



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

June 16, 2011

Ms. Joelle McGinnis  
Freedom of Information Officer  
Illinois Tollway  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

RE: FOIA Pre-Authorization Request – 2011 PAC 14307

Dear Ms. McGinnis:

We have received and reviewed the written notice from the Illinois Tollway of its intention to deny disclosure of certain information pursuant to section 7(1)(c) and section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c), (1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010).

On May 3, 2011, Ms. Marni Pyke of the *Daily Herald* requested "all personnel files and any documents related to the hiring of the following employees: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]." The Tollway seeks pre-authorization to withhold the following information and documents under section 7(1)(c): the names, applications, and resumes of unsuccessful applicants, the resumes of the employees named in the request, the employee evaluations of the named employees, employees' previous salaries, and employees' reasons for leaving prior employment. The Tollway also seek pre-authorization to withhold candidate evaluation documents, interview notes, and score sheets under section 7(1)(f).

**7(1)(c) DETERMINATION**

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." The exemption further provides that the "disclosure of

information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010.

The Tollway's use of the exemption in section 7(1)(c) to withhold the names, applications, and resumes of applicants who were not hired is **approved**. We have concluded that the Tollway has met its initial burden of demonstrating that disclosure of this application information pertaining to individuals who were not hired would constitute a clearly unwarranted invasion of personal privacy. The list of applicants' names would allow these applicants to be identified. The applications and resumes also contain information by which the applicants could be identified, such as schools attended, current and former employment, and references. The fact that an individual is seeking new employment is highly personal, and the subjects' right to privacy outweighs the legitimate public interest in obtaining this information. With respect to applicants who were not hired, the application materials do not relate to the public duties of any public employee.

The Tollway's use of the exemption in section 7(1)(c) to withhold the resumes of Tollway employees is **denied**. These resumes contain information that indicates the employees' skills and preparation to carry out their duties. Generally, resumes submitted as part of a job application are tailored to be as relevant to the job as possible. For these reasons, these resumes bear on the public duties of these employees. Therefore, the Tollway has not sustained its initial burden of demonstrating that these resumes are exempt in their entirety under section 7(1)(c). If any of these resumes contains information that is highly personal and that does not bear on the employee's public duties, the Tollway may submit a new pre-authorization request identifying specific information in a resume or resumes that it wishes to redact as exempt under section 7(1)(c).

The Tollway's use of the exemption in section 7(1)(c) to withhold employees' previous salaries and reasons for leaving prior employment is **approved**. This information is highly personal, and the subjects' right to privacy outweighs any legitimate public interest in obtaining this information. Previous salaries and reasons for leaving prior employment do not bear on the employees' duties at the Tollway. We conclude that the Tollway has sustained its initial burden of demonstrating that this information is exempt under section 7(1)(c).

The Tollway's use of the exemption in section 7(1)(c) as to employee evaluations is **denied**. Section 7(1)(c) does not properly apply to employment evaluations of public employees because the evaluations "bear on the public duties" of these employees. However, in its written notice, the Tollway asserts that employee evaluations are exempt under section 7.5(q) of FOIA, which exempts "[i]nformation prohibited from being disclosed by the Personnel Records Review Act." 5 ILCS 140/7.5(q) (West 2009 Supp.), as amended by Public Act 96-1331, effective July 27, 2010. Advance approval by the Public Access Counselor is not required for the assertion of the exemption in section 7.5(q), and therefore we make no determination at this time regarding the applicability of that exemption.


### 7(1)(f) DETERMINATION

In its written notice, the Tollway also asserts that candidate evaluation documents, interview notes, and individual scoring sheets for all applicants for employment are exempt under section 7(1)(f) of FOIA, which exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions 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 29, 2010.

The Tollway's use of the exemption in section 7(1)(f) to withhold these documents is **approved**. The Tollway explained that these documents contain the opinions and recommendations of evaluators and are used in formulating the Tollway's hiring decisions. The Tollway asserts that these documents have not been publicly cited or identified by the Board of Directors. Therefore, we conclude that the Tollway has met its initial burden of demonstrating that these documents are exempt under section 7(1)(f).

If you have any questions, please contact me at (312) 814-2086. This correspondence shall serve to close this matter.

Very truly yours,

  
SARAH KAPLAN  
Assistant Attorney General  
Public Access Bureau

14307 preauth al dl 71c 71f emp priv prelim draft sa

cc: *Via electronic mail*  
Ms. Marni Pyke  
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