



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2011

Ms. Virginia Yang, FOIA Officer
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

FOIA Pre-Authorization Request - 2011 PAC 14063

Dear Ms. Yang:

We have received and reviewed the written notice from the Illinois Department of Natural Resources (IDNR) of its intention to deny certain information as exempt from disclosure 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). Specifically, on April 25, 2011, [REDACTED] submitted a FOIA request to IDNR for records of IDNR biologist Michelle Simone's comments regarding the Rice Lake Habitat Rehabilitation and Enhancement Project proposed by the U.S. Army Corps of Engineers. IDNR is seeking to withhold notes and comments that assess the environmental impact of the proposed project.

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.). 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

IDNR's use of the section 7(1)(f) exemption to withhold the biologist's comments is **approved**. We have reviewed un-redacted copies of the records, which consist of email messages with notes and recommendations that express opinions regarding the potential impact of the proposed project on rare and endangered species. IDNR has explained that it is in the

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process of making a determination regarding the potential impact of the proposed project on rare and endangered species. Thus, the records in question are pre-decisional in nature, and there is no indication that those records have been cited by the head of the public body. Accordingly, we conclude that IDNR has sustained its initial burden of demonstrating that these records are exempt from disclosure under section 7(1)(f).

Accordingly, IDNR may issue a partial denial letter and release the remaining records, if it has not already done so.

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

cc:

