



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 12, 2011

Via Electronic Mail
Ms. Erin Van De Walle
Freedom of Information Officer
City of Elmhurst
foia@elmhurst.org

Re: FOIA Pre-Authorization Request – 2011 PAC 15839

Dear Ms. Van De Walle:

We have received written notice from the City of Elmhurst (City) of its intention to deny the 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). 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[.]"

On June 27, 2011, Mr. Joel Feldman, of the law firm Loevy and Loevy, submitted a FOIA request to the City seeking inter-office memoranda between the City of Elmhurst Police Department (Department) and the DuPage County Metropolitan Enforcement Group (DuMEG). The City denied the request, stating that the records constitute notes, recommendations, and memoranda in which opinions were expressed and policies and actions were formulated

On August 9, 2011, the City furnished the Public Access Counselor with copies of the responsive records, which include internal memoranda between the Department and DuMEG personnel, as well as internal correspondence between Department personnel.

DETERMINATION

The City's request for approval to withhold the memoranda from disclosure pursuant to section 7(1)(f) is **approved** in part and **denied** in part.

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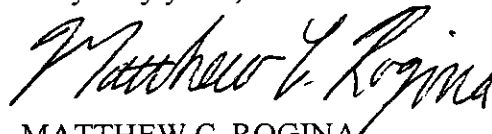
Section 7(1)(f) protects records that relate to a deliberative process. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

Based on our review of the records furnished by the City, we conclude that the October 5, 2010, and October 19, 2010, memoranda between Department personnel *do not* contain opinions, discussions, or recommendations leading up to a decision. Rather, the memoranda contain a Department employee's fact-based summary of an incident and 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). Therefore, the City has not met its burden under section 7(1)(f) with regard to the above-identified memoranda.

The City may withhold the October 21, 2010, November 10, 2010, and November 16, 2010, memoranda. We conclude that those memoranda express opinions and recommendations about the incident referenced in the October 5, 2010, and October 19, 2010, memoranda and may be characterized as deliberative. As a result, they may be withheld under section 7(1)(f).

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

15839 preauth dl 71f prelim mun

Via U.S. Mail and Electronic Mail
cc: Mr. Joel Feldman
Loevy & Loevy
312 N. May Street, Suite 100
Chicago, Illinois 60606

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Ms. Kate Reifsnyder
Storino, Ramello & Durkin
Kathleen M. Reifsnyder
reifsnyder@srd-law.com