



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

Lisa Madigan
ATTORNEY GENERAL

March 4, 2011

Ms. Sheila Chernis
Illinois Department of Commerce and Economic Opportunity
FOIA Officer
Sheila.chernis@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 9845

Dear Ms. Chernis:

We have received from the Illinois Department of Commerce and Economic Opportunity 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 Raceway Associates LLC Grant agreement and related documents. DCEO claims that portions of seven records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by DCEO.

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 of the documents at issue, the document excerpts over which DCEO seeks to assert the Section 7(1)(f) exemption appear to fall within the scope of the Section 7(1)(f) exemption. These excerpts consist of opinions and recommendations utilized by DCEO in its decision-making process with regard to a particular issue. Further, there is no evidence to suggest that this record has been publicly cited and identified by the head of the public body. Accordingly, DCEO has met its initial burden of demonstrating that this record is 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 M. Sebek
Assistant Public Access Counselor

