



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 8, 2011

Mr. Clifton J. Mitchell
Senior Staff Attorney
City of Peoria
419 Fulton Street
Peoria, Illinois 61602

RE: Pre-Authorization Request 2011 PAC 13160

Dear Mr. Mitchell:

We have reviewed the written notice from the City of Peoria of its intention to deny certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/7(1)(f).

On February 11, 2011, Mr. Dean B. Rhoads, on behalf of the law firm Sutkowski & Rhoads, submitted a FOIA request to the City seeking information with regard to certain redevelopment in the City.

In its March 25, 2011 Notice of Intent to Deny, the City asserted that several e-mail exchanges between City personnel and the City attorney with regard to certain redevelopment in the City are exempt from disclosure pursuant to Section 7(1)(f) of FOIA, which exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions 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." The City supplied this Office with copies of the documents and e-mails that it seeks to withhold under Section 7(1)(f) on April 6 and April 7, 2011.

Determination

The City's request for approval of its decision to withhold the memorandum pursuant to Section 7(1)(f) is approved. The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987).

This Office has reviewed the e-mails and preliminary drafts that the City seeks to withhold and we have concluded that they consist of opinions, recommendations and financial projections by City personnel and the City attorney from a two-year period about the proposed redevelopment agreement entered into by the City.

Additionally, there is no evidence that the e-mails have been publicly cited and identified by the head of the City. 5 ILCS 140/7(1)(f).

Accordingly, we find that the City has met its initial burden under Section 7(1)(f) and may withhold the e-mails.

Please be advised, however, that pursuant to Section 9.5(b) of FOIA (5 ILCS 140/9.5(b)), a public body must submit its notice of intent to deny to the Office of the Public Access Counselor within 5 business days of receipt of the FOIA request. In this matter, the City submitted the notice of intent to deny more than a month after its initial receipt. Any subsequent failure by the City to strictly comply with the pre-approval process set out in Section 9.5(b) may result in the Public Access Counselor's denial of *any* asserted exemptions. The City should supply Mr. Rhoads with any draft documents contained in the emails that have been finalized subsequent to the submission of Mr. Rhoads request if it has not already done so.

If you have any questions, please feel free to contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Dean Rhoads
Attorney at Law
Sutkowski & Rhoads, Ltd.
416 Main Street, Suite 400
Peoria, Illinois 61602

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