



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

Lisa Madigan  
ATTORNEY GENERAL

September 30, 2010

Ms. Jessica Bargnes  
Scariano, Himes and Petrarca, Chtd.  
Via electronic mail  
jbargnes@edlawyer.com

RE: FOIA Pre-approval Request – 2010 PAC 9710

Dear Ms. Bargnes:

We have received and reviewed Mount Prospect District No. 57's (the District's) written request for approval of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated September 8, 2010 from [REDACTED] request sought all e-mail communication regarding his "appeal and ridership determination" and related documents. The District has indicated its intention to withhold one responsive e-mail pursuant to Section 7(1)(f).

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

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1<sup>st</sup> 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).

Section 7(1) of FOIA provides as follows:

When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. 5 ILCS 140/7(1).

### Determinations

We have determined that the District has not met its initial burden of establishing that the e-mail at issue may properly be withheld in its entirety under Section 7(1)(f). This five paragraph e-mail, dated September 1, 2010, from [REDACTED] to [REDACTED] and [REDACTED] relates to the District's determination that [REDACTED]'s children are not eligible for free transportation to their school, because they do not reside more than 1.5 miles from the school they attend. Specifically, it consists primarily of [REDACTED] recitation of the relevant measurements the District had taken to determine the distance from the school to [REDACTED] residence. Section 7(1)(f) does not exempt such purely factual recitations to the extent that they are reasonably segregable from the expression of otherwise properly exempt opinions or policy formulations in a given record. 5 ILCS 140/7(1); *see, also, Petroleum Information Corp. v. U.S. Dept. of Interior*, 976 F. 2d 1429, 1436 (D.C. Cir., 1992) (construing the parallel language of Federal FOIA Exemption 5 to hold that "[t]he release of materials that do not embody agency judgments-for example, materials relating to standard or routine computations or measurements over which the agency has no significant discretion-is unlikely to diminish officials' candor or otherwise injure the quality of agency decisions. . . . Requiring disclosure of such materials is fully 'consistent with efficient government operation.'" (Internal citation omitted.)

In this case, we have determined that the District has met its burden of justifying redaction under Section 7(1)(f) only with respect to the second and third sentence of the third paragraph of this e-mail. These are the only two sentences which reasonably constitute part of the District's deliberative process with respect to the transportation determination at issue and the factual under-pinning on which that determination was based. We have also determined that those two sentences are reasonably segregable from the factual recitations which comprise the remainder of this email. As such, the District may produce a redacted copy, in accordance with the determinations above, in response to [REDACTED] FOIA request.

If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith  
Public Access Counselor

By: [REDACTED]

Matthew M. Sebek  
Assistant Public Access Counselor

cc:



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