



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

Lisa Madigan
ATTORNEY GENERAL

March 25, 2011

Ms. Sarah Pratt
FOIA Officer
Office of the Illinois Attorney General
500 S. 2nd Street
Springfield, IL 62706

RE: FOIA Pre-approval Request – 2010 PAC 13005

Dear Ms. Pratt:

We have received from the Office of the Illinois Attorney General 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 [REDACTED] [REDACTED] FOIA request sought the following:

[a]ll metadata collated by the Public Access Counselor as it pertains to the receipt and processing of requests for review for the 2010 year. . . .[,] the number of requests submitted by citizens seeking a second opinion on a denial of records, and any metadata regarding the time of review each request took, . . . the average time each request took to undertake and how many of those requests exceeded the mandatory 60 days for review[,] any emails or other internal communications within the Attorney General's office discussing any such delays.

The OAG claims that several e-mails are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions.

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 emails proposed to be withheld under Section 7(1)(f) appear to fall within the scope of the Section 7(1)(f) exemption, because they consist of internal discussions which contain opinions and which pertain to the formulation of actions and policies. 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 OAG 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.

Sincerely,


Matthew W. Sebeck
Assistant Public Access Counselor

cc: 

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