



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 22, 2011

Ms. Karen Coppa
Chief Assistant Corporation Counsel
City of Chicago Department of Law
karen.coppa@cityofchicago.org

RE: FOIA Pre-Authorization Request - 2011 PAC 13489

Dear Ms. Coppa:

We have received and reviewed the written notice from the City of Chicago Department of Law (City) 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 140/17et seq., as amended).

Specifically, on March 28, 2011, Mr. Richard Devine, on behalf of the law firm Meckler, Bulger, Tilson, Marick and Pearson LLP, submitted a FOIA request to Alderman Patrick J. Levar seeking copies of communications between the Alderman Levar and the Chicago Department of Aviation (CDA) with regard to contracts entered into between the City of Chicago and Westfield Management.

On April 11, 2011, the City of Chicago Department of Law submitted a Pre-Authorization Request with this Office on behalf of Alderman Levar explaining that several draft documents relating to concession contracts are 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 CDA seeks to withhold draft documents that are responsive to Mr. Devine's request.

Determinations

The City's request for approval of its decision to withhold the memoranda pursuant to Section 7(1)(f) is approved. This Office has reviewed the documents submitted by the City and determined that they are clearly draft documents. As such, these documents properly fall within the scope of Section 7(1)(f).

Additionally, there is no evidence that this information has been publicly cited and identified by the head of the City. 5 ILCS 140/7(1)(f).

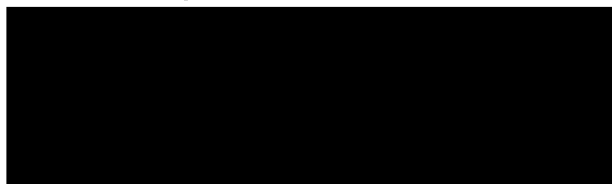
Based on this analysis, the City has met its initial burden under Section 7(1)(f) and may withhold the draft documents in question.¹

Please be advised that individual public officers are not within the definition of a "public body" under FOIA. *Quinn v. Stone*, 211 Ill. App. 3d 809, 812, 570 N.E.2d 676, 678 (1st Dist. 1991). There, the court upheld the dismissal of a complaint for injunctive relief against a City of Chicago alderman because the alderman was "not the proper recipient" of a FOIA request to which he did not respond. *Id.* Instead, the request should have been submitted to the mayor and the city council. *See id.* at 811-12, 570 N.E.2d at 677-78.

Accordingly, Alderman Levar is not a "public body" under FOIA and therefore he is not obligated to respond to Mr. Devine's FOIA request. In the future, Mr. Devine may wish to submit his FOIA request for the records to the City of Chicago Department of Law.

Should 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: Mr. Richard A. Devine
Meckler, Bulger, Tilson, Marick and Pearson LLP
Richard.devine@mbtlaw.com

13489 preauth al 71f prelim sa

¹ We note that this Office made a similar conclusion in No. 2010 PAC 13505. In that matter, Mr. Devine submitted a FOIA request to the Chicago Department of Aviation. This Office approved CDA's use to withhold the same set of records that the City seeks to withhold with regard to this FOIA request. In that letter, we noted that the CDA is obligated to disclose the drafts to Mr. Devine upon completion.