



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 11, 2011

Village of Wheeling
Lisa Leonteos, Primary FOIA Officer
2 Community Blvd.
Wheeling, IL 60090

Re: Pre-authorization request – 2011 PAC 12536

Dear Ms. Leonteos:

We have received from the Village of Wheeling a notice of intention to deny information requested by [REDACTED] under the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended. [REDACTED] requested on January 26, 2011 various records regarding the Village's RedLightSystem, a video surveillance system that detects traffic violations. The Village requested pre-authorization to withhold under Section 7(1)(f) (5 ILCS 140/7(1)(f)) records of communications regarding contractual negotiations between the Village and administrative hearing officer Victor Puscas, and records of communications regarding contractual negotiations between the Village and RedSpeed of Illinois, LLC, which is the RedLightSystem vendor.

Section 7(1)(f) exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records 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 Section 7(1)(f) exemption applies to "predecisional materials used by a public body in its deliberative process." *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247, 799 N.E.2d 859, 864 (1st Dist. 2003). The exemption is "intended to protect the communications process and encourage frank and open discussion among agency employees before a decision is made." *Id.* at 248, 799 N.E.2d at 864.

The Village's request for pre-authorization to withhold records of communications between the Village and RedSpeed pursuant to Section 7(1)(f) is **approved in part and denied in part**. We have reviewed un-redacted copies of the records, which consist of email messages and attachments. The email messages on pages 1-5 of the records submitted to the Public Access

Counselor (PAC) on March 2 (Attachment 1) do not pertain to contractual negotiations and instead contain factual information regarding a traffic citation. The documents attached to the email messages (pages 8-68 of Attachment 1) consist of records related to the traffic citation, such as the violation notice, liability determination and a complaint for administrative review filed by ██████████ in Cook County Circuit Court. Such information is not pre-decisional in nature and does not constitute preliminary versions of records in which opinions or recommendations are discussed or policies are formulated. Accordingly, we conclude that the Village has not sustained its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

However, page 72 of Attachment 1 and page 1 of the attachment submitted to PAC on March 8 (Attachment 2) are copies of an email message in which an attorney for the Village expresses an opinion pertaining to a contractual matter. In addition, pages 6-7 of Attachment 1 consist of an email message in which a RedSpeed attorney expresses recommendations regarding the Village's upcoming response to a pending matter. Those records are pre-decisional in nature and appear to have been used in the Village's deliberative processes. Moreover, the Village has asserted that the records have not been publicly cited and identified by the head of the public body. Accordingly, we conclude that the Village has sustained its initial burden of demonstrating that the email messages on pages 6-7 and 72 of Attachment 1 and page 1 of Attachment 2 are exempt from disclosure under Section 7(1)(f).

The Village's request for pre-authorization to withhold records of communications between the Village and Mr. Puscas is **approved in part and denied in part**. With respect to email messages on pages 69-71 of Attachment 1, those messages simply confirm a scheduling matter and do not constitute preliminary versions of records in which opinions or recommendations are discussed or policies are formulated. Accordingly, the Village has not sustained its initial burden of demonstrating that these email messages are exempt from disclosure under Section 7(1)(f). However, the email messages on pages 2-5 of Attachment 2 pertain to a proposed contract between the Village and Mr. Puscas. Those records are pre-decisional in nature and were used in the Village's deliberative process. The Village also has asserted that the email messages have not been publicly cited and identified by the head of the public body. Accordingly, the Village has sustained its initial burden of demonstrating that the email messages on pages 2-5 of Attachment 2 are exempt from disclosure pursuant to Section 7(1)(f).

The Village has asserted that additional information in ██████████ FOIA request is exempt from disclosure under Section 7(1)(b) (5 ILCS 140/7(1)(b)) and Section 7(1)(g) (5 ILCS 140/7(1)(g)). Because prior approval by the Public Access Counselor is not required for the assertion of exemptions other than Section 7(1)(c) (5 ILCS 140/7(1)(c)) and Section 7(1)(f), we make no determination at this time regarding the applicability of any other exemptions.

This letter shall serve to close this file. If you have any questions, please feel free to contact me at 312-814-6756 or ssilverman@atg.state.il.us.

Sincerely,


Steve Silverman
Assistant Public Access Counselor

cc:

