



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 1, 2010

Ms. Nancy Warren
FOIA Officer
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

RE: FOIA Pre-Authorization Request – 2010 PAC 5774

Dear Ms. Warren:

We have received and reviewed the written notice from the City of Aurora (City) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et. seq.*, as amended.

Specifically, on January 26, 2010, [REDACTED] submitted a FOIA request to the City seeking “copies of the current contract, amendments, memos or any other written/electronic communication (2009-2010) between any city agent/employee and/or related to consultant Dan Shomon (Mr. Shomon) and/or his company entity.”

The City responded to [REDACTED] request on February 9, 2010 and supplied him a portion of the documents responsive to his request. On February 9, 2010, the City submitted a pre-authorization request with this Office asserting that certain drafts, notes, recommendations and memoranda relating to Dan Shomon and/or his company entity are exempt from disclosure pursuant to Section 7(1)(f), which exempts from inspection and copying “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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).

On February 18, 2010, this Office initiated further inquiry into the matter and requested copies of the documents the City seeks to withhold pursuant to Section 7(1)(f). On February 24, 2010, the City provided us with more than 200 pages of e-mails, preliminary drafts, designs, maps, property record cards, and financial estimates relating to several proposed commercial developments in the City that were related to Mr. Shomon’s company.

Determinations

The City's request for approval of its decision to withhold information pursuant to Section 7(1)(f) is approved in part and denied in part. This Office has reviewed the documents supplied to us by the City and it is our conclusion that the documents are preliminary in nature and express opinions and recommendations about several pending commercial developments in the City.

During an August 31, 2010 phone conversation with a representative of this Office, Aurora City Attorney Alayne Weingartz confirmed that since the filing of [REDACTED] FOIA request, two proposed developments, Chipolte and the Saddleup Saloon and Dance Hall, have been approved by the City Council. To the extent that any of the records supplied to this Office regarding Chipolte, the Saddleup Saloon and Dance Hall or any other proposed development have been publicly cited by the Mayor in the course of the consideration of these developments, such information must be disclosed. With respect to any such records, the City's request for approval is denied.

Based on this analysis, the City has met its burden under Section 7(1)(f) and may withhold any and all documents that are preliminary in nature that have not been publicly cited or identified by the head of the public body since the filing of [REDACTED] FOIA request.

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

Sincerely,

Cara Smith
Public Access Counselor

[REDACTED]
Matthew C. Rogina
Assistant Public Access Counselor

cc: [REDACTED]