



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

Lisa Madigan
ATTORNEY GENERAL

November 8, 2010

Mr. John Costello
Freedom of Information Officer
Office of the Illinois Attorney General
500 S. 2nd St.
Springfield, IL 62706

RE: FOIA Pre-approval Request – 2010 PAC 9230

Dear Mr. Costello:

We have received from the Office of the Illinois Attorney General (OAG) a written notice of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request submitted by [REDACTED]. [REDACTED] FOIA request sought "copies of any documents . . . relating to a workers' compensation claim filed by [REDACTED] against the Illinois State Police as a result of a December 11, 2004 accident [REDACTED]." The OAG claims that 17 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 the OAG.

Section 7(1)(f) of the Freedom of Information Act (5 ILCS 140/7(1)(f)) 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.

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).

With respect to the OAG's Section 7(1)(f) assertion, the 17 pages at issue appear to fall within the scope of the Section 7(1)(f) exemption. These documents consist of draft and evaluative documents which constitute part of the OAG's deliberative process concerning its handling of this claim. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, the OAG has met its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

In addition to its Section 7(1)(f) assertion, the OAG also asserts the Section 7(1)(b) and Section 7(1)(m) exemptions (5 ILCS 140/7(1)(b),(m)) as additional bases for withholding certain responsive records and portions thereof. This letter takes no position with respect to the OAG's assertion of these exemptions. Please note that FOIA only requires public bodies to submit a Notice of Intent to Deny and request for pre-authorization with regard to assertions of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials). Where information is specifically exempt under other sections of the Act, public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization.

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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