



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 25, 2011

*Via Electronic Mail*  
Ms. Suzanne Yokley-Bond  
Interim Chief Legal Counsel  
Illinois State Police  
Suzanne\_Yokley-Bond@isp.state.il.us

Re: FOIA Pre-Authorization Request – 2011 PAC 16291

Dear Ms. Yokley-Bond:

We have received the written notice from the Illinois State Police (ISP) of its intention to withhold certain information from disclosure pursuant to section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011). Bruce Rushton, formerly of the *State-Journal Register (SJR)*, submitted a FOIA request to the Illinois State Police (ISP) seeking the personnel file of [REDACTED]

In its August 17, 2011, Pre-Authorization Request, ISP indicated that it will provide Master Sergeant Snider's personnel file with private information redacted, as well as the Case Action Report, and final disposition of any adjudicated disciplinary file. ISP seeks to withhold any remaining disciplinary files pursuant to section 7(1)(f), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]" ISP contends that the records are part of its "deliberative process." ISP furnished us with an unredacted copy of the reports and an explanation of its assertion of the section 7(1)(f) exemption.

**DETERMINATIONS**

In its notice, ISP stated that it would disclose to the *SJR* the portions of the personnel file that contain records such as academic transcripts, officer action requests, and letters of commendation and redact certain "private information" under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011). Therefore, our review is limited to the applicability of the section 7(1)(f) exemption to the disciplinary investigation reports.

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ISP's request for approval to withhold the investigative reports from disclosure pursuant to section 7(1)(f) is **denied**. 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).

As we concluded in Ill. Att'y Gen. PAC Pre-Auth. al14329, section 7(1)(f) does not extend to the fact or observation-based reports that underlie a decision. The responsive records regarding ISP's investigation of [REDACTED] and an incident at the Anchor Inn do not appear to be deliberative, as they do not contain opinions or recommendations by ISP personnel about a course of action to take with the investigation or [REDACTED]. Rather, the documents are witness statements and interviews in which ISP personnel document fact-based observations by persons with knowledge of the incident.

Accordingly, ISP has not met its burden of demonstrating by clear and convincing evidence that the records are exempt from disclosure under section 7(1)(f) of FOIA.

Because 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 section 7(1)(c) and section 7(1)(f) exemptions, we cannot consider the applicability of any other exemptions raised. This correspondence shall serve to close this matter. Should you have any questions, you may contact me at (312) 814-5383.

Very truly yours,

[REDACTED]  
MATTHEW C. ROGINA  
Assistant Attorney General  
Public Access Bureau

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*Via Electronic Mail*  
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