



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

Lisa Madigan
ATTORNEY GENERAL

April 19, 2010

Ms. Jeanne Marquardt
Freedom of Information Officer
DuPage County
421 N. County Farm Rd.
Wheaton, Illinois 60187

RE: FOIA Pre-Approval Request – 2010 PAC 6759

Dear Ms. Marquardt:

We have received and reviewed the written notice from DuPage County of its intent to deny disclosure of certain records related to Navistar, Inc.'s business or zoning proposals as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act. 5 ILCS 140/1 *et seq.*, as amended (FOIA).

██████████ submitted a FOIA request to the County dated March 24, 2010, seeking records related to interactions between the County and Navistar, Inc., specifically:

Copies of all correspondence (including email correspondence) to/from/between/among elected officials of DuPage Co. regarding any aspects of Navistar, Inc.'s (and its affiliated companies) business or zoning proposal in Lisle from Jan. 2009 to present.

In its written notice, the County has asserted that, while it is releasing several hundred pages of responsive documents, some of the responsive documents are exempt from disclosure under subsection 7(1)(f) of FOIA as "preliminary drafts, notes, recommendations, memoranda or other records in which opinions are expressed or policies or actions are formulated." In particular, the County has indicated its intent to withhold seven emails and memos "from preliminary negotiations in which opinions are expressed or strategies are discussed."

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, 244 (1st Dist. 2003), considered a FOIA request for a copy of a report prepared by a consulting firm as part of a State agency's consideration of the relocation of the Boeing Company's headquarters to Illinois. In analyzing the applicability of section 7(1)(f) to this report, the court noted that the Illinois Supreme Court has recognized 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. The *Harwood* court adopted the defendant's argument that the word "preliminary" in section 7(1)(f) 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 Du Page County, we have determined that the County's reliance on the Section 7(1)(f) exemption with regard to the emails and memos in question is **approved**. According to the County, the seven items at issue reflect the opinions of individuals involved in its decisionmaking process and include discussions of potential strategies for action on the part of the County. As such, those records constitute "predecisional intra-agency communications" falling within the definition of deliberative process materials covered by section 7(1)(f). Thus, the County may properly withhold these reports as exempt under Section 7(1)(f) of FOIA.

If you have any questions, please feel free to contact me at (217) 785-7438. This letter will serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By


Amanda M. Lundeen
Assistant Public Access Counselor

cc:

