



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

Lisa Madigan
ATTORNEY GENERAL

March 4, 2011

Ms. Sunny Clark
Illinois Department of Central Management Services
FOIA Officer
Sunny.clark@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 9425

Dear Ms. Clark:

We have received from the Illinois Department of Central Management Services (CMS) 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. Andrew Lawrence. Mr. Lawrence's FOIA request sought documents reflecting an internal CMS policy that prohibits any CMS employee, other than Nick Kannelopoulos or Terry Schierholz, from communicating directly with Andrew Lawrence, a registered lobbyist. Mr. Lawrence has also requested in this FOIA request that various specified employees attest to the existence of this policy. CMS claims that certain potentially responsive e-mails are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by CMS.

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 CMS's description of the documents at issue, the e-mails over which CMS seeks to assert the Section 7(1)(f) exemption appear to fall within the scope of the Section 7(1)(f) exemption, because they consist of internal discussions pertaining to the formulation of CMS policy. Further, there is no evidence to suggest that the records at issue have been publicly cited and identified by the head of the public body. Accordingly, CMS 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,

A black rectangular redaction box covering the signature of Matthew M. Sebek.

Matthew M. Sebek
Assistant Public Access Counselor

cc: Mr. Andrew Lawrence
ael_go@ameritech.net

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