



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

Lisa Madigan
ATTORNEY GENERAL

August 17, 2010

Mr. George Logan
FOIA Officer
Illinois Department of Revenue
101 W. Jefferson Street, MC 5-500
Springfield, Illinois 62702

RE: FOIA Pre-Authorization Request – 2010 PAC 9024

Dear Mr. Logan:

We have received and reviewed the written notice from the Illinois Department of Revenue (IDOR) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et. seq.*, as amended.

Specifically, on July 14, 2010, Mr. Joseph Walczak submitted a FOIA request to the IDOR requesting all documents relating to the Board of Appeals Order No. 07-1024, Taxpayer IDs DP-00243, 2384, and 36-37693181. The appeal relates to two on-site inspections between February 2006 and February 2007 of a snow removal facility in Wheeling, Illinois. Based on those inspections, the IDOR fined the facility owner more than \$88,000 in dyed diesel penalties. As a result, the facility's owners appealed the findings to the IDOR Board of Appeals.

On August 12, 2010, the IDOR submitting a pre-authorization request with this Office explaining that the documents relating to the appeal are exempt from disclosure pursuant to Section 7(1)(f), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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).

Determinations

The IDOR's request for approval of its decision to withhold information pursuant to Section 7(1)(f) is approved in part and denied in part. On August 12, 2010, this Office received more than 100 pages of documents that the IDOR considers to be exempt from disclosure pursuant to Section 7(1)(f). Those documents include:

1. Handwritten notes and recommendations written by the hearing officer;
2. Internal communications written by the hearing officer;
3. Penalty and Interest Review;
4. Case Detail Report;
5. Assessment Referral Worksheet;
6. Activity Reports;
7. Dyed Diesel Fuel Inspection Violation Reports;
8. Diesel Fuel Dye Analyzer;
9. Dyed Diesel Fuel Inspection/Sample Receipt;
10. Assessment Activity Inquiry;
11. Integrated Registration Information System;
12. 2007 Illinois Registration Identification Cards;
13. Photographs of the violations;
14. Continuation Report; and
15. Assessment Activity Inquiry;

In its letter, the IDOR explains that several of the documents it seeks to withhold contain personal notes and internal correspondence by the hearing officer that were used by the officer to develop a final recommendation to be given to the Board of Appeals. In reviewing the documents, this Office has concluded that the hearing officer's personal notes and internal correspondence are preliminary in nature and fall within the scope of Section 7(1)(f).

However, several of the documents that the IDOR also seeks to withhold pursuant to Section 7(1)(f) do not contain the personal notes of the hearing officer and would otherwise be classified as public records pursuant to Section 2(c) of FOIA. For purposes of FOIA, "public records" means "documentary materials pertaining to the transaction of public business". 5 ILCS 140/2(c). While the IDOR explains that the documents were utilized in the preparation of the hearing officer's recommendation to the Board of Appeals, it appears that a majority of these documents relate to the 2006 and 2007 inspections of the facility and contain findings and conclusions by the IDOR about the facility.

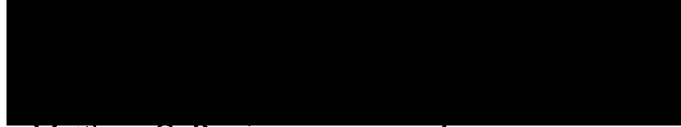
Therefore, the documents that relate to IDOR's inspections of the facility cannot be said to be preliminary in nature and do not fall within the scope of Section 7(1)(f).

Based on this analysis, the IDOR may withhold the documents that contain the personal notes and internal correspondence of the hearing officer, but should disclose the remaining documents that relate to the 2006 and 2007 inspection of the facility. If you have any questions or concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:



Matthew C. Rogina
Assistant Public Access Counselor

cc: Joseph J. Walczak
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