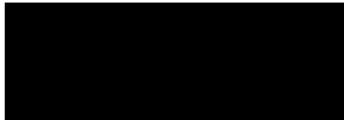




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 21, 2010



Village of Bensenville
c/o Mr. Keith Letsche
Bond & Dickson
400 S. Knoll St., Unit C
Wheaton, IL 60187

RE: FOIA Request for Review – 2010 PAC 5786
FOIA Pre-approval Request – 2010 PAC 6032

Dear Mr. Bowser and Mr. Letsche:

On February 10, 2010, the Public Access Counselor received from [REDACTED] a Request for Review relating to two January 26, 2010 Freedom of Information Act (FOIA) requests [REDACTED] submitted to the Village of Bensenville.

[REDACTED] first request sought documents relating to work done for the Village by Prescient Solutions. [REDACTED] alleged that he had received no response to that request. In a letter dated February 25, 2010, we asked that the Village provide an explanation of its handling of [REDACTED] request. In response, in a letter dated March 8, 2010, the Village provided documentation indicating that it had attempted to email the response to [REDACTED] as requested, but that the responsive email was returned as undeliverable. Copies of the responsive documents were provided to the Public Access Counselor and forwarded to [REDACTED]. A review of the relevant correspondence indicates that the Village did act in good faith in attempting to grant [REDACTED] access to the requested records in the format he specified. [REDACTED] was forwarded a copy of the Village's response and provided an opportunity to reply to that response. The Public Access Counselor has received no reply from [REDACTED] nor has [REDACTED] raised any further issue with relation to this request. As such, we consider this aspect of [REDACTED] Request for Review resolved by the release of the requested documents and have determined that further evaluation of the matter is not warranted.

[REDACTED] second request sought a copy of his personnel file. The Village responded by granting the request in part and denying it in part. The Village withheld two memoranda which the Village has asserted are exempt from disclosure under Section 7(1)(f). The Village's

response indicated that notice of its intent to deny the request as to the two memoranda had been submitted to the Public Access Counselor for review pursuant to Section 9.5(b) of the Freedom of Information Act. The Public Access Counselor received that Notice of Intent to Deny on March 1, 2010. Our February 25, 2010 letter to the Village asked for further explanation of its basis for asserting that the requested documents properly fit within the Section 7(1)(f) exemption and asked that the Village provide us with copies of the relevant memoranda. The Village responded with the requested copies and explanation on March 8, 2010.

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).

Based on our review of this information, we have determined that it is appropriate for the Village to withhold under Section 7(1)(f) the memoranda in question. 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 records at issue appear to fall within the scope of the exemption. The Village has explained that the memoranda constitute recommendations of Village officials or employees with regard to the requester's continued employment with the Village. The documents and their contents are predecisional and constitute part of the Village's deliberative process in determining how to proceed with regard to [REDACTED] status as a Village employee. As such, the records are exempt from disclosure under Section 7(1)(f).

If you have any questions, please feel free to contact me at (217) 785-7438. This letter shall serve to close these files.

Sincerely,

Cara Smith
Public Access Counselor

[REDACTED]
Amanda M. Lundeen
Assistant Public Access Counselor