

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 20, 2010

Ms. Donna Lobaito
FOIA Officer
Village of Hawthorn Woods
Via e-mail to:
dlobaito@vhw.org

RE: FOIA Request for Review – 2010 PAC 9310

Dear Ms. Lobaito:

We have received and reviewed the Village of Hawthorn Woods' (Village'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 from [REDACTED] [REDACTED] FOIA request sought a copy of the annexation agreement between the Village and Dartmoor Homes and related documents and the Village seeks to exempt the responsive agreement, contending that it is not yet fully executed by all of the parties thereto.

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).

Determination


We have determined that the Village has not met its initial burden of establishing that the annexation agreement at issue may properly be withheld under Section 7(1)(f). Despite the fact that this agreement has not been signed by each of the signatories, this agreement has been cited and identified in Village Ordinance No. 1332-10, passed by the Village's trustees (and approved by the Village's mayor) on July 1, 2010, which relates to, among other things, "zoning land newly annexed to the village of Hawthorn Woods." Section 7(1)(f) expressly provides "a specific record . . . shall not be exempt when the record is publicly cited and identified by the head of the public body." Not only has this annexation agreement been cited and identified in this ordinance, but the Village's corporate authorities have zoned certain property impacted by the agreement. As such, the agreement does not constitute a "preliminary draft" as that phrase is used in Section 7(1)(f), and, therefore, cannot properly be exempted on that basis.

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

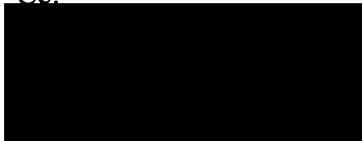
Sincerely,

Cara Smith
Public Access Counselor

By:


Matthew M. Sebek
Assistant Public Access Counselor

Cc:


9310 pre-auth dl 7(1)(f) prelim draft mun