



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 24, 2011

Via electronic mail

Trooper Kerry Sutton
Freedom of Information Act Officer
Illinois State Police
Kerry_Sutton@isp.state.il.us

RE: FOIA Pre-Authorization Request - 2011 PAC 13998

Dear Trooper Sutton:

We have received and reviewed the written notice from the Illinois State Police (ISP) of its intention to deny disclosure of certain information pursuant to section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). Specifically, on March 28, 2011 [REDACTED] submitted a FOIA request to ISP seeking copies of police reports related to [REDACTED]. On May 5, 2011, ISP submitted its written notice to this Office seeking to redact investigator notes pursuant to section 7(1)(f).

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. ISP furnished to the Office of the Public Access Counselor unredacted copies of the records that it seeks to redact on May 20, 2011.

DETERMINATION

ISP's use of the exemption in section 7(1)(f) to redact investigator notes is **denied**. The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's

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decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

Although section 7(1)(f) might properly apply, for example, to a document or a portion of an investigative record in which an investigator expresses an opinion regarding the validity of a complaint or proposes a course of action, the exemption does not extend to the underlying fact-or observation-based reports. The redactions that ISP has applied to these reports are more conclusory in nature and cannot be characterized as preliminary within the provisions of section 7(1)(f). Accordingly, we conclude that ISP has not met its initial burden and that section 7(1)(f) does not exempt the investigator notes.

If you have any questions, you can contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

cc:

