



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 13, 2011

Ms. Marilyn Banks
Records Manager/City Clerk
City of Champaign
Finance Department
102 North Neil Street
Champaign, IL 61820

RE: FOIA Pre-Authorization Request - 2011 PAC 13681

Dear Ms. Banks:

We have received and reviewed the written notice from the City of Champaign 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).

On April 6, 2011, [REDACTED] submitted a FOIA request seeking six categories of information, including correspondence between the City and the Fountain Head Drainage District about detaching Copper Slough and giving the City control over it. The City claims that four e-mails are exempt from disclosure under section 7(1)(f) because they enclose preliminary drafts and contain opinions or relate to the formulation of policies or actions.

Section 7(1)(f) of FOIA 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.

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court 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." *Harwood*, 344 Ill. App. 3d at 247. In considering the matter, the *Harwood* court adopted the defendant's argument

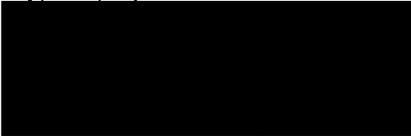
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that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Harwood*, 344 Ill. App. 3d at 247-248. The court noted that no previous Illinois cases interpreted the use of the term "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." *Harwood*, 344 Ill. App. 3d at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

DETERMINATION

The City's use of the exemption in section 7(1)(f) to withhold the four records at issue is **approved**. Based on our review, the records fall within the scope of the section 7(1)(f) exemption, because they consist of internal discussions concerning preliminary drafts. These records also contain opinions and pertain to the formulation of policies advocated by the City. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, the City has met its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f).

If you have any questions, please contact me at (217) 782-9078. This correspondence shall serve to close this matter.


MATTHEW M. SEBEK
Assistant Attorney General
Public Access Bureau

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cc:

