



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

April 11, 2010

Mr. Randall Roberts
Executive Assistant State's Attorney
Cook County State's Attorney's Office
Via electronic mail
rarober@cookcountygov.com

RE: FOIA Pre-approval Request – No. 6630

Dear Mr. Roberts:

On April 5, 2010, we received from the Cook County State's Attorney's Office a written request for approval of its intent to assert the Section 7(1)(c) and 7(1)(f) exemptions in response to a March 2, 2010 Freedom of Information Act (FOIA) request from [REDACTED]. The request sought all records regarding a criminal investigation of a sexual assault allegation against a specific individual.

The Cook County State's Attorney's Office has indicated an intent to withhold responsive "felony review folders" under Section 7(1)(f) of the Act, noting that those folders contain "the Assistant State's Attorney's mental impressions, thoughts, preliminary drafts, and recommendations about what action to take in the case." The Cook County State's Attorney's Office noted that under the law, these folders are not disclosed in discovery.

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.

As a result of our review of the information provided by the Cook County State's Attorney's Office, we have determined that the felony review folders may properly be withheld as exempt under Section 7(1)(f). The records appear to reflect the Assistant State's Attorney's process of analyzing the case and considering and recommending how to proceed. Such records constitute part of the public body's deliberative process.

Additionally, the State's Attorney's Office has indicated that it intends to withhold copies of "Facebook email exchanges purportedly between the minor" and the specific individual alleged to have committed sexual assault as exempt from disclosure under Section 7(1)(c). Section 7(1)(c) of the Freedom of Information Act permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "unwarranted 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."

We have determined that the Cook County State's Attorney may properly withhold the responsive Facebook email exchanges under Section 7(1)(c). The State's Attorney's Office has explained that those email exchanges involve a minor complaining witness and contain very personal information concerning that minor. Based on the information provided, we have determined that those messages are highly personal and that their release would be objectionable to a reasonable person. Additionally, the public interest in the release of the contents of the messages is minimal and is, therefore, outweighed by the privacy interest of the minor involved in the incident at issue.

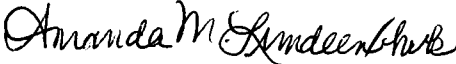
We also note that the Cook County State's Attorney has indicated an intent to withhold other information within the responsive records based on exemptions other than Section 7(1)(f) and 7(1)(c). This letter is not intended to advise you with regard to the applicability of any other exemptions to the documents requested.

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

Sincerely,

Cara Smith
Public Access Counselor

By:


Amanda M. Lundeen
Assistant Public Access Counselor

cc:

