terminology of "all records," "all records received, reviewed, or created," and "all copies" for certain forms sought. From that, Upstate Medical refuses even to search for records or to explain why or how its records system would not permit locating such records.

New York Public Officer Law § 89(3)(a) states the following:

> An agency shall not deny a request on the basis that the request is **voluminous** or that locating or **reviewing the requested records or providing the requested copies is burdensome** because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming or other services required to provide the copy…

N.Y. Pub. Off. Law § 89(3)(a) (McKinney)(emphasis added).

In *Konigsberg v. Coughlin*, 1986, 68 N.Y.2d 245, 247, 508 N.Y.S.2d 393, 501 N.E.2d 1, the court held that the inmate's request "to inspect and review any and **all files or records kept on**

me and my number of identification of the New York State Department of Correctional Services" **reasonably described the documents sought** and disclosure provisions of FOIL **could not be avoided** on the basis of allegations that the request would require review of **thousands of records** (emphasis added). So too here, the request for "all records" limited to specific sub-units of Upstate Medical, topics, and persons, as detailed in the FOIL Request, is sufficient to put Upstate Medical on notice of what is requested.

The Appellate Division, in fact, has noted that the FOIL *requestee* has "a broad duty" to make its records available:

> To promote open government and public accountability, FOIL imposes a **broad duty** on government agencies to make their records available to the public (see Public Officers Law § 84). The statute is based on the policy that "the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government".

Jewish Press, Inc. v. New York City Dep't of Educ., 183 A.D.3d 731, 122 N.Y.S.3d 679, 681 (2020) (citing *Matter of Abdur–Rashid v. New York City Police Dept.*, 31 N.Y.3d 217, 224–225, 76 N.Y.S.3d 460, 100 N.E.3d 799, quoting *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567, 571, 419 N.Y.S.2d 467, 393 N.E.2d 463)(emphasis added).

In *Jewish Press, Inc.*, the Court found significant that the request was not open-ended:

> The respondent acknowledges that the forms are maintained at the schools where the relevant employees are currently or were last assigned. Contrary to the respondent's contention, **the petitioner's request is not open-ended** and does not require the respondent to manually search every document filed with it over a broad time period."

Jewish Press, Inc., 183 A.D.3d 731, 122 N.Y.S.3d 679, 681–82 (2020)(emphasis added). So too here, our FOIL Request is not open-ended, it is limited to a narrow time frame and certain specified sub-units, persons, and topics.

While Upstate Medical's Denial Letter states that the FOIL Request is "too broad in scope," in reality, LIF and the Free Beacon limited the FOIL Request by specifying a narrow time frame (May 1, 2020, to the present), a focused subject matter ("Diversity Task Force," "Tiger Teams", "the Office of Diversity and Inclusion", and specific forms used by the University), and listed specific individuals from whom documents were sought. As such, the FOIL Request was not "open-ended" or "overly broad," much less so vague as to not permit Upstate Medical at least to search for records (which it apparently has not even attempted).

Because the FOIL Request is limited in time frame, subject matter, and individuals, the FOIL Request is not too broad, but narrowly-tailored to seek specific responsive documents regarding Upstate Medical. Simply because the FOIL Request sought "all" records or "all" copies does not

make the FOIL Request too broad. As seen in *Konigsberg*, the request for "all files or records" was held by the Court of Appeals to be reasonably described.

B. UPSTATE MEDICAL CANNOT OBJECT TO THE TERM "RECORDS"

1. "RECORDS"

It appears from the Denial Letter that Upstate Medical objects to the use of the term "records" as not sufficiently specific. This term, however, is defined in the statute, and Upstate Medical cannot refuse to search for and produce records on a claim that "records" does not reasonably describe the types of documents sought. The term "record" is defined by the FOIL statute as follows:

> "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

N.Y. Pub. Off. Law § 86(4) (McKinney).

LIF and the Free Beacon used the statutory terms when requesting "all records," "all records received, reviewed, or created," and "all copies" of specified records. As such, an objection by Upstate Medical to the term "records" being used by LIF and the Free Beacon to define the information sought as "not reasonably described" is improper.

2. THE TIME FRAME OF THE FOIL REQUEST WAS LIMITD

In *Bader v. Bove* (2 Dept. 2000) 273 A.D.2d 466, 710 N.Y.S.2d 379, leave to appeal denied 95 N.Y.2d 764, 716 N.Y.S.2d 38, 739 N.E.2d 294, the property owners sought access to village records under FOIL, but failed to reasonably-describe the documents requested when they sought "[a]ll notes, records, correspondence, meeting minutes and other documents related to the adoption and/or revision of the Village Zoning Code's prohibition of commercial activity." The Court held that the village had "demonstrated that, to fully comply with the information requests, the one full-time employee of the village clerk's office would have to **manually search** through every document filed with the village **going back over 45 years**." *Id.* at 467, 710 N.Y.S.2d 379, 379 (2000)(*citing Matter of Gannett Co. v. James*, 86 A.D.2d 744, 447 N.Y.S.2d 781)(emphasis added).

Unlike the FOIL requester in *Bader*, LIF and the Free Beacon are not seeking documents held over the course of forty-five (45) years. Instead, the FOIL Request only sought documents from May 1, 2020, to the present. The request, therefore, was for records created (most likely electronically) within approximately the last eight (8) recent *months*.

Upstate Medical has not indicated any undue burden, since the records requested almost certainly mostly are in electronic format, and those records in paper format likely could be gathered from the identified sub-units and persons without much effort. The Denial Letter gives no indication that any effort even has been made by Update Medical to assess the manner in which such responsive records could be obtained, for example, by electronic searches from Upstate Medical's central email system or from specific Upstate Medical employees' email accounts who were specifically listed in the FOIL Request.

3. THE SUBJECT MATTER IS REAONABLY DESCRIBED

In *Kirsch v. Board of Educ. of Williamsville Cent. School Dist.* (4 Dept. 2017) 152 A.D.3d 1218, 57 N.Y.S.3d 870, leave to appeal denied 155 A.D.3d 1610, 63 N.Y.S.3d 290, leave to appeal denied 31 N.Y.3d 904, 78 N.Y.S.3d 710, 103 N.E.3d 781, the Appellate Division held that the school district was required to provide petitioners with requested e-mails under FOIL, as petitioners **reasonably described** the requested e-mails to enable the school district to identify and produce records, when she requested "certain email records of the superintendent of respondent Williamsville Central School District." *Id.* The *Kirsch* Court also held that the school district could not evade broad disclosure provisions of statute upon the allegation that request would require review of thousands of records.

In *Irwin v. Onondaga Cty. Res. Recovery Agency*, 72 A.D.3d 314, 315–18, 895 N.Y.S.2d 262, 263–65 (2010), the Appellate Division held that the petitioner reasonably described the photographs he sought in his FOIL request, when requesting "all of the electronically stored photographs in the possession of the respondent," stating the following:

> **We conclude that the court erred in denying the FOIL request with respect to the unpublished photographs** in the possession of OCRRA with the exception of unpublished photographs depicting individuals other than petitioner or relating to active or ongoing law enforcement investigations. We also conclude that the court should have ordered OCRRA to disclose the 'system' metadata associated with the photographs that OCRRA has already disclosed to petitioner, as well as the photographs that we have deemed subject to disclosure under FOIL. We thus conclude that the amended judgment should be modified accordingly…

(emphasis added). Information sufficient to "reasonably describe" records sought does not require an applicant to identify a specific record with particularity, but instead merely requires an applicant to provide sufficient detail to enable agency staff to locate the record. N.Y. State Comm Open Govt. AO 11760.

The FOIL Request described the records sought with enough specificity that Upstate Medical would be able to locate and identify the records requested. By providing the date range, subject matter, and individuals holding the records sought, LIF and the Free Beacon reasonably

described the records sought and provided sufficient detail for Upstate Medical to identify and locate the records requested.

4. THE FOIL REQUEST IDENTIFIES SPECIFC INDIVIDUALS

In *Friedman v. Rice*, 2017, 30 N.Y.3d 461, 68-70 N.Y.S.3d 1, 90 N.E.3d 800, the petitioner filed a FOIL request for "**all documents** provided by the Nassau County District Attorney to the 'Friedman Case Review Panel' and for **all records** concerning whether Advisory Panel members were 'members of the general public for purposes of [FOIL] and Civil Rights Law § 50–b.'"; the Court of Appeals held the following:

> though offender did not include a specific demand that district attorney disclose the entire unredacted case file; language in offender's request for documents, referring to review team and advisory panel, tracked district attorney's earlier press release and **therefore reasonably described and clearly sought all documents that were part of reinvestigation process**

(emphasis added). Just as the FOIL requester in *Friedman* sought "all documents" by the Nassau County District Attorney regarding a specified "Panel," LIF and the Free Beacon have requested records from specific individuals associated with Upstate Medical, and regarding specific sub-units and specific topics. By providing Upstate Medical with these specific details, the FOIL Request reasonably describes the documents sought and also indicates the specific people who likely would be in possession of these records.

IV. UPSTATE MEDICAL MUST MAKE A GOOD FAITH EFFORT TO LOCATE RESPONSIVE RECORDS

The availability of statutory attorney's fees is intended to create a clear deterrent to unreasonable delays and denials of access and thereby encourage every unit of government to make a good faith effort to comply with the requirements of Freedom of Information Law (FOIL). *South Shore Press, Inc. v. Havemeye*r (2 Dept. 2016) 136 A.D.3d 929, 25 N.Y.S.3d 303. In order to deny a request on the ground that it fails to reasonably describe the records, an agency must establish that the descriptions were insufficient for purposes of locating and identifying the documents sought. N.Y. State Comm Open Govt. AO 11543.

Upstate Medical's blanket denial in the Denial Letter indicates that Upstate Medical did not make a good faith effort to comply with the FOIL Request, or that Upstate Medical took any steps to try to locate the records sought. Moreover, in the Denial Letter, Upstate Medical did not indicate that the records sought could *not* be located or identified, and, given the specific description of the records sought in the FOIL Request, it is highly likely that Upstate Medical *would* be able to locate and identify the records sought. Upstate Medical has not identified any other specific information it would need to perform the searches.

As required by statute, please fully explain in writing the reasons for denial in response to the points raised in this appeal, or provide access to the record sought, pursuant to N.Y. Pub. Off. Law § 89(4)(a) (McKinney).

V. WE INTEND TO SEEK ATTORNEY'S FEES IF UPSTATE MEDICAL CONTINUES ITS UNJUSTIFIED OBJECTIONS

We hope that Upstate Medical will take this opportunity to reconsider and rescind its denial of the FOIL Request, for the reasons set forth above. If litigation is necessary, which hopefully it will not be, we intend on seeking attorney's fees and costs.

A. STATUTE

New York Public Officer Law § 89(4)(c)(ii) states the following:

> [t]he court…shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.

N.Y. Pub. Off. Law § 89(4)(c)(ii) (McKinney).

B. CASE LAW

In *Rauh v. de Blasio*, 161 A.D.3d 120, 127, 75 N.Y.S.3d 15, 21 (2018), the Appellate Division held that the newspaper reporters, who substantially prevailed in a suit against a mayor's office for release of records under FOIL, were entitled to attorney fees under the law. The court found that the mayor's office had no reasonable basis to withhold records of its communications with privately-hired consultants, and the mayor's office's attempts to withhold these communications ran counter to the public's interest in transparency and the ability to participate on important issues of municipal governance. *Id.*

In *South Shore Press, Inc. v. Havemeyer*, 136 A.D.3d 929, 931, 25 N.Y.S.3d 303, 304 (2016), the Appellate Division held that the FOIL requester was entitled to reasonable attorney's fees and costs arising from the town trustees' denial of his FOIL request, which sought certain town trustees' banking and financial records. The court found that an award of attorney's fees was appropriate, as it promoted the purpose of and the policy behind FOIL, and the statutory prerequisites were met, because the trustees' reasons for denying the requestor's FOIL request were insufficient and contrary to the mandates of FOIL, and were otherwise without merit. *Id.*

The *S. Shore Press* Court further held that "the award of attorney's fees is intended to 'create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL'." *S. Shore Press, Inc. v. Havemeyer*, 136 A.D.3d 929, 931, 25 N.Y.S.3d 303, 304 (2016) (*quoting Matter of*

New York Civ. Liberties Union v. City of Saratoga Springs, 87 A.D.3d 336, 338, 926 N.Y.S.2d 732).

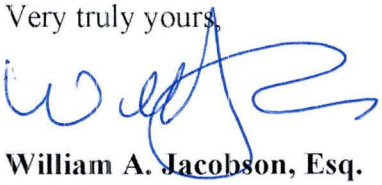
We are willing to work cooperatively with Upstate Medical to obtain the records covered by the FOIL Request. We would certainly be in our right to seek redress from the court; however, our hope is that Upstate Medical will comply with its statutory obligations and will make a good faith search for and produce the records requested in the FOIL Request. We are, of course, willing to discuss Upstate Medical's concerns and methods to overcome those concerns; however, no concerns have been raised by Upstate Medical. We would rather not have to file suit, but Upstate Medical's response is so dismissive of its statutory obligations that if we do file suit, we will seek attorney's fees.

VI. CONCLUSION

LIF and the Free Beacon appeal from the Denial Letter, and request that Upstate Medical comply with the FOIL Request.

We look forward to receiving your response to this appeal.

Very truly yours,



William A. Jacobson, Esq.
President
Legal Insurrection Foundation
contact@legalinsurrection.com

-and-

Eliana Johnson
Editor-in-Chief
Free Beacon, LLC

Cc:

(via email)

Michael Jurbala
AVP Internal Audit and FOIL Officer
Upstate Medical University
750 East Adams Street
Syracuse, New York 13210

Exhibit A
"FOIL Request"

Legal Insurrection Foundation
18 Maple Avenue # 280
Barrington, RI 02806
Email: contact@legalinsurrection.com

VIA EMAIL: foil@upstate.edu

December 4, 2020

Records Access Officer
SUNY Upstate Medical University
Office of the Internal Audit and FOIL Officer
750 East Adams Street
Syracuse, NY 13210

RE: Freedom of Information Law Request

Records Access Officer:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, Sections 84-90, the Legal Insurrection Foundation and Free Beacon LLC hereby request the following records, as defined by Section 84(4), and also including, but not limited to, emails, text messages, electronic messages, notes, minutes, handouts, programs, and drafts, from State University of New York Upstate Medical University ("Upstate Medical"), for the date range May 1, 2020, to the present:

Request No. 1: All records of the Diversity Task Force[1] and Implement and Oversight Tiger Teams.[2]

Request No. 2: All records received, reviewed, or created by the Diversity Task Force Chair, **Daryll Dykes, PhD, MD, JD**, regarding the business of the Diversity Task Force and/or Implement and Oversight Tiger Teams.

[1] "Diversity Task Force" means the task force that was assembled by Chief Diversity Officer, Daryll Dykes, PhD, MD, JD, to, per Upstate Medical, accomplish "the herculean task to make *actionable* recommendations to move Upstate in a bold new direction toward greater diversity, equity, inclusion and belonging", as referenced in the following links : https://www.upstate.edu/diversityinclusion/initiatives/task-force/index.php; https://www.upstate.edu/diversityinclusion/pdf/task-force-report.pdf.

[2] "Implement and Oversight Tiger Teams" mean the teams, per Upstate Medical, that evaluate, prioritize, develop, and coordinate the action items proposed in the Diversity Task Force Report, including, but not limited to, the following teams: (1) Policy, Bias Reporting, and Mitigation; (2) Recruitment & Retention; (3) Patient, Community, and Alumni Services; (4) Diversity Organization, Branding, and Messaging; and (5) Education and Training, , as referenced in the following links: https://www.upstate.edu/diversityinclusion/initiatives/task-force/index.php; (https://www.upstate.edu/diversityinclusion/pdf/task-force-report.pdf.

Request No. 3: All records received, reviewed, or created by the following Implement and Oversight Tiger Team Co-Chairs, regarding the business of the Implement and Oversight Tiger Teams and/or the Diversity Task Force:

- **David Amberg**;
- **Sipho Mbuqe**;
- **Jennifer Welch**;
- **Nancy Page**;
- **Janell Gage**;
- **Nakeia Chambers**;
- **Sean Patterson**;
- **Daryll Dykes**;
- **Rachel Hopkins**; and
- **Rebecca Greenblatt**.

Request No. 4: All records received, reviewed, or created by the following persons employed in the Office of Diversity and Inclusion, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams:

- **Daryll C. Dykes, PhD, MD, JD**, Chief Diversity Officer;
- **Carl Thomas**, Interim Affirmative Action Officer/Title IX Coordinator and Supplier Diversity Coordinator;
- **Mary Meier**, EEO/AA Compliance Specialist;
- **Connie Gregory**, Resident Engagement Specialist; and
- **Sean Patterson**, SPHR, SHRM-SCP, Affirmative Action Assistant/Data Analyst.

Request No. 5: All records received, reviewed, or created by the following persons on Upstate Medical's Executive Committee, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams:

- **Mantosh Dewan, MD**, President;
- **Lawrence Chin, MD**, Dean, College of Medicine;
- **Robert J. Corona, DO, CPE, MBA, FCAP, FASCP**, CEO Upstate University Hospital;
- **David C. Amberg, PhD**, Vice President for Research;
- **Mark Schmitt, PhD**, Dean, College of Graduate Studies;
- **Tammy Austin-Ketch, PhD, FNP, FAANP**, Dean, College of Nursing;
- **Katherine Beissner, PT, PhD**, Dean, College of Health Professions;
- **Lynn Cleary, MD**, Vice President for Academic Compliance and University Accreditation;
- **Eric J. Smith, CPA, MBA**, Senior Vice President for Finance and Administration & Senior Associate Dean for Finance, College of Medicine;
- **Eileen Pezzi**, Vice President for Development;
- **Linda Veit, MPH**, Interim Chief of Staff & Assistant Vice President of Community Relations; and

- **Daryll C. Dykes, PhD, MD, JD**, Chief Diversity Officer.

Request No. 6: All records regarding faculty meetings, including but not limited to meeting minutes, meeting agendas, presentation material, as well as communications exchanged about such meetings, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams.

Request No. 7: All records, including but not limited to meeting minutes, meeting agendas, presentation material, as well as communications exchanged about such meetings, emails, electronic messages, drafts, and memoranda, regarding Upstate Medical's Office of Diversity and Inclusion's Report of the 2020 Diversity Task Force, dated August 31, 2020, as referenced in the following link: https://www.upstate.edu/diversityinclusion/pdf/task-force-report.pdf.

Request No. 8: All copies of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of ***prospective students*** applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

Request No. 9: All copies of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of ***prospective faculty*** applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

Request No. 10: All copies of application forms, templates and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of ***prospective staff*** applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

Request No. 11: All copies of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of ***prospective managerial administrators*** applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

Request No. 12: All records, including but not limited to program materials, handouts, and videos, for all orientation sessions held for incoming students at Upstate Medical regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race,

identity, and/or belonging, including but not limited to as described in the following link: https://www.upstate.edu/currentstudents/document/session_ii_schedule.pdf.

Request No. 13: All records regarding the creation and selection of the Upstate Medical "Interview Questions" for incoming students, referenced in the link below, as well as all documents that demonstrate the identities of committee(s), group(s), professor(s), administer(s), or individual(s) involved in creating this list of questions, including but not limited to as described in this link: https://www.upstate.edu/currentstudents/document/college_of_medicine_interview_questions_2020.pdf.

Please note that this request does not seek personally identifiable information regarding any student or prospective student of Upstate Medical, and we agree that any such personally identifiable information may be redacted.

If this request appears to be too extensive or fails to reasonably describe the records, please contact me in writing.

We request that the records be produced in electronic format, on a flash drive or other means of electronic transfer.

If there are any fees for copying the records requested, please supply the records without informing me if the fees are not in excess of one hundred dollars ($100.00).

As you know, the Freedom of Information Law requires that an agency respond to a request within five (5) business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Very truly yours,

//William A. Jacobson//

William A. Jacobson, Esq.
President
Legal Insurrection Foundation
contact@legalinsurrection.com

-and-

Eliana Johnson
Editor-in-Chief
Free Beacon LLC

Exhibit B
"Denial Letter"

UPSTATE
MEDICAL UNIVERSITY

December 11, 2020

Mr. William A. Jacobson, Esq.
President
Legal Insurrection Foundation
18 Maple Avenue #280
Barrington, RI 02806
Email: contact@legalinsurrection.com

Dear Mr. Jacobson,

I am writing in regards to your Freedom of Information Law request received by the SUNY Upstate Medical University FOIL Officer on December 4, 2020.

Your request is for:

1. ***All records*** of the Diversity Task Force1 and Implement and Oversight Tiger Teams.

2. ***All records received, reviewed, or created*** by the Diversity Task Force Chair, Daryll Dykes, PhD, MD, JD, regarding the business of the Diversity Task Force and/or Implement and Oversight Tiger Teams.

3. ***All records received, reviewed, or created*** by the following Implement and Oversight Tiger Team Co-Chairs, regarding the business of the Implement and Oversight Tiger Teams and/or the Diversity Task Force:
   - David Amberg;
   - Sipho Mbuqe;
   - Jennifer Welch;
   - Nancy Page;
   - Janell Gage;
   - Nakeia Chambers;
   - Sean Patterson;
   - Daryll Dykes;
   - Rachel Hopkins; and
   - Rebecca Greenblatt.

