



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 13, 2011

Ms. Megan Morgan
Assistant Corporation Counsel
City of Springfield
800 E. Monroe St., Room 313
Springfield, IL 62701

RE: FOIA Pre-Authorization Request - 2011 PAC 14542

Dear Ms. Morgan:

We have received and reviewed the written notice from the City of Springfield 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 24, 2011, [REDACTED] submitted a FOIA request seeking an Internal Affairs Report associated with S08-73352, including the taped interview with [REDACTED]. The City claims that the responsive report is exempt from disclosure under section 7(1)(f) because it is a preliminary draft in which opinions are expressed and action by the City is formulated.

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 that the word "preliminary" does not refer to the "posture of the particular document sought to be

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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 responsive report is **approved**. Based on our review, the record falls within the scope of the section 7(1)(f) exemption, because it consists of a preliminary draft which contains opinions and which pertains to the formulation of possible action by the City. Further, there is no evidence to suggest that this record has been publicly cited and identified by the head of the public body. Accordingly, the City has met its initial burden of demonstrating that this record is 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:

