



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

Lisa Madigan
ATTORNEY GENERAL

October 13, 2010

Ms. Sunny Clark
FOIA Officer
Illinois Department of Central Management Services
Via electronic mail
Sunny.Clark@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 9992

Dear Ms. Clark:

We have received and reviewed the Illinois Department of Central Management Services' (CMS'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 August 13, 2010 from [REDACTED] [REDACTED] certain documents relating to a contract between the State of Illinois and Scientific Games, International pursuant to the Central Communication System-Video Gaming Act solicitation promulgated by the Illinois Gaming Board. CMS claims that 56 pages of responsive records 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 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 (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)).

The 56 pages at issue appear to fall within the scope of the Section 7(1)(f) exemption. These documents consist of intra-agency correspondence and evaluative documents which constitute part of the CMS's deliberative process concerning this solicitation. Further, there is no evidence to suggest that these records 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,

Cara Smith
Public Access Counselor

By: 

Matthew M. Sebek
Assistant Public Access Counselor

cc: 

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