



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

June 3, 2011

Mr. Robert J. Grindle
Legal Fellow, Office of the Governor
JRTC 100 West Randolph St., Ste. 16-100
Chicago, IL 60601

FOIA Pre-Authorization Request - 2011 PAC 14353

Dear Mr. Grindle:

We have received and reviewed the written notice from the Office of the Governor of its intention to deny disclosure of certain information pursuant to sections 7(1)(c) and (f) of the Freedom of Information Act (FOIA). (5 ILCS 140/7(1)(c), (f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). Specifically, on December 6, 2010, John O'Connor submitted a FOIA request for copies of all records of correspondence between numerous individuals and former Governor Rod Blagojevich and certain members of his administration. The Governor's Office is seeking to redact information identifying unsuccessful job applicants and personal information pertaining to a successful applicant under section 7(1)(c); the Governor's Office also is seeking to redact portions of records which it asserts expressed opinions, issued recommendations, or evaluated prospective actions.

Section 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary 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

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29, 2010. The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248.

DETERMINATION

Section 7(1)(c)

The Governor's Office's assertion of section 7(1)(c) of FOIA to redact the names of unsuccessful job applicants and personal information regarding a successful candidate is **approved**. We previously have determined that employment applications of unsuccessful job applicants are exempt under section 7(1)(c). In doing so, we noted that disclosure of such information could negatively impact an applicant's current employment and hamper a public body from attracting qualified applicants for open positions. Ill. Att'y Gen. Pre-Auth. al5196, issued July 29, 2010. With respect to the successful applicant, the information for which the Governor's Office has asserted the section 7(1)(c) exemption is highly personal by its very nature. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Accordingly, we conclude that the Governor's Office has sustained its initial burden of demonstrating that information identifying unsuccessful job applicants and specific personal information regarding a successful job applicant is exempt from disclosure under section 7(1)(c).

Section 7(1)(f)

The Governor's Office's use of the section 7(1)(f) exemption to withhold certain records is **approved in part and denied in part**. With respect to email messages regarding a bridge collapse and gasoline prices, the use of section 7(1)(f) is **approved**. We have reviewed un-redacted copies of those email messages and determined that they express opinions and recommendations which apparently were considered in formulating responses. Such records are pre-decisional in nature, and the Governor's Office has asserted that the records have not been publicly cited or identified by the head of either public body. Therefore, we conclude that the Governor's Office has sustained its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f).

The Governor's Office's use of the section 7(1)(f) exemption for the remaining records, however, is **denied**. We have reviewed un-redacted copies of those records, which consist of a draft listing of various public officials, estimates pertaining to federal funding for certain construction projects and an opinion related to those estimates, and an apparent recommendation regarding a separate matter. The draft listing appears to consist of solely

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factual information, which is not within the scope of the section 7(1)(f) exemption. The Governor's Office has indicated in a telephone conversation that it is unaware of any decision-making process connected to the estimates and related opinion; nor could the Governor's Office identify a deliberative process connected to the recommendation regarding the separate matter. Accordingly, we conclude that the Governor's Office has not sustained its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f).

The Governor's Office also indicates that it intends to redact additional information from the records pursuant to section 7(1)(b) (5 ILCS 140/7(1)(b) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010) of FOIA. Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than sections 7(1)(c) and 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

If you have any questions, please contact me at (312) 814-6756. This correspondence shall serve to close this matter.

Very truly yours,



STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

14353 preauth al 7(1)(c) priv dl 7(1)(f) prelim draft sa

cc: Mr. John O'Connor
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