



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 14, 2011

Ms. Barbara Gosslear
Spiroff & Gosslear, Ltd.
City Attorney, City of Oak Brook Terrace
610 W. Roosevelt Road, Suite A-2
Wheaton, Illinois 60187

RE: FOIA Pre-Authorization Request-2010 PAC 9244

Dear Ms. Gosslear:

We have received and reviewed the written notice from the City of Oak Brook Terrace (City) of its intention to deny certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act ("FOIA") 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on August 17, 2010 former City Manager Martin J. Bourke submitted a FOIA request to the City seeking copies of the following:

1. Performance evaluations of Martin J. Bourke, former City Manager of Oak Brook Terrace as completed by the Mayor and all Alderman of the City and submitted to Mayor Anthony Ragucci at any time between July 1 and July 28, 2010.
2. The report from the City Attorney Barbara Gosslear to Mayor Anthony Ragucci concerning an anonymous complaint accusing former City Manager Bourke of creating or fostering a hostile work environment given to the Mayor from July 1, to July 28, 2010.

On August 24, 2010, the District submitted a Notice of Intent to Deny to this Office explaining that the evaluation and written reprimand are exempt from disclosure pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying any "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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." This Office initiated further inquiry into the matter on August 31, 2010 and requested a copy of the documents that the City seeks to exempt. The City fully complied with our further inquiry letter on September 9, 2010.

Determinations

The City's request for approval to withhold the evaluations and the written reprimand is approved in part and denied in part. The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987).

Performance Evaluations

The evaluations of Mr. Bourke by the Mayor and various Alderman can be characterized as the City's preliminary opinions and recommendations about Mr. Bourke's performance as City Manager and would otherwise fall within the scope of Section 7(1)(f). We note, however, that the City is statutorily obligated to disclose these evaluations to Mr. Bourke pursuant to the Personnel Record Review Act (PRRA). Specifically, Section 2 of the PRRA (820 ILCS 40/2) states the following with regard to an employee's right to inspect an evaluation:

Every employer shall, upon an employee's request which the employer may require be in writing on a form supplied by the employer, permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining *that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action, except as provided in Section 10.* (Emphasis added.)

Presently, the PRRA does not contain a provision that would prohibit a former employee such as Mr. Bourke from inspecting his own evaluations. Thus, we conclude that this specific provision in the PRRA supersedes Section 7(1)(f).

Written Reprimand

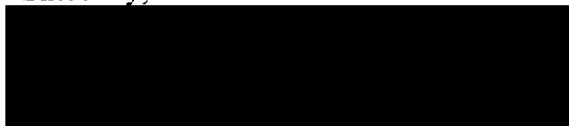
The District also seeks to withhold a draft written reprimand from Mayor Ragucci to Mr. Bourke. The document appears to have been drafted by the City Attorney for the Mayor to submit to Mr. Bourke. The City explains that the written reprimand was never supplied to Mr. Bourke, never signed by the Mayor and therefore, is considered preliminary and proposes a course of action with regard to the allegation. Because the reprimand was never made part of Mr. Bourke's personnel file it can be properly characterized as preliminary and falls within the scope of Section 7(1)(f).

Conclusions

This Office finds that the City has not met its initial burden with regard to the performance evaluations and must disclose the evaluations to Mr. Bourke. The City *has* met its initial burden with regard to the draft written reprimand and may withhold this document pursuant to Section 7(1)(f).

Should you have any questions, please feel free to contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Martin J. Bourke
mjbourke@comcast.net

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