



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 15, 2011

Ms. Brigett R. Bevan, FOIA Officer  
Chicago Transit Authority  
567 W. Lake Street  
Chicago, IL 60661

RE: FOIA Pre-Authorization Request - 2011 PAC 15312

Dear Ms. Bevan:

We have received and reviewed the written notice from the Chicago Transit Authority (CTA) 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 2010)). Specifically, on April 15, 2011, Mr. Patrick Rehkamp submitted a FOIA request for various records regarding the renovation of the Red Line Cermak-Chinatown station. CTA seeks to withhold certain records which it characterizes as pre-decisional.

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." 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.

CTA's use of the section 7(1)(f) exemption is **approved in part and denied in part**. We have reviewed copies of the records in question, which include executed contracts ("Electric Facilities Service Agreement," dated May 19, 2010, and "Customer Work Agreement," dated March 3, 2010) together with documentation of CTA payments to a private company. In addition, portions of CTA memoranda concerning the project, dated February 5, 2010, August 19, 2010, January 7, 2011, and February 25, 2011, document "previously approved work orders" and the cost of those work orders. In addition to not being pre-decisional in nature, those records

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document the use of public funds and therefore are subject to disclosure under section 2.5 of FOIA (5 ILCS 140/2.5 (West 2010)). However, the remaining records contain notes, opinions, and recommendations that CTA considered in formulating work orders and other forms of action related to the project. Such records are pre-decisional in nature, and there is no indication that those records have been cited by the director of CTA. Accordingly, we conclude that CTA has sustained its initial burden of demonstrating that the records – with the exception of executed contracts, documentation of payments to private companies, and portions of memoranda detailing previously completed work orders and the cost of those work orders – are exempt from disclosure under section 7(1)(f).

CTA also indicates that it intends to redact additional information from the records pursuant to section 7(1)(k) (5 ILCS 140/7(1)(k) (West 2010)). Because advance approval by the Public Access Counselor is not required for the assertion of exemptions other than sections 7(1)(c) (5 ILCS 140/7(1)(c) (West 2010)) and 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

Accordingly, CTA 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

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cc: Mr. Patrick Rehkamp  
Better Government Association  
223 W. Jackson, Ste. 620  
Chicago, IL 60603