

**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

July 1, 2010

Ms. Kay Titchenal
Freedom of Information Officer
SIU School of Medicine
327 W. Calhoun Ave.
Springfield, IL 62702

RE: FOIA Pre-approval Request – 2010 PAC 5399

Dear Ms. Titchenal:

On January 21, 2010, we received from SIU School of Medicine (SIU SOM) a written request for approval of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated January 4, 2010 from [REDACTED] (Requester). The request sought "any and all records regarding [Requester's] employment as a former SIU School of Medicine Police Officer" from August 31, 2009 to December 31, 2009, specifically including "meeting notes from the final meeting held on Tuesday December 8, 2009" in which Requester was advised as to his option of choosing a forced resignation or a dismissal as well as "notes, emails, or other documents regarding any [related] meetings held between Dr. Tichenal, Chief Yenchko, and [Requester]." SIU SOM has indicated its intent to withhold four separate records as exempt under Section 7(1)(f):

- (a) Copy of notes dated November 5, 2009 of initial meeting between Ms. Titchenal and Chief Yenchko regarding "an underlying issue involving the requester";
- (b) Copy of notes dated November 17, 2009 of a meeting between Ms. Titchenal, Chief Yenchko and Requester;
- (c) Copy of notes dated November 30, 2009 of a meeting between Ms. Titchenal and Chief Yenchko; and
- (d) Copy of notes of meeting on December 8, 2009.

Section 7(1)(f) of the Freedom of Information Act allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents 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).

November 2009 Meeting Notes

Based on our review of the unredacted copies of the responsive notes of the meetings held November 5, November 17, and November 30, 2009, we have determined that SIU SOM has met its burden to justify withholding these meeting notes under Section 7(1)(f). The Illinois Appellate Court in *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), ruled that “as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process.” *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant’s argument that the word “preliminary” does not refer to the “posture of the particular document sought to be disclosed” but rather to “predecisional intra-agency communications.” *Id.* at 247-248. The court noted that no previous Illinois caselaw interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect “predecisional, deliberative communications that are part of an agency’s decision-making process.” *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

The November meeting notes SIU SOM intends to withhold appear to be predecisional and appear to constitute part of SIU SOM’s deliberative process in determining how to proceed with the employment matter at issue. Finally, SIU SOM has indicated that the records have not been publicly cited and identified by the head of the public body. As such, these November 2009 meeting notes are exempt from disclosure under Section 7(1)(f).

December 8, 2009 Meeting Notes

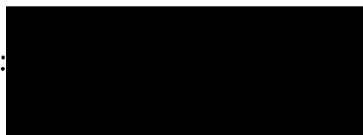
Based on our review of the unredacted copies of the responsive notes of the meeting held on December 8, 2009, however, we have determined that SIU SOM has not met its burden to justify withholding these meeting notes under Section 7(1)(f). SIU SOM presents no evidence to support the position that the notes of this meeting represent “predecisional, deliberative communications that are part of an agency’s decision-making process.” To the contrary, the notes themselves clarify that, by the time this meeting was held, the relevant decision-maker(s) “had come to a conclusion” regarding the decision to dismiss Requester from his position and the purpose of this meeting was simply to inform Requester of that pre-determined decision. The December 8, 2009 meeting notes are not exempt from disclosure under Section 7(1)(f) and, therefore, must be disclosed to Requester.

If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:



Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc: Mr. Craig Anderson
P.O. Box 102
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