



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 13, 2011

Mr. George Logan
Acting Freedom of Information Act Officer
Illinois Department of Revenue
george.logan@illinois.gov

RE: FOIA Pre-Authorization Request - 2011 PAC 13383

Dear Mr. Logan:

We have received and reviewed the written notice from Illinois Department of Revenue of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq., as amended.

Specifically, on December 4, 2010, [REDACTED] submitted a FOIA request to the Department seeking the certain information about ethanol production.

On April 6, 2011 the Department submitted a Notice of Intent to Deny with this Office explaining that the document is exempt from disclosure pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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."

Specifically, the Department seeks to withhold a single memorandum that relates to the then Senate Bill 46.

Determinations

The Department request for approval of its decision to withhold the memorandum pursuant to Section 7(1)(f) is approved. This Office has reviewed the document that the Department seeks to withhold and we have concluded that the memorandum is preliminary in nature and was generated in preparation of Senate Bill 46. Accordingly, the memorandum properly falls within the scope of Section 7(1)(f).

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

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 Department submitted the notice of intent to deny more than four months after its initial receipt of Mr. Skinner's FOIA request. Any subsequent failure by the Department 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.

Based on this analysis, the Department has met its initial burden in demonstrating that the memorandum is exempt from disclosure under Section 7(1)(f) and may withhold the document in question.

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

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc:



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