



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

Lisa Madigan
ATTORNEY GENERAL

September 1, 2010

Ms. Cassandra Daniels
FOIA Officer
Chicago Public Schools
Via electronic mail
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RE: FOIA Pre-Authorization Request – 2010 PAC 9286

On August 26, 2010, we received from Chicago Public Schools (CPS) a written request for approval of its intention to assert the Section 7(1)(f) exemption in response to an August 6, 2010 Freedom of Information Act (FOIA) request from [REDACTED]. The request sought a current copy of the CPS Position file. CPS has indicated its intention to deny access to and redact from the requested file the applicable open and close dates for each position as exempt predecisional deliberative process information under Section 7(1)(f).

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 CPS has met its burden to withhold the current position file open and close dates 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)).

In its letter, CPS explains that it seeks to withhold position dates because the budget, which contains the position dates, has not been finalized and is subject to revision, and that the release of the proposed position date information prior to the finalization of the budget could be disconcerting to staff members whose positions may be affected. Based on this explanation, CPS has sustained its burden under Section 7(1)(f) of demonstrating that this information is preliminary in nature and falls within the scope of Section 7(1)(f). CPS may, therefore, withhold the information with respect to the position dates.

If you have any questions, please feel free to contact me at (217) 785-7438. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:


Amanda M. Lundeen
Assistant Public Access Counselor

cc:

