



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

Lisa Madigan
ATTORNEY GENERAL

March 4, 2011

Mr. Grant Farrar
City of Evanston
Corporation Counsel
2100 Ridge Ave.
Evanston, IL 60201

RE: FOIA Pre-approval Request – 2010 PAC 10551

Dear Mr. Farrar:

We have received from the City of Evanston a written notice of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request submitted by Mr. Mark Chester. Mr. Chester's FOIA request sought fourteen categories of documents relating to certain proposed traffic signals and/or stoplights at specified intersections in the City. The City claims that portions of 26 pages of records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the City.

Section 7(1)(f) of the Freedom of Information Act (5 ILCS 140/7(1)(f)) 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.

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)).

Based on our review, the documents which the City seeks to withhold appear to fall within the scope of the Section 7(1)(f) exemption, because they consist of internal discussions pertaining to the formulation of City policy with respect to this issue. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, the City has met its initial burden of demonstrating that these 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 shall serve to close this file.



Matthew M. Sebek
Assistant Public Access Counselor

cc:

Mr. Mark Chester
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