



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 27, 2011

Via Electronic Mail
Ms. Jenessa Nesbitt
Freedom of Information Act Officer
DuPage County Water Commission
nesbitt@dpwc.org

RE: FOIA Pre-Authorization Request - 2010 PAC 7981

Dear Ms. Nesbitt:

We have received and reviewed the written notice from the DuPage County Water Commission (Commission) 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). Specifically, on June 3, 2010, [REDACTED] submitted a FOIA request to the Commission seeking all "communications, regardless of form, to or from Commissioners Zay or Bennington, between staff, Commission members, or any persons or entities contracted by the Commission." On June 16, 2010, the Commission submitted its written notice to this Office seeking to withhold drafts from disclosure pursuant to section 7(1)(f).

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary 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."

This Office initiated further inquiry into this matter on June 23, 2010, and the Commission responded on May 20, 2010. The Commission furnished the records to the Office of the Public Access Counselor on June 29, 2010. The drafts appear to be documents generated for a pending Board meeting.

The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he

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deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

We have reviewed the record furnished to us by Commission and conclude that Commission has met its initial burden of demonstrating that the drafts are exempt under section 7(1)(f). They are identified as drafts and do not appear to have been identified by the DuPage County Water Commissioner or the DuPage County Board President at the time these drafts were furnished to this Office for our review. Any drafts that have been finalized subsequent to [REDACTED] request must be disclosed to [REDACTED].

We conclude that the drafts may be characterized as preliminary and properly fall within the provisions of section 7(1)(f). The Commission's use of the exemption in section 7(1)(f) to withhold the record is therefore **approved**.

If you have any questions, you may contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,

[REDACTED]

MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

cc:

[REDACTED]

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