



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

Lisa Madigan
ATTORNEY GENERAL

September 13, 2010

Mr. Tony Binns
FOIA Officer
City of Chicago, Department of Community Development
City Hall, Room 1000
121 N. LaSalle St.
Chicago, IL 60602

RE: FOIA Pre-approval Request – 2010 PAC 9054

Dear Mr. Binns:

We received from the City of Chicago, Department of Community Development (City) a 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 from ~~Each Block~~. The request sought various records related the TIF proposal for the Zapata Residential Apartments. The City has indicated its intention to withhold certain records as exempt under Section 7(1)(f), specifically one email chain related to this proposal.

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 to withhold the documents in question under 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 Section 7(1)(f). Our review of the e-mail communications in question indicates that they consist largely of recommendations for City officials to consider in making decisions or taking certain actions with respect to the Zapata proposal. As such, they appear to constitute part of the City's deliberative process in determining how to proceed with regard to the proposal. There is no evidence that these e-mail communications have been publicly cited or identified by the head of the public body. As such, the City has sustained 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 will serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By: 

Matthew M. Sebek
Assistant Public Access Counselor

cc: 

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