



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 5, 2011

Mr. Thomas J. Reuter
Acting FOIA Officer
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

RE: FOIA Pre-Authorization Request – 2011 PAC 15645

Dear Mr. Reuter:

We have received and reviewed the written notice from the Illinois Environmental Protection Agency (IEPA) 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 May 19, 2011, [REDACTED] submitted a FOIA request for documents concerning SET Environmental in Wheeling. IEPA seeks to withhold one memorandum under section 7(1)(f) of FOIA.

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." 5 ILCS 140/7(1)(f) (West 2010). 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 decision is made." *Harwood v. McDonough*, 344 Ill. App. 3d 248 (1st Dist. 2003).

DETERMINATION

IEPA's use of the section 7(1)(f) exemption to withhold the memorandum is **approved**. The memorandum, which was written by a government official in another state, expressed an opinion concerning an application for a hazardous waste permit submitted to IEPA.

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IEPA has explained that it considered this memorandum in its decision-making process. Such a document is pre-decisional in nature, and IEPA asserted that the memorandum has not been cited by the director of IEPA. Therefore, we conclude that IEPA has sustained its initial burden of demonstrating that this document is exempt from disclosure under section 7(1)(f).

Accordingly, IEPA may issue a partial denial letter and release other records responsive to the request, 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
STEVE SILVERMAN *by EK*
Assistant Attorney General
Public Access Bureau

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