



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 10, 2010

Mr. Tom Reuter
Acting FOIA Coordinator
Illinois Environmental Protection Agency
Via electronic mail
Tom.Reuter@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 7188

Dear Mr. Reuter:

On April 30, 2010, we received from the Illinois Environmental Protection Agency (IEPA) a written request for approval of its intent to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated March 24, 2010 from [REDACTED] of [REDACTED]. The request sought various records related to a specified polluting entity. IEPA has indicated its intent to withhold certain records as exempt under Section 7(1)(f), including the relevant Hazardous Ranking System Preliminary Score/Projected Score, the Site Priority Status Recommendation, and various memoranda and internal communications.

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).

Based on our review of this information, we have determined that it is appropriate for the IEPA to withhold under Section 7(1)(f) the documents in question. 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 court noted that no previous Illinois caselaw interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel

language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).


The records at issue appear to fall within the scope of the exemption. First, the IEPA has indicated an intent to withhold the Hazardous Ranking System Preliminary Score/Projected Score and Site Priority Status Recommendation. IEPA has explained that these documents consist of the preliminary evaluations and recommendations of IEPA staff with regard to assigning the proper status to the site in question. These recommendations are considered in determining enforcement options, priorities and strategies with regard to polluting entities. Such record is clearly encompassed by the language of the Section 7(1)(f) exemption. With regard to the memos and other internal communications the IEPA also intends to withhold, the Agency's explanation indicates that those documents are predecisional and constitute part of the IEPA's deliberative process in determining how to proceed with regard to enforcement of environmental regulations in relation to the facility in question. Finally, IEPA has indicated that the records have not been publicly cited and identified by the head of the public body. As such, the records are exempt from disclosure under Section 7(1)(f).

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

Sincerely,

Cara Smith
Public Access Counselor

By:


Amanda M. Lundeen
Assistant Public Access Counselor

cc:

