



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 14050

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 May 2, 2011, [REDACTED] of the *News-Gazette* submitted a FOIA request seeking "any and all notes, transcripts and other correspondence between Mayor-elect [REDACTED], members of his transition team and anyone else purporting to represent [REDACTED] with members of the Champaign city government staff for the period between March 15 and May 1, 2011."¹ The City claims that four specified records are exempt from disclosure under section 7(1)(f) because they 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.

¹E-mail from Tom Kacich, *News-Gazette*, to Champaign FOIA Inbox (May 2, 2011, 09:13 CST).

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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 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 and contain opinions which 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.

Very truly yours


MATTHEW M. SEBEK
Assistant Attorney General
Public Access Bureau

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cc:

