



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 16, 2011

Via electronic mail

Mr. Roman Gold
Freedom of Information Act Officer
Metra
547 West Jackson Blvd.
Chicago, Illinois 60601-5717
rgold@metrarr.com

RE: FOIA Pre-Authorization Request - 2010 PAC 6800

Dear Mr. Gold:

We have received and reviewed the written notice from Metra 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). Specifically, on March 10, 2010, Mr. Rick Clark submitted a FOIA request to Metra for "all documentation and correspondences concerning the contract between R&W Clark and Metra concerning the construction of the 'Hubbard Street Retaining Walls,' Contract #K19819." On April 13, 2010, Metra submitted its written notice to this Office seeking to withhold a portion of the responsive records pursuant to section 7(1)(f).

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records 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) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. On May 10, 2011, Metra furnished this Office with a representative sample of the copies of the records it seeks to withhold pursuant to section 7(1)(f). Metra seeks to withhold drafts and internal memoranda relating to the contract.

DETERMINATION

Metra's use of the exemption in section 7(1)(f) to the withhold the drafts and internal memoranda is **approved**. The section 7(1)(f) exemption is intended to encourage


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government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

We have reviewed the drafts and internal memoranda furnished to us by Metra and conclude that Metra has met its initial burden of demonstrating that the drafts and internal memoranda are preliminary and fall within the scope of section 7(1)(f). There also exists no evidence that the drafts and memoranda have been publicly cited or identified by the head of Metra. As a result, Metra may withhold the records. If any of the drafts have been finalized subsequent to Metra's submission of its written notice, such records must be disclosed to Mr. Clark.

If you have any questions, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

cc: Mr. Rick Clark
R. & W. Clark Construction
8012 W. Lincoln Highway
Frankfort, Illinois 60423

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