



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

Lisa Madigan
ATTORNEY GENERAL

July 14, 2010

Ms. Kathryn Saltmarsh
FOIA Officer
Illinois Attorney General's Office
500 S. 2nd St.
Springfield, IL 62704

RE: FOIA Pre-approval Request – 2010 PAC 8237

Dear Ms. Saltmarsh:

We have received and reviewed written notice from the Illinois Attorney General's Office (AGO) 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 dated June 16, 2010 from Ms. Melissa P. Irick (Requester), an attorney with The Foster & Buick Law Group, LLC. The request sought various records related to "issues and problems with the [AGO's] website's estate tax calculator." AGO has indicated its intention to withhold certain responsive records pursuant to Section 7(1)(f), specifically two e-mails, which it provided to the Public Access Counselor (PAC), and which the AGO asserts "contain the expression of opinions by staff members as part of an effort to formulate a policy or decide a course of action."

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).


AGO has met its burden of demonstrating that the records are exempt from disclosure under Section 7(1)(f). In reviewing these documents, the PAC has confirmed that they contain the expression of opinions of staff members concerning the source of the issues that had arisen with the AGO's website's estate tax calculator and potential solutions to these issues. Such records are clearly encompassed by the language of the Section 7(1)(f) exemption, because they constitute part of the AGO's deliberative process in determining how to proceed with regard to addressing these issues. Further, there is no evidence that either of these e-mails has been publicly cited and identified by the Attorney General.

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: Ms. Melissa P. Irick
The Foster & Buick Law Group, LLC
2040 Aberdeen Ct.
Sycamore, IL 60178