



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

Ms. Sheila Chernis, CPPB
Freedom of Information Officer
Illinois Department of Commerce and Economic Opportunity
500 East Monroe
Springfield, IL 62701-1643

RE: FOIA Pre-Authorization Request - 2011 PAC 15715

Dear Ms. Chernis:

We have received and reviewed the written notice from the Illinois Department of Commerce and Economic Opportunity 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 June 9, 2011, Ms. Katie Callicutt requested copies of all evaluations and submissions for a Request for Proposal (RFP) "entitled CDBG Disaster Recovery (IKE) PROGRAM MANAGEMENT Reference # 10-000000050102."¹ The Department seeks to redact evaluators' comments on scoring sheets.

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.

DETERMINATION

The Department's assertion of the section 7(1)(f) exemption to redact evaluators' comments from the scoring sheets is **approved**. We have reviewed a representative sample of the evaluators' comments, which consist of notes that express opinions and recommendations which were considered by the Department before making a final decision for awarding a contract. Such records are pre-decisional in nature, and there is no indication that the records

¹Email from Katie Callicutt, Agate Software, Inc., to Sheila Chernis, Freedom of Information Officer, Illinois Department of Commerce and Economic Opportunity (June 9, 2011, 9:12 a.m.).

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have been cited by the director of the Department. Accordingly, we conclude that the Department has sustained its initial burden of demonstrating that the evaluators' comments are exempt from disclosure under section 7(1)(f).

The Department also indicates that it intends to redact additional information from the records pursuant to sections 7(1)(a) and 7(1)(g) of FOIA (5 ILCS 140/7(1)(a), (g) (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.

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: Ms. Katie Callicutt
Agate Software, Inc.
2214 University Park Drive., Ste. 102
Okemos, MI 48864