



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 16, 2011

Mr. David Silverman
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Village of Lisle
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RE: FOIA Pre-Authorization Request - 2011 PAC 12181

Dear Mr. Silverman:

We have received and reviewed the written notice from the Village of Lisle of its intention to deny certain information as exempt from disclosure under section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010).

On January 24, 2011, [REDACTED] submitted a FOIA request seeking a "copy of all records and materials created pursuant to any and all legislative work since May 1, 2010 to present. (Attorney work to lobby to change state laws.)" The Village claims that the responsive records, draft legislation, and correspondence concerning that draft, are exempt under section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions.

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.

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." *Harwood*, 344 Ill. App. 3d 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

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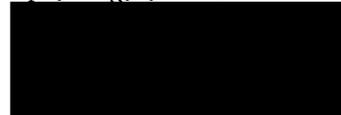
disclosed” but rather to “predecisional intra-agency communications.” *Harwood*, 344 Ill. App. 3d at 247-248. The court noted that no previous Illinois cases interpreted the use of the term “preliminary” and, as such, stated that it was helpful to look to cases interpreting the parallel language of the 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.” *Harwood*, 344 Ill. App. 3d at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

DETERMINATION

The Village's use of the exemption in section 7(1)(f) for the responsive draft legislation and correspondence concerning that draft is **approved**. Based on our review, the records proposed to be withheld appear to fall within the scope of the section 7(1)(f) exemption, because they consist of internal discussions which contain opinions and which pertain to the formulation of policies advocated by the Village. 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 Village 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 contact me at (217) 782-9078. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW M. SEBEK
Assistant Attorney General
Public Access Bureau

cc:



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