



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 9, 2011

*Via Electronic Mail*  
Ms. Mandy Bentley  
Freedom of Information Officer  
Illinois Department of Corrections  
[Mandy.Bentley@doc.illinois.gov](mailto:Mandy.Bentley@doc.illinois.gov)

Re: FOIA Pre-Authorization Request – 2011 PAC 15812

Dear Ms. Bentley:

We have received written notice from the Illinois Department of Corrections (IDOC) 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).

██████████ an IDOC employee, submitted a FOIA request to IDOC seeking records relating to an internal investigation into allegations of employee misconduct against her at the Pontiac Correctional Center. On July 26, 2011, IDOC denied Ms. Cooley's entire request pursuant to section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2010)) and also sought pre-authorization to withhold all responsive records pursuant to section 7(1)(f). Section 7(1)(f) exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]"

IDOC furnished the Public Access Counselor with copies of the responsive records, which include investigative reports, emails, and Administrative Directive 03.02.108. IDOC contends that the records were generated as part of IDOC's "deliberative process in determining the final outcome of this investigation, and whether or not discipline was merited against this employee."

## DETERMINATION

Section 7(1)(f) protects records that relate to a deliberative process. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1<sup>st</sup> Dist. 2003). "[T]he 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).

Based on our review of the records furnished by IDOC, we conclude that the investigative reports are not deliberative in nature, because they do not contain opinions, discussions, or recommendations leading up to a decision. Rather, the records contain fact-based observations and summaries that do not fall within the provisions of section 7(1)(f). Although section 7(1)(f) might properly apply, for example, to a document or a portion of an investigative record in which an investigator expresses an opinion regarding the validity of a complaint or proposes a course of action, the exemption does not extend to underlying fact- or observation-based reports. *See* 2011 PAC 14329 (Ill. Att'y Gen. PAC Pre-Auth dl14329, issued August 5, 2011).

With respect to the emails identified as part of the investigation's records, we note that discovery of the printed emails triggered IDOC's investigation into alleged misconduct. As stated above, section 7(1)(f) is intended to exempt those records that are part of a deliberative process. IDOC, however, seeks to withhold records that *pre-date* IDOC's investigation. Contrary to IDOC's assertion that the "records consist of pre-decisional deliberative process materials solicited, obtained, and utilized in drawing conclusions and making the final determination," records that are generated prior to an internal investigation into employee misconduct cannot be considered deliberative or preliminary and do not fall within the provisions of section 7(1)(f).<sup>1</sup> IDOC's request for approval to withhold the reports from disclosure pursuant to section 7(1)(f) is **denied**.


The pre-authorization process under section 9.5(b) of FOIA (5 ILCS 140/9.5(b) (West 2010)) is limited to reviewing assertions of sections 7(1)(c) or 7(1)(f) to withhold public records. Therefore, we make no determination here as to the applicability of 7(1)(d)(iv) or any other exemption asserted by IDOC to deny disclosure of the requested information.

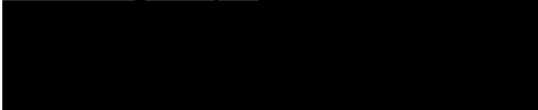
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<sup>1</sup>We further note that IDOC has not provided any explanation as to why Administrative Directive 03.02.108 should be exempt from disclosure under section 7(1)(f).

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

Very truly yours, 

  
MATTHEW C. ROGINA  
Assistant Attorney General  
Public Access Bureau

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cc: 