



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 18, 2011

*Via electronic mail*

Mr. Tom Mammoser  
FOIA Officer  
Dundee Township Park District  
21 N. Washington St.  
Carpentersville, IL 60110  
tmammoser@dtpd.org

RE: Open Meetings Act Request for Review – 2011 PAC 14059

Dear Mr. Mammoser:

We have received and reviewed the written notice from the Dundee Township Park District (District) of its intention to deny disclosure of certain information pursuant to 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 April 7, 2011, [REDACTED] submitted a FOIA request seeking records relating to the development of a particular portion of Randall Road. Specifically, [REDACTED] sought "copies of minutes and notes from meetings between the park district staff or officials and Kane County representatives wherein any discussions took place regarding Randall Road, between Illinois Route 72 and Huntley Road, as well as any studies, reports and memoranda since January 1, 2004, regarding Randall Road between Illinois Route 72 and Huntley Road." Letter from [REDACTED] Zukowksi, Rogers, Flood & McArdle, to FOIA Officer, Dundee Township Park District (April 7, 2011).

The District responded to [REDACTED] request, granting it in part and denying it in part. The District has explained that the requested records relate to the development of a roadway and access points involving District property. The District, in cooperation with the Village of Dundee (Village), must seek approval of the development plan from the Kane County Department of Transportation (KDOT) and ultimately enter into an intergovernmental agreement with the Village to pursue the development plan.

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The District has indicated that the parties are currently in negotiations regarding the project, its approval by KDOT, and the terms of the intergovernmental agreement. The District released some responsive records to [REDACTED], but withheld six categories of records as exempt under section 7(1)(f). The District has indicated its intention to deny: handwritten notes of staff members involved in negotiations; internal communications reflecting staff members' opinions and proposed negotiation strategies; reports and opinions from consultants compiled for the purpose of creating and presenting a proposal to KDOT; drafts, notes and recommendations for the terms of the proposed intergovernmental agreement; correspondence with other property owners containing opinions and formulating actions; and correspondence containing negotiations and other communications with KDOT.

Section 7(1)(f) of the Freedom of Information Act exempts from disclosure:

[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.

Based on our review of the records in question, we have determined that the District has met its initial burden of demonstrating that the documents in question are exempt under section 7(1)(f). The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill. App. 3d 473 (1<sup>st</sup> Dist. 1987). Section 7(1)(f) also exempts from disclosure documents produced by outside consulting firms hired to advise public bodies on a particular course of action. *Harwood v. McDonough*, 344 Ill.App.3d 242, 248 (1<sup>st</sup> Dist. 2003). The Court in *Harwood* 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.

The Public Access Counselor's office has reviewed the documents supplied by the District and concluded those documents consist of preliminary notes, drafts, recommendations, and predecisional correspondence that constitute part of the District's deliberative process for planning and negotiating the development in question and, therefore, 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 public body. Based on this analysis, the District has met its initial burden under section 7(1)(f) to withhold the documents in question.

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This letter will serve to close this matter. If you have any questions, please contact me at (217) 785-7438.

Very truly yours,

  
AMANDA M. LUNDEEN  
Assistant Attorney General  
Public Access Bureau

cc:

  
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