



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 11, 2010

Ms. Denise Ii
FOIA Officer, City Clerk
City of Sandwich
144 East Railroad St.
Sandwich, IL 60548

RE: FOIA Pre-approval Request – 2010 PAC 7210

Dear Ms. Ii:

On May 4, 2010, we received from the City of Sandwich (City) a written notice of its intent to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated April 19, 2010 from [REDACTED] (Requester) relating to the "Fairwind Boulevard/U.S. Route 34" construction project. The request sought records regarding a variety of subjects, including "any and all other documents which are material or relevant in any way to any matter asserted above, including, but not limited to, any memorandums from attorneys, or opinions directing the City to withhold funds in any form." The City has indicated its intent to withhold certain documents responsive to this portion of the FOIA request as exempt under Section 7(1)(f) and has indicated that it has either furnished a copy of, or otherwise made available, the remaining responsive documents to the Requestor.

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 the City has met its burden of justifying its determination to withhold the subject documents pursuant to Section 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 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. The category of documents at issue sought by the Requester includes “memorandums from attorneys, or opinions directing the City to withhold funds in any form.” The City has indicated its intent to withhold “preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or actions are formulated.” Such records are clearly encompassed both by the broad language of this category of Requester’s FOIA request and by the language of the Section 7(1)(f) exemption. As such, the records and information identified are exempt from disclosure under Section 7(1)(f).

If you have any questions, please feel free to contact me at (217) 782-9078. This letter will serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By: 

Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc: 