



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

Lisa Madigan
ATTORNEY GENERAL

September 15, 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 8333

Dear Mr. Reuter:

We have received and reviewed the Illinois Environmental Protection Agency's (IEPA's) written request for approval of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated June 14, 2010 from [REDACTED], an attorney with the law firm of Laysner & Freiwald, P.C. The request sought "any and all documents relating to Rohm & Hass' (formerly Morton Chemical) entry into the site remediation program, and any and all documents relating to violations of the program." IEPA has indicated its intention to withhold certain responsive records pursuant to Section 7(1)(f), specifically:

1. two Hazardous Ranking System (HRS) Preliminary Score evaluations, dated February 1, 1989, and December 31, 1989;
2. a draft Screening Site Inspection Report, dated March 1, 1990;
3. a Screening Site Inspection Report, dated July 19, 1990;
4. a memorandum from an IEPA field inspector to its FOS Manager, dated November 12, 1985; and
5. certain internal IEPA e-mails.

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).

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court 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 cases 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 Section 7(1)(f) exemption. They include a variety of documents including internal memoranda, correspondence between IEPA and USEPA regarding enforcement at the site, preliminary site evaluation and scoring documents, and internal IEPA communications concerning drafts of various enforcement-related documents. IEPA has explained that these records consist of preliminary evaluations and recommendations with regard to quantifying the environmental threats present at the site in question and the agency’s determination of proper action with regard to that site. It is our understanding that IEPA staff considers these recommendations in determining enforcement options, priorities and strategies with regard to environmental hazards. Additionally, IEPA works in conjunction with USEPA with regard to enforcement of environmental regulations. IEPA’s explanation indicates that the documents it seeks to exempt under Section 7(1)(f) are predecisional and constitute part of IEPA’s deliberative process in determining how to proceed. Such records are clearly encompassed by the language of the Section 7(1)(f) exemption, because they constitute part of the IEPA’s deliberative process in determining how to proceed with regard to enforcement of environmental regulations in relation to the site in question. Further, IEPA has indicated that the records have not been publicly cited and identified by the head of the public body. Accordingly, IEPA has met its burden of demonstrating that the records 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 shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By: 

Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc: 

