



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

Lisa Madigan
ATTORNEY GENERAL

August 12, 2010

Mr. Troy A. Fodor
Vice President & General Counsel
Illinois Municipal Electric Agency
3400 Conifer Drive
Springfield, Illinois 62711

RE: Pre-Authorization Request – 2010 PAC 8781

Dear Mr. Fodor:

We have received and reviewed the written notice from the Illinois Municipal Electric Agency (IMEA) of its intention to deny disclosure of certain documents as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(f).

IMEA's written notice relates to a FOIA request submitted by Mr. Michael Hawthorne of the *Chicago Tribune* for the following records from the time frame of January 1-July 22, 2010:

[A]ny and all documents, emails, external correspondence, meeting minutes and internal memoranda involving and between the Illinois Municipal Electric Agency, its municipal members, Prairie State Generating Co. and Peabody Energy, related to the construction budget for the Prairie State Energy Campus and any borrowing to pay for those costs.

IMEA furnished to Mr. Hawthorne meeting minutes from IMEA Executive Board and Board of Directors meetings for January, February and April, 2010.¹ It also provided two ordinances regarding IMEA's operating budget and appropriations for fiscal years 2010 and 2011. However, IMEA asserted that records requested "relating to the construction budget for the Prairie State Energy Campus and any borrowing to pay the costs thereof, other than the minutes already provided, are exempt from disclosure" under Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are

¹ IMEA indicated in its written notice that no Executive Board or Board of Directors (Boards) meetings were held in March or May 2010. It also indicated that minutes from the Boards' meetings in June 2010 had not yet been approved for release and that draft minutes from the Executive Board's July 2010 meeting had not yet been prepared.

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.”

Specifically, IMEA identified a number of e-mails exchanged between IMEA Senior Vice President and CFO Robert Childers and (1) internal staff members of IMEA; (2) consultants of IMEA; (3) representatives of other Prairie State Participants who serve with Mr. Childers on the Prairie State Finance and Accounting Committee; and (4) [Prairie State Generating Company] staff assigned to assist the members of the Prairie State Finance and Accounting Committee. IMEA has asserted that the e-mails contain Mr. Childers' opinions and reflect the formulation of recommendations for the implementation of the Prairie State Project and policies for IMEA members. One such e-mail contained a draft of comments that Mr. Childers intended to make during a closed-session meeting. According to the IMEA General Counsel, none of these e-mails has been publicly cited and identified by IMEA's CEO or the chairman of its Board of Directors.

Additionally, with respect to other documents related to the Prairie State construction budget for the time periods in question, the IMEA asserted that the documents are pre-decisional and are used to formulate recommendations for the IMEA Board of Directors regarding construction and other issues that may come up once the power plants begin operating. According to the IMEA General Counsel, none of these documents has been publicly cited and identified by IMEA's CEO or the chairman of its Board of Directors.

Determination

IMEA's use of the Section 7(1)(f) exemption with regard to the records in question is **approved**. IMEA has sustained its burden of demonstrating that the withheld documents consist of e-mails and other pre-decisional materials used to help IMEA officials formulate actions on specific issues. There is no evidence that these documents have been publicly cited and identified by IMEA's CEO or the chairman of its Board of Directors. Accordingly, IMEA may issue a partial denial to Mr. Hawthorne.

Should you have questions or concerns, please feel free to contact me at (312) 793-0865. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By: Sara Gadola Gallagher
Deputy Public Access Counselor

cc: Mr. Michael Hawthorne
Staff Reporter
Chicago Tribune
435 North Michigan Avenue
Chicago, Illinois 60611