4. ***All records received, reviewed, or created*** by the following persons employed in the Office of Diversity and Inclusion, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams:
   - Daryll C. Dykes, PhD, MD, JD, Chief Diversity Officer;

UPSTATE MEDICAL UNIVERSITY

- Carl Thomas, Interim Affirmative Action Officer/Title IX Coordinator and Supplier Diversity Coordinator;
- Mary Meier, EEO/AA Compliance Specialist;
- Connie Gregory, Resident Engagement Specialist; and
- Sean Patterson, SPHR, SHRM-SCP, Affirmative Action Assistant/Data Analyst.

5. ***All records received, reviewed, or created*** by the following persons on Upstate Medical's Executive Committee, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams:
   - Mantosh Dewan, MD, President;
   - Lawrence Chin, MD, Dean, College of Medicine;
   - Robert J. Corona, DO, CPE, MBA, FCAP, FASCP, CEO Upstate University Hospital;
   - David C. Amberg, PhD, Vice President for Research;
   - Mark Schmitt, PhD, Dean, College of Graduate Studies;
   - Tammy Austin-Ketch, PhD, FNP, FAANP, Dean, College of Nursing;
   - Katherine Beissner, PT, PhD, Dean, College of Health Professions;
   - Lynn Cleary, MD, Vice President for Academic Compliance and University Accreditation;
   - Eric J. Smith, CPA, MBA, Senior Vice President for Finance and Administration & Senior Associate Dean for Finance, College of Medicine;
   - Eileen Pezzi, Vice President for Development;
   - Linda Veit, MPH, Interim Chief of Staff & Assistant Vice President of Community Relations; and
   - Daryll C. Dykes, PhD, MD, JD, Chief Diversity Officer.

6. ***All records*** regarding faculty meetings, including but not limited to meeting minutes, meeting agendas, presentation material, as well as communications exchanged about such meetings, regarding the Diversity Task Force and/or the Implement and Oversight Tiger Teams.

7. ***All records***, including but not limited to meeting minutes, meeting agendas, presentation material, as well as communications exchanged about such meetings, emails, electronic messages, drafts, and memoranda, regarding Upstate Medical's Office of Diversity and Inclusion's Report of the 2020 Diversity Task Force, dated August 31, 2020, as referenced in the following link: https://www.upstate.edu/diversityinclusion/pdf/task-force-report.pdf.

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8. ***All copies*** of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of prospective students applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

9. ***All copies*** of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of prospective faculty applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

10. ***All copies*** of application forms, templates and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of prospective staff applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

11. ***All copies*** of application forms, templates, and documents that ask questions regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging of prospective managerial administrators applying to Upstate Medical, including but not limited to records regarding the development, purpose, and necessity of these forms and questions. (Note: This request does not seek documents as filled out by applicants, only the forms of such documents.)

12. ***All records***, including but not limited to program materials, handouts, and videos, for all orientation sessions held for incoming students at Upstate Medical regarding diversity, equity, inclusion, antiracism, social justice, bystander intervention for bias, race, identity, and/or belonging, including but not limited to as described in the following link: https://www.upstate.edu/currentstudents/document/session_ii_schedule.pdf.

13. ***All records*** regarding the creation and selection of the Upstate Medical "Interview Questions" for incoming students, referenced in the link below, as well as all documents that demonstrate the identities of committee(s), group(s), professor(s), administer(s), or individual(s) involved in creating this list of questions, including but not limited to as described in this link

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https://www.upstate.edu/currentstudents/document/college_of_medicine_interview_questions_2020.pdf.

Please be advised that your request for "all records" (items# 1,6,7,12,13) or "all records received, reviewed, or created" (items# 2,3,4,5) or "all copies" (items# 8,9,10,11) is too broad in scope and does not reasonably describe the records sought. New York Public Officers Law section 89 (3) requires that the records requested be reasonably described. Please assess your request and resubmit if necessary.

Should you wish to appeal this decision, you must do so in writing, within 30 days of your receipt of this letter. Appeals must be addressed to:

Hank Bennett
FOIL Appeals Officer
SUNY System Administration
353 Broadway, SUNY Plaza
Albany, NY 12246

Sincerely,

Michael Jurbala
AVP Internal Audit and FOIL Officer
Upstate Medical University
750 East Adams Street
Syracuse, New York 13210