



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

June 13, 2011

*Via Electronic Mail*

Mr. Tom Mammoser  
Executive Director and FOIA Officer  
Dundee Township Park District  
21 N. Washington St.  
Carpentersville, IL 60110  
[REDACTED]

RE: FOIA Pre-Authorization Request - 2011 PAC 14095

Dear Mr. Mammoser:

We have received and reviewed the written notice from the Dundee Township Park District of its intention to deny disclosure of certain information under 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 9, 2011, [REDACTED] Zukowski, Rogers, Flood & McArdle submitted a FOIA request seeking copies of minutes and notes from any meetings between District staff or officials and representatives of Kane County at which any discussions about Randall Road (between Illinois Route 72 and Huntley Road) took place, as well as any studies, reports, and memoranda since January 1, 2004, regarding the same portion of Randall Road. The District claims that portions of records responsive to this FOIA request 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 the 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.

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In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1<sup>st</sup> 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. Campanone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998).

#### DETERMINATION

The District's use of the exemption in section 7(1)(f) to withhold the 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 which contain opinions and which pertain to the formulation of policies and/or actions advocated by the District. 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 District 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



MATTHEW M. SEBEK  
Assistant Attorney General  
Public Access Bureau

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cc:

