



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 7, 2010

Ms. Rita Elsner
FOIA Officer
Village of Schaumburg
Municipal Center
101 Schaumburg Court
Schaumburg, IL 60193-1899

RE: FOIA Pre-approval Request – No. 6564

Dear Ms. Elsner:

On March 31, 2010, we received from the Village of Schaumburg a written request for approval of its intent to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act request received from [REDACTED] dated March 30, 2010. [REDACTED] request sought copies of the "Bidders list (plan holders list)" for specified projects.

Section 7(1)(f) of the Freedom of Information Act allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents 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).

The Illinois Appellate Court in *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248.

The Village has indicated an intent to deny the request under Section 7(1)(f), asserting that the lists are "preliminary and may change on a daily basis" and noting that such lists "become[] final on the day the bid is scheduled to be opened."

As a result of our review, we have determined that the Village may not properly withhold the lists in question under **Section 7(1)(f)**. While the Bidder list will not be complete until all bids are received, the lists of bidders are not "documents in which opinions are expressed, or policies or actions are formulated" by the Village. Thus, while such a list may be preliminary in the sense that it is incomplete until the day bids are opened, it does not constitute a predecisional inter-agency communication. The Village's request for Pre-Authorization of reliance upon the Section 7(1)(f) exemption is, therefore, denied.

If you have any questions, please feel free to contact me at 217-785-7438.

Sincerely,

Cara Smith
Public Access Counselor



Amanda M. Lundeen
Assistant Public Access Counselor

cc:

