



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 5, 2010

City Administrator Albert Hudzik
City of Columbia
Municipal Building
208 South Rapp Avenue
P.O. Box 467
Columbia, Illinois 62236-0467

RE: Pre-Authorization Request - 2010 PAC 6488

Dear Mr. Hudzik:

We have received and reviewed the written notice from the City of Columbia (City) of its intent to deny disclosure of certain records as exempt from disclosure under subsections 7(1)(c) and 7(1)(f) of the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, as amended (FOIA).

██████████ submitted a FOIA request dated March 11, 2010, seeking a copy of his personnel file. In its written notice, the City asserted that certain documents containing "statements by various individuals voicing complaints against ██████████ or providing information for the administrative investigation" are exempt from disclosure under subsections 7(1)(c) and 7(1)(d)(iv) of FOIA. The City also asserted that documents containing "drafts/comments between city officials (e.g., the City Administrator) and legal counsel" (Draft Documents) are exempt from disclosure under subsection 7(1)(f) of FOIA.

Subsection 7(1)(c) of FOIA exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c). The exemption defines "[u]nwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." *Id.*

Subsection 7(1)(f) of FOIA exempts from disclosure 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).

City Administrator Albert Hudzik

April 5, 2010

Page 2

Determinations

As previously noted, the City's basis for denying disclosure of the statements of individuals who filed complaints with or provided information to the City as part of an administrative investigation falls under the exemption in subsection 7(1)(d)(iv) of FOIA. As I confirmed in our telephone conversation today, the City's use of that exemption does not require preapproval from our office. Moreover, it is not necessary for the City to assert the subsection 7(1)(c) exemption (using as a basis its argument for denying disclosure of records under subsection 7(1)(d)(iv) of FOIA) when it has already asserted that the records are exempt from disclosure under another exemption in FOIA.

The City's use of the subsection 7(1)(f) exemption with regard to the Draft Documents is **approved**. In our telephone conversation, you further characterized these as documents in which city officials expressed opinions about and formulated action pertaining to the investigation. You clarified that some of the Draft Documents were drafts of documents that were ultimately issued to [REDACTED] and that none of the Draft Documents had been publicly cited or identified by the mayor. As such, the Draft Documents are exempt from disclosure under subsection 7(1)(f).

As such, the City should issue a partial denial letter directly to [REDACTED]. Should you have questions or concerns, please feel free to contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:

[REDACTED]
Sara Gadola Gallagher
Deputy Public Access Counselor

cc:

[REDACTED]